

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF SEPTEMBER 22, 2006**

**THE SERRANO CRUZ SISTERS V. EL SALVADOR
MONITORING COMPLIANCE WITH JUDGMENT**

HAVING SEEN:

1. The judgment on merits, reparations and costs (hereinafter "the judgment") delivered by the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") on March 1, 2005, in which it:

DECLAR[ED]:

By six votes to one, that:

1. The State has violated the right to judicial guarantees and judicial protection embodied in Articles 8(1) and 25 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Ernestina and Erlinda Serrano Cruz and their next of kin, in the terms of paragraphs 53 to 107 of [the] judgment.
Dissenting Judge *ad hoc* Montiel Argüello.

By six votes to one, that:

2. The State has violated the right to humane treatment embodied in Article 5 of the American Convention [...], in relation to Article 1(1) thereof, to the detriment of the next of kin of Ernestina and Erlinda Serrano Cruz, in the terms of paragraphs 111 to 115 of [the] judgment.
Dissenting Judge *ad hoc* Montiel Argüello.

By five votes to two, that:

3. It will not rule on the alleged violations of the rights of the family, the right to a name, and the rights of the child, embodied in Articles 17, 18 and 19 of the American Convention [...], respectively, in the terms of paragraph 125 of [the] judgment.
Dissenting Judges Cançado Trindade and Ventura Robles.

By six votes to one, that:

4. It will not rule on the alleged violation of the right to life embodied in Article 4 of the American Convention [...], in relation to Article 1(1) thereof, to the detriment of Ernestina and Erlinda Serrano Cruz, in the terms of paragraphs 130 to 132 of [the] judgment.
Dissenting Judge Cançado Trindade.

AND DECIDE[D]:

By six votes to one, that:

* Judge Oliver Jackman did not take part in the deliberation and signature of this Order, because he advised that, for reasons beyond his control, he would be unable to participate in the seventy-second regular session of the Court. Also, Judge Diego García-Sayán disqualified himself from hearing this case, in accordance with Articles 19(2) of the Statute of the Court and 19 of its Rules of Procedure, so that he did not take part in the delivery of the judgment or in this Order.

5. [The] judgment constitutes *per se* a form of reparation, in the terms of paragraphs 157 and 201 thereof.

Dissenting Judge *ad hoc* Montiel Argüello.

6. The State shall, within a reasonable time, carry out an effective investigation into the reported facts in this case, identify and punish those responsible and conduct a genuine search for the victims, and eliminate all the obstacles and mechanisms *de facto* and *de jure*, which prevent compliance with these obligations in the instant case, so that it uses all possible measures, either through the criminal proceedings or by adopting other appropriate measures, and shall publicize the result of the criminal proceedings, in the terms of paragraphs 166 to 182 of [the] judgment.

Dissenting Judge *ad hoc* Montiel Argüello.

7. The State shall adopt the following measures to determine the whereabouts of Ernestina and Erlinda Serrano Cruz: establishment of a national commission to trace the young people who disappeared during the armed conflict when they were children, with the participation of civil society; creation of a search web page; and creation of a genetic information system, in the terms of paragraphs 183 to 193 of [the] judgment.

Dissenting Judge *ad hoc* Montiel Argüello.

8. The State shall, within one year, organize a public act acknowledging its responsibility for the violations declared in [the] judgment and in reparation to the victims and their next of kin, in the presence of senior State authorities and the members of the Serrano Cruz family, in the terms of paragraphs 194 of [the] judgment.

Dissenting Judge *ad hoc* Montiel Argüello.

9. The State shall publish, within six months, at least once in the official gazette and in another national newspaper, Chapter 1, entitled "Introduction of the case," Chapter III, entitled "Jurisdiction" and Chapter VI, entitled "Proven facts," as well as the operative paragraphs of [the] judgment, and shall also establish a link to the complete text of [the] judgment in the search web page, in the terms of paragraph 195 of [the] judgment.

Dissenting Judge *ad hoc* Montiel Argüello.

10. The State shall designate, within six months, a day dedicated to the children who disappeared during the internal armed conflict for different reasons, in the terms of paragraph 196 of [the] judgment.

Dissenting Judge *ad hoc* Montiel Argüello.

11. The State shall provide free of charge, through its specialized health institutions, the medical and psychological treatment required by the next of kin of the victims, including the medicines they require, taking into consideration the health problems of each one, after making an individual evaluation, and within six months, inform the next of kin of Ernestina and Erlinda Serrano Cruz in which health centers or specialized institutes they will receive the said medical or psychological care, and provide them with the treatment, in the terms of paragraphs 197 to 200 of [the] judgment. If Ernestina and Erlinda Serrano Cruz are found alive, the State shall also provide them with the said medical and psychological treatment, in the terms of paragraph 198 of [the] judgment.

Dissenting Judge *ad hoc* Montiel Argüello.

12. The State shall pay Suyapa Serrano Cruz the amount established in paragraph 152 of [the] judgment in reparation for the pecuniary damage suffered by the next of kin of the victims, part of which was assumed by the *Asociación Pro-Búsqueda*, in the terms of paragraph 152 of [the] judgment.

Dissenting Judge *ad hoc* Montiel Argüello.

13. The State shall pay, in compensation for non-pecuniary damage caused to the victims and their next of kin, the amounts established in paragraph 160 of [the] judgment, in favor of Ernestina Serrano Cruz, Erlinda Serrano Cruz, María Victoria Cruz Franco, Suyapa, José Fernando, Oscar, Martha, Arnulfo and María Rosa, all Serrano Cruz, in the terms of paragraph 160 of [the] judgment.

Dissenting Judge *ad hoc* Montiel Argüello.

14. The State shall pay the amounts established in paragraph 207 of [the] judgment to the *Asociación Pro-Búsqueda*, for the costs and expenses generated in the

domestic sphere and in the international proceedings before the inter-American system for the protection of human rights, and to CEJIL, for the costs and expenses it incurred in the said international proceedings, in the terms of paragraph 207 of [the] judgment.
Dissenting Judge *ad hoc* Montiel Argüello.

15. The State shall pay the compensations, reimburse the costs and expenses, and adopt the measures of reparation established in the eighth operative paragraph of [the] judgment, within one year of its notification, in the terms of paragraph 208 of [the] judgment.
Dissenting Judge *ad hoc* Montiel Argüello.

[...]

19. The State shall deposit the compensation ordered in favor of Ernestina and Erlinda Serrano Cruz in a deposit certificate or account in a reputable Salvadoran banking institution and in the most favorable financial conditions permitted by Salvadoran legislation and banking practice. If, after 10 years, the compensation has not been claimed, the amount shall be given, with the earned interest, to the siblings of Ernestina and Erlinda in equal parts, who will have two years to claim it, after which, if it has not been claimed, it shall be returned to the State, in the terms of paragraph 210 of [the] judgment.
Dissenting Judge *ad hoc* Montiel Argüello.

20. The payment of the compensation corresponding to María Victoria Cruz Franco, mother of Ernestina and Erlinda Serrano Cruz, shall be given to her children in equal parts, in the terms of paragraph 211 of [the] judgment.
Dissenting Judge *ad hoc* Montiel Argüello.

