

Order of the
Inter-American Court of Human Rights*
of February 3, 2010
Case of the Serrano-Cruz Sisters v. El Salvador
(Monitoring Compliance with Judgment)

HAVING SEEN:

1. The Judgment on the Merits, Reparations and Costs (hereinafter "the Judgment") rendered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court" or "the Tribunal") on March 1, 2005.

2. The Orders on compliance with the Judgment issued by the Court on September 22, 2006 and July 3, 2007. In the latter, the Court declared that it would keep the proceedings open to monitor compliance with the following obligations which remained unfulfilled:

a) 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* which prevent compliance with said obligations in the instant case, using all possible measures available, either through the criminal proceedings or other appropriate measures, and to publicize the result of the criminal proceedings (*sixth operative paragraph of the Judgment [...]*);

b) to establish 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 (*seventh operative paragraph of the Judgment [...]*);

c) to create a genetic information system [in order to obtain and store] genetic data that can help establish the identity and relationship of the disappeared children and their next of kin (*seventh operative paragraph of the Judgment [...]*);

d) 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, taking into consideration the health problems of each one of them after making an individual evaluation, and to inform the next of kin of Ernestina and Erlinda Serrano-Cruz in which health centers or specialized institutes they will receive such medical or psychological care, and provide them with the treatment. If Ernestina and Erlinda Serrano-Cruz are found alive, the State must also provide them with the aforesaid medical and psychological treatment (*eleventh operative paragraph of the Judgment [...]*);

e) to create a web page to find disappeared persons (*seventh operative paragraph of the Judgment*

* Judge Diego García-Sayán excused himself from hearing this case pursuant to Article 19(2) of the Statute and the then Article 19 (now Article 21) of the Rules of Procedure of the Court; therefore, he did not participate in the issuance of the Judgment or this Order. Consequently, as provided by Article 4(2) of the Rules of Procedure, Judge García-Sayán relinquished the Presidency to the Vice President of the Court, Judge Leonardo A. Franco, acting President in the instant case.

f) to publish, at least once, the parts of the Judgment on the merits, reparations and costs rendered by the Court in the Official Gazette (*ninth operative paragraph and paragraph 195 of the Judgment [...] and tenth Considering clause of the Order on Compliance with Judgment of September 22, 2006*).

3. The briefs of October 26 and November 1, 2007 and October 10, 2008 and their respective appendixes, in which the Republic of El Salvador (hereinafter “the State” or “El Salvador”) reported on the status of compliance with the reparations ordered in the Judgment.

4. The briefs of December 5, 2007 and June 23 and November 14, 2008 and their respective appendixes, containing the observations of the representatives of the victims (hereinafter “the representatives”) on the information provided by the State.

5. The briefs of January 10, 2008 and January 19, 2009, in which the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) included its observations on the State’s reports and on the observations made by the representatives.

6. The Order of the then President of the Inter-American Court of December 8, 2009, whereby, in consultation with all other judges of this Court, the parties were called to a private hearing regarding compliance with the Judgment.

7. The arguments and information presented by the parties at the private hearing regarding compliance with the Judgment held on January 28, 2010 during the 86th Regular Period of Sessions of the Court in the city of San José, Costa Rica.¹

CONSIDERING:

1. That monitoring compliance with its decisions is a power inherent in the judicial functions of the Court.

2. That El Salvador has been a State Party to the American Convention since June 23, 1978 and that it accepted the jurisdiction of the Court on June 6, 1995.

3. That, pursuant to Article 68(1) of the American Convention, “[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any