21. The payment of the compensation established in favor of the siblings of Ernestina and Erlinda Serrano Cruz shall be made directly to them. If any of them have died, the payment shall be made to the heirs, in the terms of paragraph 212 of [the] judgment.
Dissenting Judge *ad hoc* Montiel Argüello.

[...]

23. If, due to causes that can be attributed to the next of kin of the victims, beneficiaries of the payment of compensation, they are unable to receive it within the said period of one year, the State shall deposit such amounts in their favor in an account or a deposit certificate in a reputable Salvadoran banking institution in United States dollars, in the terms of paragraph 215 of [the] judgment.
Dissenting Judge *ad hoc* Montiel Argüello.

[...]

25. It shall monitor compliance with [the] judgment and shall file the instant case, when the State has fully implemented all its provisions. Within one year of notification of [the] judgment, the State shall provide the Court with a report on the measures taken to comply with it, in the terms of paragraph 217 of [the] judgment.
Dissenting Judge *ad hoc* Montiel Argüello.

[...]

2. The communication of January 18, 2006, with which the Office of the Ombudsman of the State of El Salvador submitted a document entitled "Report on compliance by the State of El Salvador with the judgment delivered by the Court in the case of the sisters Ernestina and Erlinda Serrano Cruz," in which it referred to compliance with some of the measures of reparation established by the Court.

3. The brief of March 20, 2006, in which the Deputy Director of Protocol of the Ministry of Foreign Affairs of El Salvador transmitted "a cordial invitation to the act relating to the judgment delivered by the Inter-American Court of Human Rights on March 1, 2005, in the case of Erlinda and Ernestina Serrano Cruz," to be presided by

the Minister of Foreign Affairs, Francisco Esteban Laínez Rivas, on Wednesday, March 22, 2006 [...].”

4. The brief of April 5, 2006, and its attachments, in which the State of El Salvador (hereinafter “the State” or “El Salvador”) presented its report on the measures adopted to comply with the judgment delivered by the Court on March 1, 2005 (*supra* Having seen paragraph 1). In summary, El Salvador indicated that:

- (a) Regarding the functioning of a national commission to trace young people who disappeared during the armed conflict when they were children, and the participation of civil society:
 - i. “It had begun to take administrative measures [...] in order to provide this commission with a physical space for its operations, and financial resources, which had not been included in the State’s budget, to allow it to respond to the acquired obligation. [...] On April 18, 2005, [...] it [had] hired a person from the Association [*Pro-Búsqueda de Niñas y Niños Desaparecidos*]” (hereinafter the “*Asociación Pro-Búsqueda*” or “*Pro-Búsqueda*”). “On May 5, 2005, *Pro-Búsqueda* had officially handed over 40 cases to the head of the Ministry of Foreign Affairs [...]”;
 - ii. “The composition of the Inter-Institutional Commission to trace children who disappeared as a result of the armed conflict [hereinafter “the Inter-Institutional Commission”] is as follows: the Ministry of Foreign Affairs, as Coordinator; the Ministry of Governance; the Ministry of Defense; the National Civil Police; the Salvadoran Institute for the Integral Development of Children and Adolescents; the Attorney General’s Office; and the Prosecutor General’s Office.” “Unfortunately, in a note of September 29, 2005, the *Asociación Pro-Búsqueda* notified the Coordinator of the Inter-Institutional Tracing Commission of its decision to withdraw from the Commission as of that date.” The Ministry of Foreign Affairs has asked the *Asociación Pro-Búsqueda* to reconsider its decision on several occasions, stating that “it was willing to submit the pertinent reforms to the consideration of the President of the Republic, so that the *Asociación Pro-Búsqueda* could be officially considered a full member of the commission.” At all times, the State had granted this Association special recognition and, even though it was not an official member of the Commission, it had been regarded as a member owing to its active participation in the Commission’s work. During the discussions to draw up the regulations, it had submitted proposals, suggestions and observations that had been taken into account; hence it was never considered to be a mere observer;
 - iii. The regulations for the organization and operation of this Inter-institutional Commission were approved on February 6, 2006;
 - iv. Regarding the work of the Commission, the first case of a person who had been found was resolved at the beginning of March, and family reunification was being arranged;
 - v. “With regard to ensuring that the State’s institutions are obliged to cooperate by providing information to the national Tracing Commission and access to all files and records that could contain information on the possible whereabouts of the young people in question, [...] it has already been possible to access the files of the Salvadoran Institute for the Integral Development of Children and Adolescents, [and] the Attorney General’s Office and the Ministry of Defense have provided the

information requested from them; moreover, a formal request has been made to access the files of the Judiciary”;

- (b) Regarding the creation of a search web page, “the Inter-institutional Commission has a web site, [...] so that those interested [...] can submit requests to search for any disappeared child or, if applicable, provide information on a specific case.” “It also includes a section for contacts with links to the web pages of the members of the Commission, their collaborators, and Embassies, and information on the Chalatenango Trial Court; links to the web pages of institutions working to trace missing persons, and institutions related to the protection of human rights are also included.” “Another section includes information on the Commission and describes different ways of contacting it.” In addition, it has “a section for receiving requests by means of a form; this enables visitors to the site to know what information is important when trying to find an individual”;
- (c) Regarding the creation of a genetic information system, “the Supreme Court of Justice and the Ministry of Foreign Affairs have held working meetings because the former already has a genetic testing laboratory.” “These two institutions have signed a cooperation agreement in this regard and, currently, [...] they are working to conclude a possible addendum to this agreement so that this objective can be regulated specifically [...] U]ntil this has been signed, it has been agreed that any action will be taken through the President of the Supreme Court of Justice”;
- (d) Regarding the publication, at least once, in the official gazette and in another national newspaper, of Chapters I, III and VI, as well as the operative paragraphs of the judgment, this publication was made on September 29, 2005, in the official gazette, Tome 368, Number 180, and in the daily newspaper, *El Mundo*. In addition, the web site of the Inter-institutional Commission has a direct link to the complete text of the judgments of March 1, 2005, and November 23, 2004;
- (e) Regarding the obligation to designate a day dedicated to the children who disappeared during the internal armed conflict for different reasons, on September 29, 2005, the Legislative Assembly issued Legislative Decree No. 829 declaring March 29 each year to be the “Day of Family Reunification of children who were lost during the armed conflict for different reasons.” The State presented the pages of the issue of the official gazette where the decree was published;
- (f) Regarding the obligation to provide, free of charge, through its specialized health care institutions, the medical and psychological treatment required by the next of kin of the victims, “it has expressed its willingness to provide the next of kin of Erlinda and Ernestina Serrano Cruz with the specialized care they require [... . O]n September 26, 2005, State officials met with members of the *Asociación Pro-Búsqueda* [...,] and also with Arnulfo, José Fernando, Marta, Suyapa and María Rosa, all Serrano Cruz, to inform them of this decision and also to reach agreement on possible dates for the first medical evaluation and the conditions under which this would be carried out [...]. Since then, the members of the Serrano Cruz family have been attended in the Maternity and Rosales Hospitals, and also in the Rehabilitation Center for the Blind, and each one has been provided with medical care adapted to the

medical problems diagnosed in the said health care institutions [... O]fficials from the Ministry of Foreign Affairs have accompanied them to each medical appointment." The State has provided the Serrano Cruz family with "means of transportation to and from Chalatenango, and their meals." It attached a certified copy of the medical files of the said members of the Serrano Cruz family. Regarding psychological care, the representatives had indicated that the first evaluation would be made in a private clinic, but "no information in this regard has been received from the said Association";

- (g) Regarding the obligation to organize a public act acknowledging its responsibility for the violations declared in the judgment and in reparation to the victims and their next of kin, the said public act had been conducted in the atrium of Chalatenango Cathedral on March 22, 2006. The Minister of Foreign Affairs had presided the act and, during his address, "he regretted profoundly all the events that occurred during the armed conflict that reigned in El Salvador for more than 12 years, which directly affected each and every Salvadoran family, and particularly the events that affected our children, referring directly to Erlinda and Ernestina, and expressing the State's hope that situations such as those that occurred at that time and that affected Salvadoran society would never happen again." Senior State authorities attended this act including the President of the Supreme Court of Justice, Justices, Deputies, the Ombudsman, the Attorney General, the departmental Governor, Ministers and Deputy Ministers, and also members of the Diplomatic Corps accredited to El Salvador and special guests. "All the siblings of Erlinda and Ernestina Serrano Cruz, except Oscar Serrano Cruz, were present." "In addition, there was widespread coverage by the national and international media (television and newspapers)[. ... P]hotographs, articles and other documents can be found on the web pages of the Ministry of Foreign Affairs: www.rree.gob.sv and the Inter-Institutional Tracing Commission [...] www.comisiondebusqueda.gob.sv." The first case resolved by the Inter-Institutional Tracing Commission was announced during this event;
- (h) Regarding the obligation to pay the compensation for pecuniary and non-pecuniary damage, "the Ministry of Foreign Affairs has proceeded to open bank accounts in favor of the beneficiaries and to deposit the amounts." "The same criteria have been used to open accounts and deposit the amounts established for compensation in favor of Erlinda and Ernestina Serrano Cruz." Since María Victoria Cruz Franco is deceased, "the amounts have been increased by US\$10,000.00 each, as established in paragraph 211 of the judgment." The State forwarded copies of the notes issued by the financial institution detailing the transactions in favor of each member of the Serrano Cruz family;
- (i) Regarding the obligation to pay the amounts established in paragraph 207 of the judgment to the *Asociación Pro-Búsqueda* and to CEJIL for costs and expenses, "an account has been opened and the amounts established by the Court for costs and expenses have been deposited in favor of the *Asociación Pro-Búsqueda*." Regarding the payment to CEJIL, "the amount corresponding to CEJIL for costs and expenses has been remitted to the Embassy of El Salvador accredited to [... Costa Rica], to be delivered to that organization." The State presented a copy of the receipt signed by the representatives of CEJIL; and

- (j) Regarding the obligation to carry out an effective investigation into the reported facts in this case, identify and punish those responsible and conduct a genuine search for the victims, and to publicize the result of the criminal proceedings, "the competent authorities responsible for investigating crimes and prosecuting them [...] are playing an active role in specific procedures designed to clarify the facts so as to conclude the judicial proceedings." At the request of the Prosecutor's Office, the respective court has sent an official communication to the Ministry of Defense requesting information on those responsible for the military operations in the zone and those who took part in them.

5. The brief of May 17, 2006, and its attachments, in which the *Asociación Pro-Búsqueda* and the Center for Justice and International Law (CEJIL), representatives of the victims and their next of kin (hereinafter "the representatives"), submitted observations on the State's report of April 5, 2006 (*supra* Having seen paragraph 4). To summarize, in this brief they stated that:

- (a) Regarding the functioning of a national commission to trace the young people who disappeared during the armed conflict when they were children, and the participation of civil society:
 - i) *Pro-Búsqueda* "knew about the draft regulations [of the Inter-Institutional Tracing Commission] and forwarded observations on them in June and August 2005, but it was never informed about the final version of the regulations approved in February 2006." The State has not modified or proposed any reform of Decree No. 45 creating this Inter-institutional Commission, so that its purpose continues to be "to collaborate with the public institutions involved in or responsible for the protection of children in tracing children who were involuntarily separated from their families and to facilitate family reunification, based above all on the best interests of the child";
 - ii) Regarding access to all files and records that could contain information on the possible whereabouts of the young people, "there is no guarantee of any kind that it would have access to all the information needed for its investigations," so that "on repeated occasions, [they have] advised the Minister of Foreign Affairs, who is responsible for coordinating this Commission, that the Commission needs to be given high legal standing to guarantee its stability and permanence, and have suggested the possibility of including a provision that makes it compulsory for all State entities to collaborate with the Commission";
 - iii) Regarding the Commission's composition, "the State makes no reference to the measures adopted" to guarantee the independence and impartiality of the members. "[T]hose who form part of the Commission [...] are officials of the institutions that [...], in some cases, participated in the disappearance of children, such as the Armed Forces." In addition, "neither *Pro-Búsqueda*, nor any other non-governmental organization is a member of the Inter-Institutional Tracing Commission." The *Asociación Pro-Búsqueda* decided to withdraw from the Inter-institutional Commission owing to "the excessive delay in starting up operational activities, the lack of concrete results[...], the State's political manipulation of *Pro-Búsqueda's* participation in the Commission, and also the failure to modify or adapt the Commission to the parameters defined by the Court";

- (b) Regarding the creation of a search web page, "its construction has not yet been concluded. Owing to lack of publicity and links with State agencies and national and international non-governmental organizations, [...] the web page is difficult to access [...]; furthermore, it has not been linked to Internet search engines." In addition, "the web page does not include all the information available on Ernestina and Erlinda Serrano Cruz, as established in the judgment; nor does it include any information on the children's family." They were "unaware whether the necessary coordination has been put in place to facilitate the establishment and development of a search network as mentioned in the judgment";
- (c) Regarding the creation of a genetic information system, "in its report, the State does not mention any specific measure taken to comply with this measure." "[T]he existence of a cooperation agreement between the Supreme Court of Justice and the judicial body does not in itself imply any progress towards the establishment of a genetic information system";
- (d) Regarding the publication, at least once, in the official gazette and in another national newspaper, of Chapters I, III and VI, as well as the operative paragraphs of the judgment, it agreed with the State's report on the date and the newspapers in which these were published, but mentioned that "the publications included chapters I, IV, V, VI and VII of the judgment on preliminary objections, as well as the dissenting opinions of Judge *ad hoc* Alejandro Montiel Argüello; consequently the Ombudsman's Office considered that an attempt was being made to question the Court's ruling." Since "the publication appeared in the newspaper *El Mundo* and not in a newspaper with higher circulation, [...] this notably reduced the judgment's social impact";
- (e) Regarding the obligation to designate a day dedicated to the children who disappeared during the internal armed conflict for different reasons, "the day was designated 'of Family Reunification' of children who were lost during the armed conflict for different reasons. This attempts to disregard the existence of the phenomenon of the enforced disappearance of children, eliminating the significance of the date." On March 22, 2006, *Pro-Búsqueda* submitted a draft law to the Legislative Assembly to annul the day of "Family Reunification" and to declare June 2 each year as the "Day of the children who disappeared during the internal armed conflict";
- (f) Regarding the obligation to provide, free of charge, through its specialized health institutions, the medical and psychological treatment required by the next of kin of the victims, "the initial medical appointments in the Maternity and Rosales Hospitals were scheduled during the first week of October 2005 [... A] representative of the State and a representative of the *Asociación Pro-Búsqueda* accompanied them to ensure the effectiveness of the medical care. The expenses for transportation and meals for the Serrano Cruz family arising from the medical care have been paid by the State." However, "no prior medical evaluations were scheduled [...], the initial medical appointments were not previously coordinated with the administrative personnel of the health centers [..., and] the result of the evaluations was not officially presented [... T]he lack of coordination and the general shortcomings of the national health system make it essential for the *Asociación Pro-Búsqueda* to intervene permanently to arrange appointments, administrative procedures