¹ In accordance with Article 6(2) of the Rules of Procedure, the hearing was held before a commission of Judges composed of: Judge Manuel E. Ventura-Robles, Judge Margarette May Macaulay, Judge Rhadys Abreu-Blondet, Judge Alberto Pérez-Pérez and Judge Eduardo Vio-Grossi. The following persons appeared at the hearing: a) on behalf of the Inter-American Commission on Human Rights: Lilly Ching and Silvia Serrano; b) on behalf of the State: David Ernesto Morales-Cruz, General Director of Human Rights at the Ministry of Foreign Affairs, and Tania Camila Rosa, Deputy Director of Human Rights at the Ministry of Foreign Affairs, and c) on behalf of the victims and their next of kin: Suyapa Serrano, victim; Leonor Arteaga, representative of the *Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos* (Association for the Search for Disappeared Children), and Viviana Krsticevic, Alejandra Nuño, Gisela De León, Marcela Martino and Marcia Aguiluz, representatives of the Center for Justice and International Law (CEJIL). At said hearing, the State submitted copies of the following documents: Speech of the President of the Republic of El Salvador, Carlos Mauricio Funes Cartagena, within the framework of the 18th Anniversary of the signing of the Peace Accords; Inter-Institutional Cooperation Agreement between the Ministry of Foreign Affairs, the *Universidad Centroamericana José Simeón Cañas*, and the *Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos* (Association for the Search for Disappeared Children), and draft decree to create the National Commission for the Search for Children who Disappeared during the Internal Armed Conflict.

case to which they are parties." For such purposes, States are required to ensure the implementation of the Court's rulings at the domestic level.²

4. That, given that the Court's judgments are final and not subject to appeal, as set out in Article 67 of the American Convention, said judgments are to be promptly and fully complied with by the State.

5. That the obligation to comply with the judgments of the Court conforms to a basic principle of the Law of International Responsibility of States, upheld by international case law, under which States are required to comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by this Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States may not invoke the provisions of its internal law to escape their pre-established international responsibility.³ The treaty obligations of States Parties are binding on all government branches and agencies.

6. That the States Parties to the Convention are required to guarantee compliance with treaty provisions and their effects (*effet utile*) at the domestic level. This principle is applicable not only with regard to the substantive provisions of human rights treaties (*i.e.* those dealing with the protected rights) but also with regard to procedural rules, such as those concerning compliance with the decisions of the Court. These obligations are to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.⁴

7. That the States Parties to the American Convention which have accepted the compulsory jurisdiction of the Court are under a duty to fulfill the obligations imposed by this Court. This obligation includes the State's duty to report on the measures adopted to comply with the orders of the Court in said judgments. Timely fulfillment of the State's obligation to report to the Court on the manner in which it is complying with each of the aspects ordered by the latter is essential to evaluate the level of compliance with the Judgment as a whole.⁵

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² Cf. *Case of Baena-Ricardo et al.* Competence. Judgment of November 28, 2003. Series C No. 104, para. 131 and *Case of Ivcher-Bronstein v. Peru. Monitoring Compliance with Judgment.* Order of the Inter-American Court of Human Rights of November 24, 2009, Considering clause No. 3, and *Case of the "Five Pensioners" v. Peru.* Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 24, 2009, Considering clause No. 4.

³ Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of Ivcher-Bronstein*, *supra* note 2, Considering clause No. 5, and *Case of the "Five Pensioners"*, *supra* note 2, Considering clause No. 6.

⁴ Cf. *Case of Ivcher-Bronstein v. Peru.* Competence. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Ivcher-Bronstein*, *supra* note 2, Considering clause No. 6, and *Case of the "Five Pensioners"*, *supra* note 2, Considering clause No. 7.

⁵ Cf. *Case of the "Five Pensioners" v. Peru.* Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 17, 2004, Considering clause No. 5; *Case of Ivcher-Bronstein*, *supra* note 2, Considering clause No. 7, and *Case of the "Juvenile Reeducation Institute" v. Paraguay.* Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 19, 2009, Considering clause No. 7.

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8. The State informed the Court that it had effected a change in the State's actions towards compliance with the Judgment by maintaining an open and participatory dialogue with the victims through their representatives, especially the *Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos* (Association for the Search for Disappeared Children) (hereinafter "Asociación Pro-Búsqueda"). In addition, the State reported that, during the public ceremony held on January 16, 2010 to commemorate the 18th Anniversary of the signing of the Peace Accords, the President of El Salvador declared that national reconciliation cannot be achieved by denying the past, but through truth and justice and publicly acknowledged the responsibility of the State for the serious human rights violations and abuse of power committed by state agents during the internal armed conflict that ended in 1992. The President of El Salvador apologized to those who had not been able to "mourn their loss [because] they do not know the whereabouts of their loved ones" and to those who during those years had suffered with no protection from government agencies. Finally, he promised to provide its fullest and ceaseless cooperation to the relevant national and international authorities that investigate cases involving human rights violations.