and the provision of medicines directly [...] The medical care received to date has been less than optimum, because it has been affected by the general shortcomings that characterize the health care services of the national system [...]. However, these deficiencies have been rectified in part by the Ministry of Foreign Affairs, by purchasing medicines that are out of stock in the national hospitals and conducting some tests in private health care institutions when necessary. But the provision of medicines has been slow and bureaucratic [...], and support accessories for special conditions, such as eye glasses and a walking stick, have not been provided.” “[A]lthough the State has been complying with paragraphs 197 to 200 of the judgment, as regards medical treatment, it has done so deficiently.” Regarding psychological treatment, “the State has not taken any measure or action to commence psychological care for the Serrano family, even though the *Asociación Pro-Búsqueda* has requested this in writing on several occasions.” “Since the State does not have an institution that provides psychological care to victims of human rights violations, *Pro-Búsqueda* has recommended the support of a private institution that offers this service. However, the Association, as a representative of the victims, did not undertake to evaluate their need to receive psychological care, as the State indicates in its report”;

- (g) Regarding the State’s obligation to organize a public act acknowledging its responsibility for the violations declared in the judgment and in reparation to the victims and their next of kin, “the public act was designed to present the first case resolved by the Inter-Institutional Tracing Commission [...].” “[I]n his address, the Minister of Foreign Affairs never acknowledged the State’s responsibility for the violations committed [...], but] merely ‘regretted’ that the events had occurred [...]; nor did he apologize to the next of kin of the victims [...], so that the act did not represent a form of reparation for them. Indeed, the Minister of Foreign Affairs never addressed himself to the members of the Serrano Cruz family, who played no part in the ceremony”;
- (h) Regarding the obligation to pay the compensation for pecuniary and non-pecuniary damages, “in a note of March 29, 2006, the State informed the *Asociación Pro-Búsqueda* that it had opened bank accounts in a bank of the El Salvador financial system in the name of the Serrano Cruz sisters, in which it would deposit the amounts corresponding to each of them for compensation.” However, the payments to the members of the Serrano Cruz family have not been made;
- (i) Regarding the obligation to pay the amounts established in paragraph 207 of the judgment to the *Asociación Pro-Búsqueda* and to CEJIL for costs and expenses, “the State advised that it had opened a bank account in favor of the *Asociación Pro-Búsqueda* [...] However, this payment has not yet been made.” With regard to the payment to CEJIL “the Salvadoran State had delivered a cheque for the amount corresponding to expenses and costs”; and
- (j) Regarding the obligation to carry out an effective investigation into the reported facts in this case, identify and punish those responsible and conduct a genuine search for the victims, and to publicize the result of the criminal proceedings, “from the State’s report it is evident that the judicial authorities and prosecutors responsible for the investigations have not complied satisfactorily with this measure. The said report mentions just one procedure

that the Prosecutor's Office asked the court to conduct. However, there is no information on whether this procedure was implemented." "On February 24, 2006, the victims, by means of a private prosecution, incorporated into the criminal proceedings information from newspaper articles showing that the operation in which the Serrano Cruz sisters disappeared was conducted in June 1982"; they also asked that certain information should be requested and that several individuals should be summoned to testify. The Chalatenango Trial Court admitted the request and sent an official communication to the Joint Chief of Staff of the Armed Forces and to the Ministry of Defense. "On March 28, 2006, the Ministry of Defense forwarded to the court [...] the names of the Minister of Defense and the Joint Chief of Staff in 1982, as well as the names of the Head of the Air Force and of the Atlacatl Battalion [...]. The court ordered that another communication should be sent to the Ministry [...] requesting the names of 'the commanders who were in charge or in command of the Fourth Infantry Brigade and the Belloso Battalion.'" The Ministry forwarded the information requested with regard to the commanders. "However, the court did not insist in requiring information on the officers who were members of the armed units that took part in the operation in which the Serrano sisters disappeared. On May 9, 2006, the [said criminal] court ordered the Prosecutor General's Office to make inquiries about the addresses of the military leaders, within one month, so that they could be summoned to testify. [... T]he criminal proceedings are waiting for the Prosecutor General's Office to provide the information requested by the court." Regarding the adjustment of the definition of the crime of forced disappearance, the State has not adopted any measure in this respect. The State has not instituted any measure to investigate, identify and punish all the officials who unduly hindered, deviated or delayed the investigations. In this regard, "instead of promoting an inquiry into the prosecutor in charge of the investigations who devoted himself to trying to prove the inexistence of the victims so as to strengthen the State's defense in the international proceedings, the said prosecutor has been incorporated into the Human Rights Unit of the Ministry of Foreign Affairs, the entity that has assumed the execution of the measures of reparation" ordered by the Court.

6. The brief of June 9, 2006, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission") submitted observations on the State's report of April 5, 2006 (*supra* Having seen paragraph 4). In summary, in this brief it indicated that:

- (a) Regarding the functioning of a national commission to trace the young people who disappeared during the armed conflict when they were children, and participation of civil society, "the State's report did not provide detailed information on: the initiatives and actions undertaken by the national Tracing Commission to find the Serrano Cruz sisters; [...] the mechanisms that allow the national Tracing Commission to require State institutions and authorities to give it access to and provide it with relevant information; information on the independence and impartiality of the national Tracing Commission [...] and on the initiatives adopted to obtain truly and in good faith the greatest collaboration from institutions related to the issue of disappeared children." Civil society's participation in the functioning of this Commission is particularly important. "A new commission, capable of complying [with the parameters established by the Court] should be created immediately";

- (b) Regarding the creation of a search web page, "the State is obliged to create a web page to trace those who disappeared that: provides a database with first and last names, possible physical characteristics and all available information on the Serrano Cruz sisters, and on their next of kin; and gives the contact addresses and telephone numbers of State institutions [...]; [and] to adopt the necessary measures to set up links from the web page to national authorities and institutions dedicated to tracing disappeared children and youths in order to encourage, participate in and collaborate with the creation and development of an international search network." In order to trace the Serrano Cruz sisters, "the information on them and their family must be expanded[...] because the brief descriptions that have been included do not even permit their current age to be established or provide any other information that could be relevant or useful for tracing the Serrano Cruz sisters." "The Commission considers it important that the State report on the efforts made to complete the internal coordination and links that will ensure that the information provided on the children who disappeared during the armed conflict, with emphasis on the case of Ernestina and Erlinda, makes this page a truly valuable effort and not merely compliance with an international obligation";
- (c) Regarding the creation of a genetic information system, "dual criteria should be applied, so that, based on considerations of efficiency and effectiveness, an evaluation is made of whether [...] the State's actions with a view to conducting the respective investigations have produced results that allow it to be inferred that the Court's requirements will be met within a reasonable time. In this context, the Commission was concerned that there is no record in the case file of any real action to comply with what the Court established";
- (d) Regarding the publication, at least once, in the official gazette and in another national newspaper of Chapters I, III and VI, as well as the operative paragraphs of the judgment, "the State's reasons for publishing some additional material to that ordered by the Court are unclear; in particular, the dissenting opinion of the Judge *ad hoc*, in the absence of the dissenting opinions of two of the Court's own judges." "It is true that there is a link to the complete text of the judgments in the Serrano Cruz case on the search web page";
- (e) Regarding the obligation to designate a day dedicated to the children who disappeared during the internal armed conflict for different reasons, the name of this day "should mention the phenomenon of disappearance rather than loss of children";
- (f) Regarding the obligation to provide, free of charge, through its specialized health institutions, the medical and psychological treatment required by the next of kin of the victims, including the medicines they require, the State "has not documented full compliance with what the Court ordered, and it hopes that all the obstacles encountered can be overcome." "It was extremely concerned that the person who had acted as a prosecutor in the case and as a witness for the State before the Court should have been put in charge of coordinating the execution of this obligation, because it was extremely important that the best interests of the victims should always be taken into account." In addition, it "observes the failure to comply with the obligation to provide psychological treatment to the victims' next of kin";

- (g) Regarding the State's obligation to organize a public act acknowledging its responsibility for the violations declared in [the] judgment and in reparation to the victims and their next of kin, "the act that took place did not correspond to the purpose of the reparation [... E]ven though a brief mention was made of the Serrano Cruz case and the next of kin were informed that the act ordered by the Court would take place, this act stressed the case of the person who was reunited with her next of kin, and she even participated in the act giving her testimony, an opportunity that was not even offered to those to whom the act of reparation was supposedly addressed." It "did not consider that the act held to publicize that matter was a measure that complied with the State's obligation to acknowledge its responsibility and the facts established in the judgment, [...] and to make reparation to the victims and their next of kin";
- (h) Regarding the obligation to pay the compensation for pecuniary and non-pecuniary damage, and the amounts established for reimbursement of costs and expenses, it "hopes that the obstacles to making the payments can be overcome and that the State will coordinate with the victims and their representatives the best way to execute them without further delay, bearing in mind that the amounts have already been allocated and deposited"; and
- (i) Regarding the obligation to carry out an effective investigation into the reported facts in this case, identify and punish those responsible and conduct a genuine search for the victims, and to publicize the result of the criminal proceedings, it "observes that the State has failed to provide specific information on the measures tending to comply with this reparation effectively [...]. It is important that the investigations conducted in this case are aimed at seeking the truth and do not once again constitute mere formalities destined to fail." Moreover, regarding the stipulation made by the Court in paragraph 173 of the judgment to the effect that "the public officials who hinder, deviate or unduly delay investigations to clarify the truth about the facts must be punished, applying the provisions of domestic law in this respect with the greatest rigor," it observed "with great concern" the information presented by the representatives regarding the appointment of the aforementioned prosecutor to the Human Rights Unit of the Salvadoran Ministry of Foreign Affairs.

7. The brief of July 10, 2006, in which the representatives "provided additional information to the State's report of April 5, 2006." In summary, they indicated that:

- (a) Regarding the obligation to pay the compensation for pecuniary and non-pecuniary damage, "on May 22, 2006, the State of El Salvador paid the compensation for pecuniary and non-pecuniary damage in favor of the victims, next of kin of Ernestina and Erlinda Serrano Cruz." "The State has advised that it is willing to pay the costs to *Pro-Búsqueda*; this has not been accomplished for administrative reasons within the Association";
- (b) Regarding the publication, at least once, in the official gazette and in another national newspaper of Chapters I, III and VI, as well as the operative paragraphs of the judgment, "given the characteristics of the publication made by the State of El Salvador, this aspect was not complied with: because the publication included some chapters of the preliminary objections and the

dissenting opinions of the judge *ad hoc* [...] and because the publication was made in a newspaper with limited circulation, in smaller print than the print used for advertisements, so that its impact was reduced"; and

- (c) Regarding the obligation to designate a day dedicated to the children who disappeared during the internal armed conflict for different reasons, the designation made by the State should refer "explicitly [...] to the phenomenon of disappearance. The term 'lost' suggests that the victims' next of kin were responsible."

CONSIDERING:

1. That it is an inherent attribute of the jurisdictional functions of the Court to monitor compliance with its decisions.
2. That El Salvador has been a State Party to the American Convention since June 23, 1978, and accepted the compulsory jurisdiction of the Court on June 6, 1995.
3. That, Article 68(1) of the American Convention establishes that "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." Consequently, the State must ensure the implementation of the decisions in the Court's judgments at the domestic level.¹
4. That in view of the definitive and unappealable nature of the judgments of the Court, pursuant to Article 67 of the American Convention, the State must comply with them promptly and completely.
5. That the obligation to comply with the decisions in the Court's judgments corresponds to a basic principle of the law of the international responsibility of the State, supported by international case law, according to which a State must fulfill its international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.² The treaty obligations of the States Parties are binding for all the powers and organs of the State.
6. That the States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle is applicable with regard not only to the substantive norms of human rights treaties (that is, those which contain provisions on the protected rights), but also with regard to the procedural norms, such as those referring to compliance with the decisions of the Court. These obligations shall be

¹ Cf. *Case of Bámaca Velásquez*. Compliance with judgment. Order of the Inter-American Court of Human Rights of July 4, 2006, third considering paragraph; *Case of the "Five Pensioners"*. Order of the Inter-American Court of Human Rights of July 4, 2006, third considering paragraph; and *Case of the 19 Tradesmen*. Order of the Inter-American Court of Human Rights of February 2, 2006, third considering paragraph.

² Cf. *Case of Bámaca Velásquez*. Compliance with judgment, *supra* note 1, fifth considering paragraph; *Case of the "Five Pensioners"*, *supra* note 1, seventh considering paragraph; and *Case of the 19 Tradesmen*, *supra* note 1, fifth considering paragraph.

interpreted and applied so that the guarantee protected is truly practical and effective, bearing in mind the special nature of human rights treaties.³

7. That the States Parties to the Convention that have accepted the compulsory jurisdiction of the Court have the duty to comply with the obligations established by the Court. These obligations include the State's duty to report to the Court on the measures adopted to comply with the measures ordered by the Court in its decisions. The opportune observance of the State's obligation to report to the Court on how it is complying with each of the elements ordered by the Court is fundamental for assessing the status of compliance with the judgment as a whole.