9. The representatives acknowledged the State's goodwill, the spirit of cooperation and dialogue to ensure compliance with some of the reparations ordered in the Judgment. Likewise, Suyapa Serrano-Cruz, sister of the disappeared victims, stated that she felt good about the President's apology and acknowledgment of "the many tragic events which occurred in the country."

10. The Commission also appreciated the goodwill expressed by El Salvador and stated that "[s]uch goodwill has resulted in some progress, which the Commission regards as the first step towards compliance with the Judgment."

11. The Court notes that, in its September 22, 2006 Order, it found that the requirement to hold a public ceremony to acknowledge the State's responsibility ordered in the Judgment had been complied with by the event that took place on March 22, 2006.⁶ Nevertheless, the Court appreciates the apology made by the President of the Republic to the victims of human rights violations as well as the State's efforts to maintain a close and open dialogue with the victims in order to work towards compliance with the Judgment in the instant case. The Court considers it essential that the goodwill expressed by the head of the Executive Branch be translated into prompt compliance with the obligations derived from the Judgment, with the active participation of all government bodies concerned.

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12. In relation to the obligation to investigate into the facts of the case, identify and punish those responsible, and conduct a genuine search for the victims (*sixth operative paragraph of the Judgment*), the State admitted that "there has been no significant progress in [the] investigation." The information reported so far by the Prosecutor's Office centered around the appearance of two former high-ranking army officials as

⁶ Cf. *Case of the Serrano-Cruz Sisters v. El Salvador*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 22, 2006, Considering clause No. 9.

witnesses and the delivery of the copies of some files belonging to officers of the armed forces, among other measures, "which were requested by the *Asociación Pro-Búsqueda* and not by the Prosecutor's Office". In addition, on two occasions, the Attorney General's Office requested the President of El Salvador, at the instance of the Chalatenango Trial Court, to provide a list of the officers that participated in the so-called "*Operación Limpieza*" (Operation Clean-Up), a military operation in which the Serrano-Cruz sisters were abducted. On July 17, 2009, the President of El Salvador instructed the Ministry of National Defense to provide that information, but so far there has been no response.

13. The representatives pointed out that the State "has taken no concrete steps to ascertain the whereabouts of the [victims], neither through the criminal proceedings pending before the Chalatenango Court nor through other measures." They added that "no perpetrator has been identified, let alone punished [...]. Since the Judgment was rendered in 2005, no investigation has been initiated by any judge or prosecutor. The only steps taken have been at the instance of the family's legal representation." Also, they expressed concern over the fact that the only measure taken by the court hearing the case, on its own motion, was to summon, a few days ago, Suyapa Serrano Cruz to appear in court at the same date and time as the private hearing regarding compliance with judgment before the Inter-American Court. Further, they stated that nothing has been done to remedy the numerous omissions and oversights by the judicial authorities which show that there is no clear line of investigation aimed at uncovering the truth about what happened to the girls. Once again, "the investigation into the facts of the case is currently inactive pending the answer from the President to the letter in which he [was] required to provide information [...] and no other step has been taken by judicial authorities." Finally, the representatives pointed out that the State "has not adopted any measures to punish the officials that obstructed justice in this case."

14. The Commission pointed out that "the State has the general obligation to investigate" and, therefore, "the request that has not been fulfilled by the executive branch, namely by the Ministry of Defense, is not an isolated instance, [although it is] a step of paramount importance to the identification of those responsible [...], which may represent a breakthrough in the investigation at the domestic level." The Commission added that "the obligation to search for the victims is a very important obligation in this case, which is closely related to the investigation, but also to other forms" of reparation.