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8. That, when monitoring complete compliance with the judgments on merits, reparations and costs delivered in this case, and after examining the information provided by the State, the Inter-American Commission and the representatives of the victims and their next of kin in their briefs on compliance with the reparations (*supra* Having seen paragraphs 4 to 7), the Court has verified which elements of the judgment have been complied with partially or totally by El Salvador, as well as the reparations that remain pending compliance. The Court considers in a positive light that the State has submitted information on all the reparations ordered by the Court.

9. That the Court has verified that El Salvador has complied with:

- (a) Establishment of a link to the complete text of the judgment on merits, reparations and costs on the search web page (*ninth operative paragraph of the judgment of March 1, 2005*);
- (b) Payment to Suyapa Serrano Cruz of the amount established in paragraph 152 of the judgment on merits, reparations and costs for expenses related to the pecuniary damage suffered by the next of kin of the victims, some of which were assumed by the *Asociación Pro-Búsqueda* (*twelfth operative paragraph of the judgment of March 1, 2005*). The representatives advised that "on May 22, 2006, the State of El Salvador made the payment of compensation for pecuniary and non-pecuniary damage in favor of the victims, next of kin of Ernestina and Erlinda Serrano Cruz" (*supra* Having seen paragraph 7(a));
- (c) Payment of the amounts established in paragraph 160 of the judgment on merits, reparations and costs for compensation for the non-pecuniary damage caused to the victims and their next of kin, in favor of Ernestina Serrano Cruz, Erlinda Serrano Cruz, María Victoria Cruz Franco, Suyapa, José Fernando, Oscar, Martha, Arnulfo and María Rosa, all Serrano Cruz (*thirteenth operative paragraph of the judgment of March 1, 2005*). The representatives advised that "on May 22, 2006, the State of El Salvador paid the compensation for pecuniary and non-pecuniary damage in favor of the victims, next of kin of Ernestina and Erlinda Serrano Cruz" (*supra* Having seen paragraph 7(a)). Also, the amount corresponding to the compensation

³ Cf. *Case of Bámaca Velásquez*. Compliance with judgment, *supra* note 1, sixth considering paragraph; *Case of the "Five Pensioners"*, *supra* note 1, eighth considering paragraph; and *Case of the 19 Tradesmen*, *supra* note 1, sixth considering paragraph.

for the non-pecuniary damage suffered by María Victoria Cruz Franco increased by equal parts the amounts corresponding to her eight children, beneficiaries of compensation for non-pecuniary damage. With regard to the compensation established in favor of Ernestina and Erlinda Serrano Cruz, the Ministry of Foreign Affairs opened bank accounts in the *Banco Agrícola* in their favor and deposited the amounts established in the judgment. If the amounts deposited in favor of Ernestina and Erlinda Serrano Cruz are not claimed by them within ten years, the State shall proceed as established in paragraph 210 and in the nineteenth operative paragraph of the judgment of March 1, 2005 (*supra* Having seen paragraph 1); and

- (d) Organization of a public act acknowledging its responsibility for the violations declared in the judgment on merits, reparations and costs, and in reparation to the victims and their next of kin⁴ (*eighth operative paragraph of the judgment of March 1, 2005*). Bearing in mind the observations of the representatives and the Commission, the Court does not find sufficient cause to consider that the act carried out by El Salvador on March 22, 2006, did not comply with the requirements in the judgment. In the judgment, the Court ordered that the act should "be carried out by means of a public ceremony in the city of Chalatenango, in the presence of senior State authorities and members of the Serrano Cruz family," and this was complied with, because the State carried out the public act in the atrium of Chalatenango Cathedral; moreover, it was presided by the Minister of Foreign Affairs, who is one of the most senior State authorities, and State authorities such as the President of the Supreme Court of Justice, Justices, Deputies of the Legislative Assembly, the Ombudsman, the Attorney General, the departmental Governor, and Ministers attended the event. Some of the siblings of Erlinda and Ernestina Serrano Cruz were also present. In addition, the act was covered by the media, and articles were published on Internet. However, the Court ordered the State to conduct an act "acknowledging its responsibility for the violations declared in the judgment on merits, reparations and costs, and in reparation to the victims." In this regard, the Court notes that the act organized by the State was not devoted exclusively to the case of the Serrano Cruz sisters, as would have been most desirable, but a major part of the act was devoted to presenting "the first case resolved by the Inter-institutional Commission to trace children who disappeared as a result of the armed conflict El Salvador." Nevertheless, the Court has verified that, during his address, the Minister of Foreign Affairs referred to the case of the Serrano Cruz sisters and considers that the words of this authority, in representation of the State, to the effect that "he regretted the events concerning Erlinda and Ernestina Serrano Cruz, which were determined in the judgment and stood by them and their family in the terms of the Inter-American Court of Human Rights in its judgment of March 1, 2005," can be interpreted as a form of "acknowledgment of responsibility in relation to the violations declared in the judgment, and in reparation to the victims and their next of kin." The Minister also stated, *inter alia*, that he "regretted profoundly all the events that occurred during the armed conflict that reigned in El Salvador for more than 12 years which directly affected each and every Salvadoran family, and particularly the

⁴ Regarding the requirements for this act, the Court ordered that: "it should be carried out by means of a public ceremony in the city of Chalatenango, in the presence of senior State authorities and members of the Serrano Cruz family"; "[t]he State shall provide the necessary means to facilitate the presence of these persons in the said act"; and "the State shall disseminate this act through the media, and on the Internet."

events that affected our children,” and also expressed the “hope that situations such as those that occurred at that time and that affected Salvadoran society would never happen again.”

10. That, in the ninth operative paragraph of the judgment of March 1, 2005, the Court ordered the State to “publish, at least once, in the official gazette and in another national newspaper, Chapter 1, entitled “Introduction of the case,” Chapter III, entitled “Jurisdiction,” and Chapter VI, entitled “Proven facts,” as well as the operative paragraphs of the judgment” on merits, reparations and costs. The State has published these parts of the judgment and it has done so in both the official gazette and in another national newspaper. Nevertheless, when making this publication, in addition to the parts ordered, El Salvador included some chapters of the judgment on preliminary objections and the dissenting opinions of the judge *ad hoc* to the judgments on preliminary objections, and on merits, reparations and costs, and this was not included in the reparation ordered by the Court. The Court considers it necessary to indicate that when it establishes, as a measure of reparation, the obligation to publish some parts of the judgment, the Court selects the pertinent parts of the judgment that should be published in each specific case in order to ensure the optimum achievement of the purpose of the measure of reparation; consequently, it would have been preferable if El Salvador had only published what the Court ordered. The Court considers that, since the State made a publication that included, *inter alia*, the opinions of the judge *ad hoc* and, without justification and inequitably, did not publish the opinions prepared by the Court’s own judges, the State did not comply satisfactorily with the terms of the judgment. Therefore, in these circumstances, the Court considers that, to comply with this measure, El Salvador must publish again the parts of the said judgment on merits, reparations and costs ordered by the Court, and include all the opinions that the judges attached to the judgment.

11. That the Court has verified that El Salvador has complied partially with:
- (a) Creation of a web page to trace those who disappeared (*seventh operative paragraph of the judgment of March 1, 2005*). The page has been created and includes contact addresses and telephone numbers of the Inter-Institutional Tracing Commission, and of State institutions such as the Attorney General’s Office, the Ombudsman’s Office, the National Civil Police, the Ministry of Foreign Affairs, the Ministry of Governance, the Ministry of Defense, the Chalatenango Trial Court, and the Salvadoran Institute for the Integral Development of Children and Adolescents. It also includes links to other web pages of institutions or civil associations and international organizations dedicated to tracing disappeared children and youths, such as *Pro-Búsqueda*, *Abuelas de Plaza de Mayo*, *Red Latinoamericana de Desaparecidos* and *Federación Latinoamericana de Asociaciones de Familiares de Detenidos-Desaparecidos*, as well as links to other international organizations and the addresses and telephone numbers of embassies and consulates accredited to El Salvador. With regard to Erlinda and Ernestina Serrano Cruz, the page contains their physical description at the time of their disappearance. However, regarding this measure, in the judgment the Court ordered that the page should contain all “existing information about the Serrano Cruz sisters and their next of kin.” Accordingly, the Court considers that all available information should be added, such as the possible place, date and circumstances of the disappearance of the Serrano Cruz sisters, as well as information on their next of kin; and

- (b) Payment of the amounts established for reimbursement of costs and expenses (*fourteenth operative paragraph of the judgment of March 1, 2005*). The State paid the amount corresponding to CEJIL, while the payment to the *Asociación Pro-Búsqueda* was pending. In this regard, the Court has noted that the representatives indicated (*supra* Having seen paragraph 7) that “[t]he State has advised that it is willing to pay the costs in favor of *Pro-Búsqueda*; this has not been accomplished for administrative reasons within the Association.”

12. That the Court considers it essential that the State submit current information on the following points that are pending compliance:

- (a) Obligation to carry out an effective investigation into the reported facts in this case, identify and punish those responsible and conduct a genuine search for the victims, and eliminate all the obstacles and mechanisms *de facto* and *de jure* that prevent compliance with these obligations in the instant case, so that it uses all possible measures, either through the criminal proceedings or by adopting other appropriate measures, and to publicize the result of the criminal proceedings (*sixth operative paragraph of the judgment of March 1, 2005*). The State reported that “the competent authorities responsible for investigating crimes, and prosecuting them [...] are playing an active role in specific procedures designed to clarify the facts so as to conclude the judicial proceedings [...] At the request of the Prosecutor’s Office, the respective court has sent an official communication to the Ministry of Defense requesting information on those responsible for the military operations in the zone and those who took part in them.” The Commission and the representatives observed that the State had not provided specific information in this regard and concluded that there was an evident failure to comply with the measure by the judicial authorities and prosecutors responsible for the investigations. The representatives also advised on actions taken in the criminal proceedings before the Chalatenango Trial Court;
- (b) “Establishment of a national commission to trace young people who disappeared during the internal armed conflict when they were children, with the participation of civil society” (*seventh operative paragraph of the judgment of March 1, 2005*);
 - i) In the judgment, the Court indicated that it had taken into account that Executive Decree No. 45 had been issued on October 5, 2004, creating the “Inter-institutional Commission to trace children who disappeared as a result of the armed conflict in El Salvador.” However, in the judgment of March 1, 2005, the Court indicated clearly that the State could comply with this measure through the said Inter-institutional Commission, if the latter satisfied the parameters established by the Court; otherwise, it should create a new commission that did satisfy those parameters. According to the information provided during the stage of monitoring compliance with judgment, the State has chosen to comply with this measure through the said Inter-institutional Commission;

- ii) El Salvador has not provided all the information needed to assess whether the Inter-institutional Commission satisfies all the parameters for its operation established by the Court in the judgment. Both the representatives and the Inter-American Commission have stated that this Inter-institutional Commission does not satisfy these parameters. Therefore, the Court considers that the State must provide detailed information on compliance with the parameters established in paragraphs 185 to 188 of the judgment;
 - iii) Regarding the case of the Serrano Cruz sisters, based on the observations of the Commission and the representatives, the Court has verified that the State's report does not refer to any specific measure adopted by the Tracing Commission in order to discover their whereabouts. The State has advised that "regarding the work of this Commission, at the beginning of March, it resolved the first case of a person who was found";
 - iv) Even though the State indicated that the Inter-Institutional Tracing Commission had been able to access the files and information it had requested from State organs and authorities (*supra* Having seen paragraph 4.v), it should be recalled that the State must adopt the necessary measures to "ensure that all the State institutions and authorities are obliged to cooperate by providing information to the national Tracing Commission as well as access to all files and records that could contain information on the possible whereabouts of the young people in question." To be able to assess compliance with this reparation, the Court considers that El Salvador must advise which measure it has adopted ensures that this information will be provided;
 - v) Regarding the State's obligation to assign "the necessary human, financial, logistic, scientific and other resources [for the Tracing Commission] to be able to investigate and discover the whereabouts of young people who disappeared during the armed conflict when they were children," El Salvador indicated that it had begun to take measures to this end (*supra* Having seen paragraph 4). The Court finds that the State must report on the result of these measures, and also on the measures adopted to "guarantee the independence and impartiality of the members of the national Tracing Commission," an aspect to which it makes no reference in its report; and
 - vi) An essential aspect of the functioning of the Tracing Commission is that it should include State institutions that have shown interest in resolving this problem and others based on their functions, and also that civil society should participate in the Commission through non-governmental organizations dedicated to this search or specialized in working with young disappeared persons, such as the *Asociación Pro-Búsqueda*. Consequently, the Court finds that the State must report on the measures adopted to comply with this aspect;
- (c) Creation of a genetic information system that allows genetic data that can contribute to determining and clarifying the identification and the relationship of the disappeared children and their next of kin to be obtained and conserved (*seventh operative paragraph of the judgment of March 1, 2005*).

- The State reported that "the Supreme Court of Justice and the Ministry of Foreign Affairs have held working meetings because the former already has a genetic testing laboratory." It also mentioned that "these two institutions have signed a cooperation agreement regarding this situation [...]." The Commission and the representatives agreed that there was an absence of specific, concrete measures to comply with this reparation;
- (d) "Designation of a day dedicated to the children who disappeared during the internal armed conflict for different reasons" (*tenth operative paragraph of the judgment of March 1, 2005*). The State declared March 29 each year as "Day of Family Reunification of children who were lost during the armed conflict for different reasons." Bearing in mind the observations of the representatives and the Inter-American Commission, the Court finds that the name of the day should explicitly mention the phenomenon of disappearance;
- (e) Provision, free of charge, through its specialized health institutions, of the medical and psychological treatment required by the next of kin of the victims, including the medicines they require, taking into consideration the health problems of each one, after making an individual evaluation, and informing the next of kin of Ernestina and Erlinda Serrano Cruz in which health centers or specialized institutes they will receive the said medical or psychological care, and providing them with the treatment. If Erlinda and Ernestina are found alive, the State shall also provide them with the said medical and psychological treatment;
- i) The Court appreciates the measures adopted by the State to comply with its obligation to provide the medical care required by the next of kin of Erlinda and Ernestina Serrano Cruz, including medicines. Nevertheless, both the representatives and the Commission observed that, although the State has been complying, it has done so deficiently. Hence, the Court finds that, when reporting on compliance with this reparation, the State should refer to the said observations of the representatives and the Commission;
- ii) Regarding the psychological treatment, the State reported that the representatives had indicated that the first evaluation had been carried out in a private clinic, but that "no information in this regard had been received from the *Asociación [Pro-Búsqueda]*." Meanwhile, the representatives indicated that "the State had not adopted any measure or action to initiate the psychological assistance to the Serrano family, although this has been requested in writing on several occasions by the *Asociación Pro-Búsqueda [...]*," and that "[s]ince the State does not have an institution that provides psychological assistance to victims of human rights violations, *Pro-Búsqueda* recommended the support of a private institution that offers this service. However, the Association, as a representative of the victims did not undertake at any time to evaluate the need for them to receive psychological assistance, as the State indicates in its report." The Court finds that the parties should hold conversations to reach an agreement on the best way to implement this obligation;
- (f) The creation of web page to trace those who disappeared (*seventh operative paragraph of the judgment of March 1, 2005*). When reporting on this