15. The Court reiterates what it has held in the Judgment and in its uniform case law since the first case brought before it, i.e. that the obligation to investigate must be taken "seriously, and not as a mere formality preordained to be ineffective." [The investigation] must be conducted in a purposeful manner and undertaken by the State as its own legal duty and not as a mere pursuit of private interests, dependent on the initiative of the victim or their next of kin or upon evidence offered by them, without an effective search for the truth by public authorities."⁷

⁷ Cf. *Case of Velásquez-Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 177; *Case of the "Five Pensioners"*, *supra* note 2, Considering clause No. 15; and *Case of Valle-Jaramillo et al. v. Colombia*. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 192, para. 100.

16. In addition, the Court has previously held that the order to prosecute and punish the perpetrators and uncover all the facts of a case is one of the essential decisions contained in the judgments of the Court, as it entails emotional redress for the victims, allows them to emotionally overcome the violations, reestablishes social relations, helps avoid repetition of similar violations and eliminate the power that perpetrators might have, and entails the administration of justice through the imposition of the appropriate consequences under the law, punishing those who deserve to be punished and providing reparation to those who are entitled to it.⁸

17. When judgment is passed after the international proceedings come to a close, it is necessary for the State to avoid the recurrence of the acts that led to the legal action. The judgment and the reparations ordered therein should provide a new framework and a new vision in order to overcome in an effective and timely manner the problems identified. In this regard, it is essential that all government bodies and agencies cooperate with each other, both by providing information and by taking such steps as may be within their purview under domestic law in order to comply with such reparations.⁹

18. The Court notes that said obligation had to be complied with within a reasonable time. Based on the information provided so far, even though five years have elapsed since the entry of the Judgment and almost seventeen years since the beginning of the court investigation, the State's blatant and persistent inaction has been the order of the day, and even the State has admitted the lack of progress in said proceedings. In this connection, the Court notes that the procedural steps reported by El Salvador (*supra* Considering clause No. 12), such as the testimony of the former Chief of Staff of the Armed Forces and the former Vice Minister of Defense, were already informed to this Tribunal in October 2008,¹⁰ and to date, no evidence has been provided to suggest that they have resulted in some progress in the investigation. On the other hand, the Court appreciates the State's commitment to expedite the response of the Ministry of National Defense to the request made by the President of El Salvador to provide the names of the officers that participated in "Operation Clean-Up". Still, the Court notes that the request for information about the officers in the units that participated in said operation had already been made and reported to this Court in 2006;¹¹ however, to date, that information has not been obtained. Further, the Court points out that these steps have been taken on motion of the aggrieved party, and not on the initiative of the authorities in charge of the investigation.

19. In view of the foregoing, the Court finds that it is essential for the State to adopt specific measures to promptly and fully comply with its obligation to investigate into the facts of the case, identify and punish those responsible and conduct a genuine search for the victims. The State must also ensure that the courts fulfill their duty and effectively seek to establish the truth and determine the ensuing legal consequences, without depending on the representatives to move the proceedings along. Moreover,

⁸ Cf. *Case of Molina-Theissen v. Guatemala*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 16, 2009, Considering clause No. 20.

⁹ Cf. *Case of Molina-Theissen*, *supra* note 8, Considering clause No. 24.

¹⁰ Cf. State's Report of October 10, 2008 (record of compliance monitoring proceedings, Volume III, page 1099).

¹¹ Cf. *Case of the Serrano-Cruz Sisters*, *supra* note 6, Having Seen clauses No. 5(j) and 6(j) and Considering clause No. 12(a).

given that the information regarding the officers that participated in “Operation Clean-Up” is of paramount importance to the investigation, it must be provided to the trial court as soon as possible. Finally, the State must assess and, if appropriate, use additional resources and implement appropriate mechanisms to diligently advance the investigation into the facts of this case.

20. In addition, the representatives expressed their concern over the summons issued to Suyapa Serrano to appear before the Trail Court hearing the case (*supra* Considering clause No. 13); a move possibly designed to obstruct or make the family desist from the proceedings before the Tribunal. The Court finds it an interesting coincidence that she was summoned to appear before the Trial Court on the same date and at the same time as the hearing regarding compliance with judgment scheduled in the instant case. In this connection, the Court concluded in its Judgment that “since the case was submitted to the Inter-American Court, the criminal investigation before the Chalatenango Trial Court has been aimed mainly at defending the State in the international proceedings before the Court and not at investigating the facts alleged in the criminal proceedings.”¹²

21. Based on the foregoing, the Court considers that it is imperative for the State to: a) provide detailed and up-to-date information regarding the progress of the investigation conducted in this case, including copies of the main documents contained in the records of the case that show the status and progress of said proceedings; b) report on the steps to be taken in the investigation; c) explain the reasons for the lack of significant progress in the investigation and provide information regarding the mechanisms or resources that could be effective in diligently advancing the investigation; d) provide information regarding the representatives’ allegations that some authorities had obstructed the proceedings and, if appropriate, indicate if the pertinent measures have been taken, and e) clarify the purpose and circumstances of the summons issued to Suyapa Serrano and explain the need to summon her on the same date and time as the hearing regarding compliance with judgment scheduled by this Court.

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22. As regards the creation of a national commission to search for the young people who disappeared when they were children during the armed conflict, with the participation of civil society (*seventh operative paragraph of the Judgment*), the State reported that although a bill had been introduced in Congress to create such commission, to date, it has not been passed by the Legislature. As a result, by means of a decree, the “Executive Branch has decided to create [a] National Commission for the Search for Disappeared Children” which meets the requirements established by the Court in its Judgment. To that end, the commission will have broad authority to “investigate all offices and agencies that comprise the executive branch and to compel cooperation from other offices and agencies that are independent of the Executive” as well as operational independence. The commission will be composed of three members appointed by the President. One of them will be appointed on the recommendation of the *Asociación Pro-Búsqueda* and the other two “may not be government officials and

¹² *Case of the Serrano-Cruz Sisters v. El Salvador*. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120, para. 166.

must meet the criteria of independence —i.e. they may not be a member of a political party, or have a work history that includes employment or connection with military institutions, or have been a member of any type of armed group— and possess vast experience and expertise in human rights, among other requirements.” The commission will have authority to request information regarding files, conduct inspections in any office or agency of the executive branch, maintain constant and direct communication with the group of victims of forced disappearance of children, issue public reports, make recommendations and promote awareness campaigns.

23. The representatives pointed out that the draft Decree “sets forth provisions that would lead to compliance with most of the requirements specified in the Judgment.” However, they raised some concerns about the commission, mainly that: a) it would be located in the building of the Ministry of Foreign Affairs, which place would be difficult to access; b) it would be funded using the resources of the Ministry, which could compromise its independence, and c) its investigative powers would be limited to “the offices and agencies under the executive branch” and would therefore lack authority to request information from the Legislature or the Judiciary, which could aid in the investigations.

24. The Inter-American Commission pointed out that the creation of a commission for the search for disappeared children “is an important step that could help overcome the initial shortcomings.” In addition, it took into consideration the concerns raised by the representatives and reserved its opinion on this issue until it can get hold of the text of the Decree.

25. That the Court specified a period of six months from the date notice of the Judgment was given for the State to comply with such measure of reparation. After almost five years, the Court notes that this obligation has not been fulfilled. The Court takes into consideration that the State plans to set up a “National Commission for the Search for Children who Disappeared during the Internal Armed Conflict”, to replace the previous Inter-Institutional Commission for the Search for Disappeared Children that finished its work on May 31, 2009. According to the information provided by the State, the new commission would aim to comply with the requirements set forth in the Judgment. The Court points out that, in order to achieve such aim, the aforesaid commission should, *inter alia*, be independent and impartial, have authority to take all such measures as may be necessary to investigate and gather evidence relating to the possible whereabouts of the children who disappeared during the armed conflict. Additionally, it is essential that all government bodies and authorities be under the obligation to cooperate in providing information and access to all files and records.¹³ Furthermore, the Court notes that the selection of the members of the abovementioned Commission for the Search for Disappeared Children is in its first stages, prior to its establishment. In addition, the Tribunal has no information about whether the draft Decree that creates said commission has been enacted by the Executive and published in the Official Gazette.

26. Based on the foregoing, the State must provide up-to-date information to the Court regarding: a) the possible enactment and publication of the abovementioned draft Decree in the Official Gazette, in which case the State must submit a copy thereof; b) progress towards the creation and operation of the aforesaid commission as well as its compliance with the requirements set forth in the Judgment; c) progress

¹³ Cf. *Case of the Serrano-Cruz Sisters*, *supra* note 12, paras. 184 to 188.

made in the search for the young people who disappeared during the internal armed conflict, especially in the search for Ernestina and Erlinda Serrano-Cruz, and d) progress made by the Inter-Institutional Commission for the Search for Disappeared Children, particularly regarding the steps taken and the results obtained in relation to the facts of this case, and whether the new commission would work with the information already obtained by the Inter-Institutional Commission.

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27. With regard to the creation of a genetic information system in order to obtain and store genetic data that can help establish the identity and relationship of the disappeared children and their next of kin (*seventh operative paragraph of the Judgment*), the State reported that "there is a record available from previous efforts made before the Supreme Court of Justice of El Salvador, and also the *Universidad Nacional Autónoma de México* can provide assistance with the creation of the genetic information system; however, no satisfactory results have been achieved so far." El Salvador also expressed its "commitment to make every effort in view of the international cooperation to facilitate the creation of this information system in the country." Moreover, it recognized the valuable input from the *Asociación Pro-Búsqueda*, which in addition to offering and sharing its experience in the field, contacted the Minister of Foreign Affairs on December 16, 2009 and January 22, 2010, to propose working together to facilitate a process that would lead to the implementation of a genetic information system.

28. The representatives appreciated the commitment made by the State to use its best efforts; however, they pointed out the lack of progress in relation to this measure.

29. The Commission considered that the information provided was no different from the one previously submitted and, even though it valued all efforts made by the State, it pointed out that compliance with said measure of reparation "should not depend on international support or cooperation."

30. The Court points out that the Judgment rendered in the instant case specified that the genetic information system should be created within a reasonable time. Although the State expressed its commitment to make every effort to implement such information system, the Court notes that it has not been created yet and no specific actions have been taken towards its implementation. The Court also notes that, in the past, the State provided information regarding several measures designed to obtain cooperation from national and foreign organizations in connection with this issue,¹⁴ which have not been successful, and therefore, after five years this measure of reparation remains unfulfilled.

31. The Court once again stresses the importance of complying with this measure for the identification of disappeared persons and the determination of their filiation, as well as for promoting networking between those who are looking for disappeared persons. Therefore, the Court finds that the State must comply with this measure of reparation as soon as possible in order to help discover the truth and identify Ernestina

¹⁴ Cf. *Case of the Serrano-Cruz Sisters*, *supra* note 6, Having Seen clauses No. 4(c) and Considering clause No. 12(c).

and Erlinda Serrano-Cruz and establish their filiation. In view of the foregoing, the State shall provide information to this Court regarding the measures adopted to develop and implement, as soon as practicable, such genetic information system.

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32. As regards the duty to provide, free of charge, through its specialized health institutions, the medical and psychological treatment required by the next of kin of the victims (*eleventh operative paragraph of the Judgment*), the State reported that: a) "it continues to provide free medical care to the Serrano-Cruz family, taking into account the specific needs and conditions of each member of the family;" b) "efforts have been made to overcome the shortcomings pointed out in the past;" c) "staff from the Ministry of Foreign Affairs accompanies the members of the Serrano family for medical care and provision of medicines, which are provided by the State free of charge," and that d) transportation and meals for the family during their medical visits are provided by the Ministry of Foreign Affairs. In addition, the State pointed out that "the necessary coordination with the Ministry of Health and Social Welfare has been established and the participation of different authorities of national hospitals has also been obtained." In relation to the provision of free psychological services, it stated that they have revisited this point after discussing the issue with the *Asociación Pro-Búsqueda* and that, since January 25, 2010, there is an "inter-institutional agreement for the provision of psychosocial care to the Serrano-Cruz family;" which services will be provided by the *Universidad Centroamericana José Simeón Cañas* "given their extensive experience in treating survivors of the internal armed conflict." It also asserted that there would be no impediment to providing psychological services as soon as possible.

33. Even though the representatives recognized that there had been "significant progress" in the provision of medical care and medicines to the members of the Serrano-Cruz family, there are still "serious shortcomings". In particular, they expressed concern over the fact that the members of the family need to be accompanied by an officer of the Ministry of Foreign Affairs in order to receive medical care. In this connection, they pointed out that "the employees who work at the health center where [...] they normally go have no knowledge of the Judgment and, in the event [they] are not accompanied by a member of the Ministry of Foreign Affairs, they will not be able to [receive such care]." Moreover, they reported that "whenever the members of the Serrano-Cruz family need to undergo medical tests, these [...] are scheduled for dates far into the future."

34. The Commission appreciated the progress achieved and pointed out that "the problems related to the need to be accompanied by members of the Ministry of Foreign Affairs may represent a future limitation to the provision of medical care," and considered that it was necessary for the State to "take the necessary steps to inform those in charge of providing medical care of the nature of such care, which derives from a Judgment rendered by the Inter-American Court, and that it is a measure of reparation ordered as a consequence of human rights violations."

35. The Court appreciates the progress made in relation to the provision of free medical care to the Serrano-Cruz family, including free medicines as well as travel and meal expenses related to such care. Moreover, the Court also values the State's efforts to improve internal coordination in order to best comply with this measure of

reparation and overcome the shortcomings reported by the representatives in the past. In this regard, the Court considers that it is essential that the authorities of the Ministry of Health and Social Welfare and the professionals in charge of providing medical treatment to the members of the Serrano-Cruz family fulfill the international obligations set forth in the Judgment, which are binding on all government branches and agencies (*supra* Considering clause No. 5).

36. With respect to the provision of psychological services to the members of the Serrano-Cruz family, the Court appreciates the information that has finally been provided regarding the specific steps taken to ensure compliance with this measure of reparation. The Court expresses its satisfaction with the agreement signed by the State to secure the provision of those services for a period of two years through a professional that the family trusts, and with the fact that the treatment and the expenses directly related to it will be fully covered by the State.

37. Based on the foregoing, the Court requests the State to provide information about the provision of medical care, and especially regarding progress in the coordination with the applicable authorities of the Ministry of Health and Social Welfare and the medical staff with respect to the obligations imposed in the Judgment concerning the provision of medical care to the abovementioned family. Furthermore, El Salvador must report on the implementation of the Inter-Institutional Agreement with the *Universidad Centroamericana José Simeón Cañas* for the provision of psychological services and on any other measure designed to effectively comply with the obligation to provide free psychological counseling, which should begin as soon as possible.

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38. In relation to the creation of a web page for the search for disappeared persons (*seventh operative paragraph of the Judgment*), the State informed the Court that it is "temporarily unavailable given that it operated under the scheme of the previous Inter-Institutional Commission" and that it is currently being redesigned in coordination and cooperation with the *Asociación Pro-Búsqueda*."

39. The representatives confirmed that they held discussions with the authorities and put forward a proposal for the "redesign of the wage page, [but that] it is still not working." They pointed out that "it is one of the measures that can significantly contribute to the work of the Commission for the Search for Disappeared Children, [...] given that, according to the investigations conducted by the *Asociación Pro-Búsqueda*, the majority or a large percentage of the children who disappeared in El Salvador have been found abroad."

40. The Commission pointed out that discussions between the State and the representatives regarding this measure "began several months ago and [the launch of the new web page] would depend on the response of the [State] to the proposal presented by the representatives."

41. The Court finds that it is necessary for El Salvador to reactivate, as soon as possible, the web page, which must meet the requirements established by the Court in

its Judgment,¹⁵ so that it can become an effective tool to determine the whereabouts of Ernestina and Erlinda Serrano-Cruz. In view of the foregoing, the State shall provide the Court with detailed and up-to-date information regarding the launch of the web page according to the abovementioned conditions.

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42. As regards the publication of the parts of the Judgment on the merits, reparations and costs rendered by the Court in the Official Gazette (*ninth operative paragraph and paragraph 195 of the Judgment and tenth Considering clause of the Order on Compliance with Judgment of September 22, 2006*), the State has confirmed the publication of the pertinent parts of the Judgment in the Official Gazette of El Salvador and submitted a copy thereof.

43. The representatives made no additional observations regarding this measure.

44. In its January 10, 2008 brief, the Commission expressed its satisfaction with said publication.

45. Based on the information provided by the parties, the Court finds that this measure of reparation has been complied with.

THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of its authority to monitor compliance with its own decisions pursuant to Articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, and Articles 25(1) and 30 of the Statute and 31(2) of the Rules of Procedure of the Court,¹⁶

DECLARES,

1. That, in accordance with Considering clause No. 45 of this Order, the State has complied with its obligation to:

f) publish, at least once, the parts of the Judgment on the merits, reparations and costs rendered by the Court in the Official Gazette (*ninth operative paragraph and paragraph 195 of*

¹⁵ Cf. *Case of the Serrano-Cruz Sisters*, *supra* note 12, paras. 189 to 191.

¹⁶ Rules of Procedure of the Court approved during its 85th Regular Period of Sessions, held from November 16 to 28, 2009.

the Judgment [...] and tenth Considering clause of the Order on Compliance with Judgment of September 22, 2006).

2. That, in accordance with Considering clauses No. 11, 18 to 21, 25, 26, 30, 31, 35 to 37 and 41 of this Order, the Court will keep the proceedings open to monitor compliance with the obligations which remain unfulfilled, to wit:

a) 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* which prevent compliance with said obligations in the instant case, using all possible measures available, either through the criminal proceedings or other appropriate measures, and to publicize the result of the criminal proceedings (*sixth operative paragraph of the Judgment*);

b) to establish 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 (*seventh operative paragraph of the Judgment*);

c) to create a genetic information system [in order to obtain and store] genetic data that can help establish the identity and relationship of the disappeared children and their next of kin (*seventh operative paragraph of the Judgment*);

d) 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, taking into consideration the health problems of each one of them after making an individual evaluation, and to inform the next of kin of Ernestina and Erlinda Serrano Cruz in which health centers or specialized institutes they will receive such medical or psychological care, and provide them with the treatment. If Ernestina and Erlinda Serrano-Cruz are found alive, the State must also provide them with the aforesaid medical and psychological treatment (*eleventh operative paragraph of the Judgment*), and

e) to create a web page to find disappeared persons (*seventh operative paragraph of the Judgment*)

AND DECIDES:

1. To call upon the State to adopt all such measures as may be necessary to effectively and promptly comply with the reparations ordered by the Court in the Judgment on the Merits of March 1, 2005 and in this Order, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.

2. To require the State to submit to the Inter-American Court of Human Rights, by June 30, 2010, a report specifying all such measures as may have been adopted to comply with the reparations ordered by this Court, as set forth in Considering clauses No. 11, 18 to 21, 25, 26, 30, 31, 35 to 37 and 41 and second declaratory paragraph of this Order.

3. To request the representatives of the victims and their next of kin and the Inter-American Commission on Human Rights to submit observations on the State's report mentioned in the preceding operative paragraph, within a period of four and six weeks respectively following receipt thereof.

4. To continue monitoring compliance with the obligations set forth in the Judgment on the merits, reparations and costs of March 1, 2005 which have not been fulfilled yet.

5. To request the Secretariat of the Court to notify this Order to the State, the representatives of the victims and the Inter-American Commission on Human Rights.

Leonardo A. Franco
Acting President

Manuel Ventura-Robles

Margarette May Macaulay

Rhadys Abreu-Blondet

Alberto Pérez-Pérez

Eduardo Vio-Grossi

Pablo Saavedra-Alessandri
Secretary

So ordered,

Leonardo A. Franco
Acting President

Pablo Saavedra-Alessandri
Secretary