measure, the State should take into account what the Court has stated in considering paragraph 11(a) of this Order;

- (g) The publication of the parts of the judgment on merits, reparations and costs that the Court ordered together with all the opinions that the judges attached to this judgment, as established in considering paragraph 10 of this Order; and
- (h) The payment of the amounts established to reimburse costs and expenses (*fourteenth operative paragraph of the judgment of March 1, 2005*). The State paid the amount corresponding to CEJIL, and the payment to the *Asociación Pro-Búsqueda* remained pending. In this regard, the Court has noted that the representatives indicated that "[t]he State has advised that it is willing to pay the costs in favor of *Pro-Búsqueda*; this has not been accomplished for administrative reasons within the Association" (*supra* Having seen paragraph 7(a)).

13. That the Court will consider the general status of compliance with the judgment on merits, reparations and costs of March 1, 2005, when it receives the pertinent information on the aspects of the reparations pending compliance.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to the authority to monitor compliance with its decisions conferred by Article 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, Articles 25(1) and 30 of its Statute, and Article 29(2) of its Rules of Procedure,

DECLARES:

1. That, as indicated in considering paragraph 9 of this Order, the State has complied totally with:

- (a) Establishment of a link to the complete text of the judgment on merits, reparations and costs on the search web page (*ninth operative paragraph of the judgment of March 1, 2005*);
- (b) Payment to Suyapa Serrano Cruz of the amount established in paragraph 152 of the judgment on merits, reparations and costs, for the pecuniary damage suffered by the next of kin of the victims, part of which was assumed by the *Asociación Pro-Búsqueda* (*twelfth operative paragraph of the judgment of March 1, 2005*);
- (c) Payment of the amounts established in paragraph 160 of the judgment on merits, reparations and costs, as compensation for the non-pecuniary damage caused to the victims and their next of kin, in favor of Ernestina Serrano Cruz, Erlinda Serrano Cruz, María Victoria Cruz Franco, and Suyapa, José Fernando, Oscar, Martha, Arnulfo and María Rosa, all Serrano Cruz

(thirteenth operative paragraph of the judgment of March 1, 2005). If the amounts deposited in favor of Ernestina and Erlinda Serrano Cruz are not claimed by them within ten years, the State shall proceed as established in paragraph 210 and in the nineteenth operative paragraph of the judgment of March 1, 2005 (*supra* Having seen paragraph 1); and

- (d) The organization of a public act acknowledging its responsibility for the violations declared in the judgment, and in reparation to the victims and their next of kin (*eighth operative paragraph of the judgment of March 1, 2005*).

2. That, as indicated in considering paragraph 11 of this Order, the State has complied partially with:

- (a) Creation of a web page to trace those who disappeared (*seventh operative paragraph of the judgment of March 1, 2005*); and
- (b) Payment of the amounts established for reimbursement of costs and expenses (*fourteenth operative paragraph of the judgment of March 1, 2005*).

3. That, as indicated in considering paragraphs 10 and 12 of this Order, it will maintain open the procedure of monitoring compliance with the aspects pending compliance in this case. They are:

- (a) That the State should carry out an effective investigation into the reported facts in this case, identify and punish those responsible and conduct a genuine search for the victims, and eliminate all the obstacles and mechanisms *de facto* and *de jure* that prevent compliance with these obligations in the instant case, so that it uses all possible measures, either through the criminal proceedings or by adopting other appropriate measures, and shall publicize the result of the criminal proceedings (*sixth operative paragraph of the judgment of March 1, 2005*);
- (b) Establishment of a national commission to trace young people who disappeared during the armed conflict when they were children, with the participation of civil society (*seventh operative paragraph of the judgment of March 1, 2005*);
- (c) Creation of a genetic information system that allows genetic data that can contribute to determining and clarifying the identification and the relationship of the disappeared children and their next of kin to be obtained and conserved (*seventh operative paragraph of the judgment of March 1, 2005*);
- (d) Designation of a day dedicated to the children who disappeared during the internal armed conflict for different reasons (*tenth operative paragraph of the judgment of March 1, 2005*);
- (e) Provision, free of charge, through its specialized health institutions, of the medical and psychological treatment required by the next of kin of the victims, including the medicines they require, taking into consideration the health problems of each one, after making an individual evaluation, and informing the next of kin of Ernestina and Erlinda Serrano Cruz in which health centers or specialized institutes they will receive the said medical or

psychological care, and providing them with the treatment. If Erlinda and Ernestina are found alive, the State shall also provide them with the said medical and psychological treatment (*eleventh operative paragraph of the judgment of March 1, 2005*);

- (f) Creation of a web page to trace those who disappeared (*seventh operative paragraph of the judgment of March 1, 2005*);
- (g) Publication of the parts of the judgment on merits, reparations and costs ordered by the Court together with all the opinions that the judges attached to the judgment, as established in considering paragraph 10 of this Order; and
- h) The payment for costs and expenses in favor of the *Asociación Pro-Búsqueda* (*fourteenth operative paragraph of the judgment of March 1, 2005*).

AND DECIDES:

1. To require the State to adopt all necessary measures to fulfill effectively and promptly the aspects pending compliance ordered by the Court in the judgment on merits, reparations and costs of March 1, 2005, and in this order, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.
2. To request the State to submit to the Inter-American Court, by January 19, 2007, at the latest, a report indicating the measures adopted to comply with all the reparations ordered by the Court that are still pending compliance, as specified in considering paragraphs 10 and 12 and in the second and third declarative paragraphs of this order.
3. To request the representatives of the victims and their next of kin and the Inter-American Commission to submit their observations on the report of the State mentioned in the preceding operative paragraph within four and six weeks, respectively, of receiving it.
4. To continue monitoring the aspects pending compliance of the judgments on merits, reparations and costs of March 1, 2005.
5. To require the Secretariat of the Court to notify this Order to the State, the Inter-American Commission, and the representatives of the victims and their next of kin.

Sergio García Ramírez
President

Alirio Abreu Burelli

Antônio A. Cançado Trindade

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary