

# Gutiérrez Hernández and Family v. Guatemala

## ABSTRACT<sup>1</sup>

*This case is about the disappearance of a human rights activist. The Court found the state in violation of several articles of the American Convention, Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women and Inter-American Convention on Forced Disappearances of Persons. However, it did not declare a violation of certain articles of the Inter-American Convention on Forced Disappearances of Persons because it could not determine that Ms. Gutiérrez Hernández was actually a victim of a forced disappearance as defined in that Convention.*

## I. FACTS

### A. Chronology of Events

**January 23, 1958:** Ms. Mayra Gutiérrez Hernández is born in Guatemala City.<sup>2</sup>

**1977:** Ms. Gutiérrez Hernández joins the Revolutionary Armed Forces.<sup>3</sup>

**1980:** Ms. Gutiérrez Hernández begins work at San Carlos University in Guatemala (“State”) as a Teaching Assistant before working her way up to a full-time Lecturer position.<sup>4</sup> Additionally, she conducts research as part of San Carlos University’s Superior Council.<sup>5</sup>

---

1. Joshua Fruto, Author; Shira Diamant, Editor; Kimberly Barreto, Chief IACHR Editor; Cesare Romano, Faculty Advisor

2. Gutiérrez Hernández and Family v. Guatemala, Admissibility Report and Report on Merits, Report No. 13/15, Inter-Am. Comm’n H.R., Case No. 12.349, ¶ 35 (Mar. 23, 2015).

3. *Id.* ¶ 37.

4. *Id.* ¶ 38.

5. *Id.*

**1984:** Ms. Gutiérrez Hernández obtains a degree in psychology from San Carlos University.<sup>6</sup>

**1992-1995:** Ms. Gutiérrez Hernández elects to continue her education at San Carlos University by taking additional sociology and human rights courses.<sup>7</sup>

**April 7, 2000:** Early Friday morning, Ms. Gutiérrez Hernández walks her daughter, Ms. Ángela María del Carmen Argüello Gutiérrez, to the school bus stop.<sup>8</sup> When María del Carmen returns home that afternoon, her mother is nowhere to be seen.<sup>9</sup> Ms. Gutiérrez Hernández usually runs errands, such as going to the bank, and teaches courses at Mariano Gálvez University on Fridays, yet she is not at the University either.<sup>10</sup> María del Carmen notices that the usual items Ms. Gutiérrez Hernández brings with her to work, including her passport and mobile telephone, are at home.<sup>11</sup> Ms. Enma Lucrecia Nuñez, Ms. Gutiérrez Hernández's neighbor, informs the State that she saw Ms. Gutiérrez Hernández walking on the street with a man who had his arm around her at 8:30 a.m.<sup>12</sup>

**April 8, 2000:** Ms. Gutiérrez Hernández does not appear at her Saturday job as.<sup>13</sup> Her family begins to search for her at local prisons, hospitals, and morgues, but are unable to locate her.<sup>14</sup>

**April 9, 2000:** Ms. Gutiérrez Hernández's brother, Mr. Armando Gutiérrez, reports her disappearance to the Criminal Investigation Service of the National Civil Police and the Public Prosecution Service.<sup>15</sup>

**April 11, 2000:** Mr. Mario Polanco Pérez, a member of Mutual Support Group (Grupo de Apoyo Mutuo; GAM) with Ms. Gutiérrez Hernández, files a habeas corpus petition on behalf of Ms. Gutiérrez Hernández with judicial authorities.<sup>16</sup> The Ninth Court of First Instance for Criminal

---

6. *Id.* ¶ 36.

7. *Id.*

8. Gutiérrez Hernández and Family v. Guatemala, Admissibility Report and Report on Merits, ¶¶ 35, 44.

9. *Id.* ¶ 45.

10. *Id.* ¶ 44.

11. *Id.* ¶ 45.

12. *Id.* ¶ 70.

13. *Id.* ¶ 45.

14. Gutiérrez Hernández and Family v. Guatemala, Admissibility Report and Report on Merits, ¶ 45.

15. *Id.* ¶ 47.

16. *Id.* ¶ 48.

Matters, Drug Trafficking and Environmental Crimes (“Ninth Court”) accepts the petition, and requests prisons, hospitals, and different departments within the Office of the General Director of the National Civil Police to provide any information they have regarding Ms. Gutiérrez Hernández’s whereabouts.<sup>17</sup>

**April 12, 2000:** A prosecutor from the Public Prosecution Service requests two agents from the Chief of the Criminal Investigations Department to investigate Ms. Gutiérrez Hernández’s disappearance.<sup>18</sup>

**April 13, 2000:** The Office of the Human Rights Ombudsman files a habeas corpus petition for Ms. Gutiérrez Hernández with the Seventh Justice of the Peace for Criminal Matters.<sup>19</sup> The Third Court of First Instance for Criminal Matters, Drug Trafficking and Environmental Crimes rejects the petition because Guatemala’s courts already reported that Ms. Gutiérrez Hernández was not in any of the State’s prisons.<sup>20</sup>

**April 14, 2000:** The Chief Secretary of the Office of the Director General of the Police presents a report to the Ninth Court stating that no complaint has been filed for Ms. Gutiérrez Hernández’s disappearance.<sup>21</sup>

**April 26, 2000:** Mr. Juan Alberto Arancibia Córdova informs investigators he has known Ms. Gutiérrez Hernández since 1996 and that ‘they become lovers’ in late 1999.<sup>22</sup> They broke up afterward, always remaining good friends.<sup>23</sup>

Following the receipt of this information, the Chief of the Juveniles and Missing Persons Section of the National Civil Police’s Criminal Investigations Service submits a preliminary report to the Office of the Human Rights Ombudsman, naming Mr. Arancibia Córdova as the prime suspect in Ms. Gutiérrez Hernández’s disappearance.<sup>24</sup> Specifically, the report points to Mr. Arancibia Córdova because of conflicting information he told investigators about his stay in the State.<sup>25</sup> Additionally, the report states that, Mr. Efraín Medina, Rector of San

---

17. *Id.*

18. *Id.* ¶ 49.

19. *Id.* ¶ 50.

20. *Gutiérrez Hernández and Family v. Guatemala*, Admissibility Report and Report on Merits, ¶ 50.

21. *Id.* ¶ 48.

22. *Id.* ¶ 51.

23. *Id.*

24. *Id.*

25. *Id.*

Carlos University, and Ms. Estela Zamora, Ms. Gutiérrez Hernández's work colleague, state that they believe her disappearance is linked to the research she conducted regarding illegal adoptions and trafficking of minors in Guatemala.<sup>26</sup> They believe identifying information of lawyers involved with illegal adoptions was revealed to the United Nations Children's Fund (UNICEF).<sup>27</sup>

**April 28, 2000:** The Office of the District Prosecutor submits a report explaining its suspicions that Ms. Gutiérrez Hernández is being held captive in a building by Mr. Arancibia Córdova.<sup>28</sup> The report explains that this building is where the two lovers used to meet, Mr. Arancibia Córdova used to persistently call and harass Ms. Gutiérrez Hernández, and he has given conflicting information regarding his stay in the State.<sup>29</sup> The Office of the District Prosecutor also requests the Tenth Court of First Instance for Criminal Matters, Drug Trafficking and Environmental Crimes ("Tenth Court") to authorize a search of this building.<sup>30</sup>

**May 2, 2000:** The Office of the District Prosecutor searches the building, as authorized by the Tenth Court, and Ms. Gutiérrez Hernández is not inside.<sup>31</sup>

**May 3, 2000:** Mr. Polanco Pérez files an additional habeas corpus petition for Ms. Gutiérrez Hernández with judicial authorities.<sup>32</sup> The Eighth Court of First Instance for Criminal Matters, Drug Trafficking and Environmental Crimes accepts his habeas corpus petition and requests courts and prisons to provide any information they have on her whereabouts.<sup>33</sup> These institutions report that she has not been arrested.<sup>34</sup>

**May 7, 2000:** The Secretary of Strategic Affairs of the Presidency publishes a Guatemalan military intelligence database created during the 1980s.<sup>35</sup> The list, comprised of 650,428 individuals whom the

---

26. Gutiérrez Hernández and Family v. Guatemala, Admissibility Report and Report on Merits, ¶ 52.

27. *Id.*

28. *Id.* ¶ 53.

29. *Id.*

30. *Id.* ¶ 54.

31. *Id.*

32. Gutiérrez Hernández and Family v. Guatemala, Admissibility Report and Report on Merits, ¶ 55.

33. *Id.*

34. *Id.*

35. *Id.* ¶ 65.

government signifies as “suspected subversives,” includes Ms. Gutiérrez Hernández.<sup>36</sup>

**May 3-11, 2000:** Several articles are published reporting statements of the prosecutor spearheading Ms. Gutiérrez Hernández’s investigation.<sup>37</sup> Specifically, the prosecutor states how strange it is that Ms. Gutiérrez Hernández’s family have yet to be contacted regarding ransom.<sup>38</sup> Additionally, a detective on the case hypothesizes that Ms. Gutiérrez Hernández’s disappearance is linked to her research regarding illegal adoptions of minors.<sup>39</sup>

The Director of the National Civil Police states that the most recent information they have is regarding the sighting of Ms. Gutiérrez Hernández on the morning of April 7 with her boyfriend.<sup>40</sup> Further, the Minister of the Interior says that a confidential report states that Ms. Gutiérrez Hernández has been abducted by the Guatemalan National Revolutionary Unit, but also that her disappearance could be a crime of passion.<sup>41</sup>

**May 15, 2000:** The Congress of Guatemala passes Resolution 17-2000 requesting all relevant authorities to investigate Ms. Gutiérrez Hernández’s disappearance.<sup>42</sup> The Minister of the Interior says Ms. Gutiérrez Hernández “left the country for personal reasons.”<sup>43</sup> The prosecutor from the Public Prosecution Service relays to police investigators that an ex-guerrilla informant in Mexico reports that Ms. Gutiérrez Hernández is being hidden in a safe house by armed guards.<sup>44</sup> Such a safe house is never located.<sup>45</sup>

**May 16, 2000:** An anonymous tip reports that Ms. Gutiérrez Hernández is being held by armed men along Atlantic road.<sup>46</sup> The authorities and faculty at the Psychology School of San Carlos University request the Constitutional President of the Republic to announce and report on Ms.

36. *Id.*

37. *Id.* ¶ 56.

38. *Gutiérrez Hernández and Family v. Guatemala*, Admissibility Report and Report on Merits, ¶ 56.

39. *Id.*

40. *Id.*

41. *Id.* ¶ 56.

42. *Id.* ¶ 57.

43. *Id.*

44. *Gutiérrez Hernández and Family v. Guatemala*, Admissibility Report and Report on Merits, ¶ 58.

45. *Id.*

46. *Id.*

Gutiérrez Hernández's disappearance because they find the lack of progress in the investigation concerning.<sup>47</sup>

**May 18, 2000:** Migration authorities report that Ms. Gutiérrez Hernández has not left the State since passing through La Aurora International Airport in September 1995.<sup>48</sup>

**May 19, 2000:** An investigation into the area specified by the May 16 anonymous tip is conducted and is fruitless.<sup>49</sup>

**May 24, 2000:** The Chief of the Juveniles and Missing Persons Section of the National Civil Police's Criminal Investigation Service reports to the Office of the Human Rights Ombudsman that their information has leaked and has obstructed their investigation.<sup>50</sup>

**May 31, 2000:** Amnesty International issues a press release expressing concern over the disappearance of Ms. Gutiérrez Hernández and the ineffective investigation being conducted.<sup>51</sup> It suggests her disappearance may be linked to her report on illegal adoptions in Guatemala.<sup>52</sup>

The United Nations' Special Rapporteur on the sale of children, child prostitution and child pornography relied on her research and this earned publicity right before Ms. Gutiérrez Hernández's disappearance.<sup>53</sup> Amnesty also suggests political motivations behind her disappearance due to her siblings, who were political activists, disappearing in the 1980s.<sup>54</sup>

**June 1, 2000:** The Ninth Court declares that Ms. Gutiérrez Hernández has not been found as within the framework of the habeas corpus petition.<sup>55</sup> Therefore, the Ninth Court places the burden of the

---

47. *Id.* ¶ 59.

48. *Id.* ¶ 60.

49. *Id.* ¶ 58.

50. *Gutiérrez Hernández and Family v. Guatemala*, Admissibility Report and Report on Merits, ¶ 62.

51. *Id.* ¶ 63.

52. *Id.* 34.

53. *Id.*

54. *Id.* ¶ 42. Ms. Gutiérrez Hernández's brother, Julio Gutiérrez Hernández, and sister, Brenda Mercedes Gutiérrez, were members of guerilla groups at the University of San Carlos and were forcibly disappeared in 1982 and 1985, respectively.

55. *Id.* ¶ 66.

investigation in the hands of those responsible for criminal prosecutions.<sup>56</sup>

**June 2, 2000:** The General Directorate of Migration submits a report to the Office of the Human Rights Ombudsman stating that from April 6, 2000 to the present, they have no record of migratory movements for Ms. Gutiérrez Hernández.<sup>57</sup>

**June 12, 2000:** Mr. Polanco Pérez submits a petition for Ms. Gutiérrez Hernández to the Criminal Division of the Supreme Court of Justice.<sup>58</sup> The Criminal Division orders all habeas corpus petitions for Ms. Gutiérrez Hernández to be disposed of by June 15, 2000.<sup>59</sup> As Ms. Gutiérrez Hernández has not been located, the habeas corpus petitions are already dismissed.<sup>60</sup>

**June 19, 2000:** The San Carlos University faculty again asks the Director of the National Civil Police to intervene in hopes of furthering the case.<sup>61</sup> The faculty also notes a media outlet reported that the Director of the National Civil Police tells them the Anti-Kidnapping Unit has not taken any action because they have not received a complaint of an abduction.<sup>62</sup>

**June 22, 2000:** Although Mr. Polanco Pérez's habeas corpus petitions are forwarded to the Public Prosecution Service, he sends a brief to the Criminal Division stating that the Public Prosecution Service has not given any information about its investigation thus far.<sup>63</sup>

**June 28 and July 3, 2000:** Ms. Marta López, a prosecutor, informs the Office of the Human Rights Ombudsman that the investigation of the Public Prosecution Service has determined that all events surrounding the case were planned by Ms. Gutiérrez Hernández herself.<sup>64</sup> Ms. Gutiérrez Hernández is friends with Mr. Renato del Cid, a former guerrilla, and he appeared at the home of Ms. Gutiérrez Hernández's family in May 2000

---

56. *Gutiérrez Hernández and Family v. Guatemala*, Admissibility Report and Report on Merits, ¶ 66.

57. *Id.* ¶ 67.

58. *Id.* ¶ 69.

59. *Id.*

60. *Id.*

61. *Id.* ¶ 68.

62. *Gutiérrez Hernández and Family v. Guatemala*, Admissibility Report and Report on Merits, ¶ 68.

63. *Id.* ¶ 71.

64. *Id.* ¶ 72.

with two plane tickets to Mexico.<sup>65</sup> He also gave money to her daughter.<sup>66</sup> Some information regarding Ms. Gutiérrez Hernández's male companion the morning of April 7, 2000 indicates he was her contact in an illicit arms deal.<sup>67</sup> She was trained in the Republic of Cuba and was active in the guerrilla group there.<sup>68</sup> Ms. López also states that Ms. Gutiérrez Hernández sister, Ms. Nilda Gutiérrez, made phone calls to Mexico and El Salvador, leading the Public Prosecution Service to assume she knows her sister's whereabouts.<sup>69</sup>

**July 4, 2000:** The Ambassador of Mexico tells the faculty of San Carlos University that there is no record of Ms. Gutiérrez Hernández entering Mexico.<sup>70</sup>

**July 31, 2000:** The Human Rights Ombudsman publishes a report stating that although investigations are being conducted, Ms. Gutiérrez Hernández's family still have not received news regarding her whereabouts.<sup>71</sup> Additionally, the relevant authorities still have not found Ms. Gutiérrez Hernández nor have they been able to determine a motive for her disappearance.<sup>72</sup> As the relevant authorities cannot guarantee Ms. Gutiérrez Hernández's safety, they have violated and are responsible for failing to protect her human rights.<sup>73</sup> Additionally, he demands the State organize all it can to determine Ms. Gutiérrez Hernández's whereabouts.<sup>74</sup>

**September 19, 2000:** A technical consultant of the Public Prosecution Service tells the private secretary that the prosecution's case file is officially comprised of only a few statements.<sup>75</sup> Most of the investigative procedures are not documented and, thus do not legally exist.<sup>76</sup> The technical consultant suggests that as a first step in addressing this issue, the investigation should request from UNICEF Ms. Gutiérrez

---

65. *Id.* ¶¶ 72-73.

66. *Id.*

67. *Id.* ¶ 72.

68. Gutiérrez Hernández and Family v. Guatemala, Admissibility Report and Report on Merits, ¶ 73.

69. *Id.* ¶ 74.

70. *Id.* ¶ 75.

71. *Id.* ¶ 76.

72. *Id.*

73. *Id.*

74. Gutiérrez Hernández and Family v. Guatemala, Admissibility Report and Report on Merits, ¶ 76.

75. *Id.* ¶ 78.

76. *Id.*

Hernández's research regarding the illegal adoption of minors to determine whether it might place Ms. Gutiérrez Hernández in danger.<sup>77</sup>

**December 7, 2000:** The Criminal Division of the Supreme Court of Justice convenes regarding Mr. Polanco Pérez's special inquiry 01-2000, with a prosecutor from the Public Prosecution Service and Mr. Polanco Pérez present.<sup>78</sup> The Criminal Division finds that Mr. Polanco Pérez's inquiry should be ordered and requests the results by February 12, 2001.<sup>79</sup> Additionally, the Supreme Court instructs the Second Court of First Instance on Criminal Matters, Drug Trafficking and Environmental Crimes ("Second Court") to "oversee" the investigation.<sup>80</sup>

**January 10, 2001:** Ms. Gutiérrez Hernández's co-worker, Ms. Sonia Toledo, tells the Office of the Human Rights Ombudsman that a few days after the disappearance, she and faculty from San Carlos University inquired about the investigation.<sup>81</sup> They were told that the hypotheses were either she committed suicide, she ran off with her boyfriend, or she was taken by former guerrillas, all showing that the investigation was initially prejudiced.<sup>82</sup>

**January 25, 2001:** The United Nations Verification Mission in Guatemala reports to the Human Rights Ombudsman that the investigation being conducted by the Criminal Investigations Department is rife with disinformation and inconsistent with a mission of objectiveness and thoroughness.<sup>83</sup> Some errors include that the investigation failed to confirm the testimony of Ms. Gutiérrez Hernández's neighbor of the morning of the disappearance and tampered with evidence.<sup>84</sup> The investigation presumes the credibility of disinformation given by people regarding Ms. Gutiérrez Hernández.<sup>85</sup> The Mission further explains that Ms. Gutiérrez Hernández loves her work and her daughter, so the hypothesis that her disappearance is her own doing is unsupported.<sup>86</sup>

---

77. *Id.* ¶ 79.

78. *Id.* ¶ 80.

79. *Id.* ¶¶ 81-82.

80. *Gutiérrez Hernández and Family v. Guatemala*, Admissibility Report and Report on Merits, ¶ 82.

81. *Id.* ¶ 83.

82. *Id.*

83. *Id.* ¶ 84.

84. *Id.* ¶ 85.

85. *Id.* ¶ 86.

86. *Gutiérrez Hernández and Family v. Guatemala*, Admissibility Report and Report on Merits, ¶ 85.

The Mission goes on to elaborate on the hypothesis that her disappearance is possibly politically motivated because she has left-wing political views and works in human rights.<sup>87</sup> Ms. Gutiérrez Hernández has siblings who disappeared in the 1980s during the Guatemalan Civil War.<sup>88</sup> Additionally, the student movement she is connected with at San Carlos University was attacked by the State, and her disappearance destabilizes a pro-coup movement rising in the State.<sup>89</sup> Despite these possible reasons, the official investigation continues to ignore the hypothesis that her disappearance is linked to her research into illegal adoptions and is politically motivated.<sup>90</sup>

**February 20, 2001:** The prosecutor heading the case reports that although Ms. Gutiérrez Hernández was a member of the guerrilla forces in the 1980s, her disappearance is not a forced disappearance because: (1) no witnesses saw National Civil Police or people in army uniforms leaving her home; (2) there were no signs of violence inside her home; (3) there is no documented evidence that Ms. Gutiérrez Hernández is actively involved in a guerrilla group or a political party in Guatemala; (4) she is not being held in any state institutions as the habeas corpus petitions have shown; and (5) forced disappearances that occur by subversive groups are no longer possible as there are no paramilitary groups in Guatemala.<sup>91</sup>

**March 23, 2001:** Ms. López's habeas corpus petition to the Division for Constitutional Relief and Preliminary Proceedings of the Supreme Court of Justice is denied because the court believes Ms. Gutiérrez Hernández is not going to be found this way.<sup>92</sup>

**April 3, 2001:** The Public Prosecution Service tells the State that there is still no significant progress in the investigation.<sup>93</sup>

**April 10, 2001:** Mr. Arancibia Córdova tells the Human Rights Ombudsman he thinks Ms. Gutiérrez Hernández's disappearance is politically motivated, relating to her research into illegal adoptions.<sup>94</sup>

---

87. *Id.* ¶ 86.

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.* ¶ 87.

92. Gutiérrez Hernández and Family v. Guatemala, Admissibility Report and Report on Merits, ¶ 89.

93. *Id.* ¶ 88.

94. *Id.* ¶ 90.

**April 30, 2001:** The Human Rights Ombudsman submits a report to the Second Court stating that Ms. Gutiérrez Hernández's disappearance is one of passion in which Mr. Arancibia Córdova felt so betrayed, jealous, and worried about HIV infection that he kidnapped her.<sup>95</sup> The report further explains that this hypothesis aligns with the fact that no body has been produced in the investigation because only someone close to Ms. Gutiérrez Hernández would be able to kidnap her without violence and take her to a place where her body could be hidden.<sup>96</sup>

**May 4, 2001:** The Human Rights Ombudsman makes a statement that it finds Ms. Gutiérrez Hernández's disappearance a crime of passion because of the neighbor's witness testimony of the morning of April 7, 2000.<sup>97</sup> Later, Mr. Arancibia Córdova's defense counsel tells the media that this conclusion is unfounded.<sup>98</sup>

**July 6, 2001:** The Second Court issues a decision in which they accuse Mr. Arancibia Córdova of the disappearance and order his arrest.<sup>99</sup>

**August 2002 and May 2003:** Ms. Sara Payes, a prosecutor, tells the Presidential Human Rights Commission that the investigation still needs to: (1) exhume women's corpses; (2) compare photographs; (3) conduct more interviews with Ms. Gutiérrez Hernández's family; and (4) request Mr. Arancibia Córdova's migratory movements.<sup>100</sup>

**March 18, 2004:** The National Civil Police issues a preliminary investigation report stating that Mr. Armando Gutiérrez's testimony points to Mr. Osmín de Jesús Pineda Melgar as a suspect in the disappearance.<sup>101</sup>

**February 9, 2005:** Ms. Payes reports that Mr. Arancibia Córdova is in Mexico and, despite being accused by the Second Court, has not come forward to be arrested.<sup>102</sup>

---

95. *Id.* ¶ 91.

96. *Id.* ¶ 92.

97. *Id.* ¶ 88.

98. *Gutiérrez Hernández and Family v. Guatemala*, Admissibility Report and Report on Merits, ¶ 90.

99. *Id.* ¶ 93.

100. *Id.* ¶ 94.

101. *Id.* ¶ 95.

102. *Id.* ¶ 97.

**October 2007:** The criminal proceeding is still in its investigation stage, as funding is required to pay for any exhumation services.<sup>103</sup>

**March 2008:** The National Civil Police try to find Mr. Arancibia Córdova in Mexico, but are unsuccessful.<sup>104</sup>

**September 22, 2009:** Ms. Sandra Sosa, a prosecutor, states that the case is being handed to the Special Prosecution Unit for Human Rights with the Office of the Human Rights Ombudsman jointly investigating.<sup>105</sup>

**December 23, 2009:** The Prosecution Unit for Human Rights rejects the case transfer.<sup>106</sup>

**July 9, 2013:** Mr. Polanco Pérez requests the Criminal Division of the Supreme Court to instruct the Human Rights Ombudsman to release an update on the progress of the investigation.<sup>107</sup>

**August 1, 2013:** The Investigations Unit of the Office of the District Prosecutor for the Metropolitan Area (“Investigations Unit”) submits a report explaining that the case is still under the status of investigation.<sup>108</sup> Further, the report elaborates in stating that the disappearance may have been politically motivated.<sup>109</sup>

**September 13, 2013:** The Criminal Division of the Supreme Court holds that the Human Rights Ombudsman has presented his final investigation report, concluding that Mr. Arancibia Córdova is the one possible suspect.<sup>110</sup>

**January 31, 2014:** Ms. Olga Arias, a prosecutor, tells the Criminal Division of the Supreme Court that she now has obtained the record of Ms. Gutiérrez Hernández’s case from the Human Rights Ombudsman.<sup>111</sup>

---

103. *Id.* ¶ 98.

104. Gutiérrez Hernández and Family v. Guatemala, Admissibility Report and Report on Merits, ¶ 99.

105. *Id.*

106. *Id.*

107. *Id.* ¶ 101.

108. *Id.* ¶ 102.

109. *Id.*

110. Gutiérrez Hernández and Family v. Guatemala, Admissibility Report and Report on Merits, ¶ 103.

111. *Id.* ¶ 104.

**March 11, 2014:** Ms. Arias states that the Investigations Unit now leads the case.<sup>112</sup>

### *B. Other Relevant Facts*

More than 200,000 civilians died or disappeared during the Guatemalan Civil War.<sup>113</sup> During this time, the State's army and police often and unexpectedly invade the homes of human rights activists and kill them.<sup>114</sup> If the activists are kidnapped, they are never seen or heard from again.<sup>115</sup> This creates a culture of fear and repression throughout the State's cities.<sup>116</sup>

Human rights defenders in Guatemala face threats and attacks, with an increase both in frequency and seriousness occurring in 2000.<sup>117</sup> These attacks often carry out with the purpose of silencing human rights defenders.<sup>118</sup> Judges and officials in Guatemala often willfully delay investigating and prosecuting human rights violations.<sup>119</sup> Multiple cases before the Inter-American Court of Human Rights show that the State practices a pattern of disinterest and lack of will to prosecute human rights violations.<sup>120</sup>

## II. PROCEDURAL HISTORY

### *A. Before the Commission*

**October 30, 2000:** Ms. Nilda Gutiérrez Hernández, Ms. Argüello Gutiérrez, and Ms. Greta Mancilla Chavarría present a petition on behalf of Ms. Gutiérrez Hernández to the Inter-American Commission on Human Rights ("Commission").<sup>121</sup>

---

112. *Id.*

113. Amnesty Int'l, *City of the Disappeared – Three Decades of Searching for Guatemala's Missing*, AMNESTY.ORG (Nov. 19, 2012), <https://www.amnesty.org/en/latest/news/2012/11/city-disappeared-three-decades-searching-guatemalas-missing/> (last visited Sept. 4, 2018).

114. *Id.*

115. *Id.*

116. *Id.*

117. Inter-Am. Comm'n H.R., Fifth Report on the Situation of Human Rights in Guatemala ¶ 26 (Org. of Am. St., 2001) (hereinafter Fifth Report).

118. Fifth Report, *supra*, ¶ 38.

119. Thomas M. Antkowiak & Alejandra Gonza, *The American Convention on Human Rights: Essential Rights 4-5* (2017).

120. *Id.*

121. *Gutiérrez Hernández and Family v. Guatemala*, Admissibility Report and Report on Merits, ¶ 1.

**March 23, 2015:** The Commission approves Admissibility and Merits Report No. 13/15.<sup>122</sup>

The Commission determines that the State violated Articles 4 (Right to Life), 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 24 (Right to Equal Protection), and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) (Obligation of Non-Discrimination), as well as Article 1(b) (Duty to Punish Forced Disappearances) of the Inter-American Convention on Forced Disappearances of Persons.<sup>123</sup>

The Commission recommends the State: (1) fully repair the human rights violations declared above; (2) produce a complete and objective judicial investigation into the disappearance of Ms. Gutiérrez Hernández; (3) exhaustively search for Ms. Gutiérrez Hernández; (4) discipline as necessary the state officials who contributed to obstructing justice in the case; and (5) set forth measures ensuring that future investigations of disappearances comply with the Commission's standards.<sup>124</sup>

### *B. Before the Court*

**July 15, 2015:** The Commission submits the case to the Court, after the State failed to adopt its recommendations.<sup>125</sup>

**April 8, 2016:** The State raises three preliminary objections.<sup>126</sup> The State argues that: (1) the Court does not have the power to enforce the Inter-American Convention on Forced Disappearances of Persons as implied by Article 62.3 of the American Convention;<sup>127</sup> (2) domestic remedies have not been exhausted yet;<sup>128</sup> and (3) the Report of Article 50 of the American Convention has expired and the representatives lack accreditation.<sup>129</sup>

The Court rejects the State's first preliminary objection because it is competent to hear violations of the Inter-American Convention on Forced Disappearances of Persons.<sup>130</sup> Additionally, whether facts constitute a

---

122. *See id.*

123. *Id.* ¶ 175.

124. Gutiérrez Hernández and Family v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 2.

125. Gutiérrez Hernández and Family v. Guatemala, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.349, 1 (Jul. 15, 2015).

126. Gutiérrez Hernández and Family v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 7.

127. *Id.*

128. *Id.* ¶ 19.

129. *Id.* ¶ 27.

130. *Id.* ¶ 18.

forced disappearance is a substantive issue that should not be procedurally dismissed.<sup>131</sup>

The Court dismisses the State's second preliminary objection for failure to exhaust domestic remedies because the State's unjustified delay in judicial proceedings is at issue in this case.<sup>132</sup>

The Court dismisses the State's third preliminary objection because the Commission may postpone the publishing of its Merits Report where there is a possibility of a friendly settlement between the State and alleged victims.<sup>133</sup> Additionally, the Court noted the Convention does not provide a legal consequence for failing to timely publish a Merits Report.<sup>134</sup> Moreover, there is no requirement for a representative be accredited before the Court.<sup>135</sup>

### 1. Violations Alleged by the Commission<sup>136</sup>

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 8 (Right to a Fair Trial)

Article 24 (Right to Equal Protection)

Article 25 (Right to Judicial Protection)

*all in relation to*

Article 1(1) (Obligation of Non-Discrimination) of the American Convention

Article 1(b) (Duty to Punish Forced Disappearances) of the Inter-American Convention on Forced Disappearances of Persons

### 2. Violations Alleged by Representatives of the Victims<sup>137</sup>

Same violations alleged by the Commission, plus:

Article 3 (Right to Juridical Personality)

Article 7(1) (Right to Personal Liberty) of the American Convention

Article 2 (Definition of Forced Disappearance) of the Inter-American Convention on Forced Disappearances of Persons

---

131. *Id.*

132. *Gutiérrez Hernández and Family v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, ¶ 24.

133. *Id.* ¶ 31.

134. *Id.*

135. *Id.* ¶ 32.

136. *Id.* ¶ 2.

137. *Gutiérrez Hernández and Family v. Guatemala*, Admissibility Report and Report on Merits, ¶ 6.

## III. MERITS

A. *Composition of the Court*<sup>138</sup>

Eduardo Ferrer Mac-Gregor Poisot, President  
 Eduardo Vio Grossi, Judge  
 Humberto Antonio Sierra Porto, Judge  
 Elizabeth Odio Benito, Judge  
 Eugenio Raúl Zaffaroni, Judge  
 L. Patricio Pazmiño Freire, Judge

Pablo Saavedra Alessandri, Secretary

C. *Decision on the Merits*

**August 24, 2017:** The Court issues its Judgment on Merits, Reparations and Costs.<sup>139</sup>

The Court unanimously found that Guatemala had violated:

Articles 24 (Right to Equal Protection), 1(1) (Obligation of Non-Discrimination), 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection) in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention and Article 7(b) (Duty to Prevent, Investigate, and Punish Violence) of the Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women, to the detriment of Ms. Gutiérrez Hernández and her family,<sup>140</sup> because:

*States must provide effective judicial remedies for human rights violations victims.*<sup>141</sup> *This includes the right for victims and their relatives to investigate the truth and judge and punish those responsible.*<sup>142</sup> *“The duty to investigate is an obligation of means and not of result.”*<sup>143</sup> *An*

---

138. President Roberto F. Caldas did not participate in the deliberation of this judgment for reasons of force majeure. Judge Eduardo Ferrer Mac-Gregor Poisot therefore assumed Presidency for this case. *See* Gutiérrez Hernández and Family v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, n. 1.. Deputy Secretary Emilia Segares Rodríguez did not participate in this judgment for reasons of force majeure. *See id.* n.2.

139. *See id.*

140. *Id.* “Declares,” ¶ 4.

141. *Id.* ¶ 147.

142. *Id.*

143. *Id.* ¶ 148.

*investigation is ineffective where it is not serious, impartial, and effective, or the investigating body does not complete all necessary actions to find and punish those perpetrators.*<sup>144</sup> *When considering violence against women, Article 7(b) (Duty to Prevent, Investigate, and Punish Violence) of the Convention of Belém do Pará dictates that it is especially important to conduct a diligent and effective investigation, because States must reject and eradicate violence against women and provide women protection.*<sup>145</sup>

*Here, the State failed several times to diligently investigate Ms. Gutiérrez Hernández's disappearance.*<sup>146</sup> *First, State authorities failed to ask Mr. Armando Gutiérrez why he believed his sister's former lover was involved in the disappearance even though this denoted possible gender violence.*<sup>147</sup> *Second, no record exists of the April 14, 2000 investigation of Ms. Gutiérrez Hernández's property.*<sup>148</sup> *Third, the State did not contact the bank where Ms. Gutiérrez Hernández was supposed to make a payment the day she disappeared.*<sup>149</sup> *Fourth, even though Ms. Gutiérrez Hernández's neighbor described a man holding her the day of her disappearance, the State did not try to identify the man.*<sup>150</sup> *Fifth, even though the State received information that Ms. Gutiérrez Hernández investigated the adoption and trafficking of minors in the State, State officials failed to follow up on this information for three and a half years.*<sup>151</sup> *Sixth, even though the State claimed it pursued many paths in its investigation, it failed to document its investigative actions, rendering them legally non-existent.*<sup>152</sup> *Seventh, at the beginning of the investigation, the State allowed military officials to provide misleading information about Ms. Gutiérrez Hernández, influencing public and governmental opinion of the case.*<sup>153</sup> *Finally, even though the State knew these deficiencies existed in the investigation, it failed to fix them.*<sup>154</sup>

---

144. Gutiérrez Hernández and Family v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 148.

145. *Id.* ¶ 149.

146. *Id.* ¶ 152.

147. *Id.* ¶ 153.

148. *Id.* ¶ 154.

149. *Id.* ¶ 155.

150. Gutiérrez Hernández and Family v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 156.

151. *Id.* ¶ 157.

152. *Id.* ¶ 158.

153. *Id.* ¶ 159.

154. *Id.* ¶ 160.

Next, during the first year of the investigation into Ms. Gutiérrez Hernández's disappearance, the State investigators published impartial and incomplete reports that emphasized Ms. Gutiérrez Hernández's social and sexual behavior.<sup>155</sup> These reports called Ms. Gutiérrez Hernández "sexually insatiable" and indicated she was hiding with her lovers.<sup>156</sup> Additionally, approximately five months after Ms. Gutiérrez Hernández's disappearance, the State dismissed theories that she was kidnapped, illegally detained, or forcibly disappeared because no one ransomed her and her body was not found.<sup>157</sup> Ten months into the investigation, the State dismissed the possibility that she was extra judicially executed.<sup>158</sup> The Court indicated that the State dismissed these theories without properly investigating them.<sup>159</sup> Particularly, the State did not attempt to connect Ms. Gutiérrez Hernández's disappearance with the disappearances of her brother and sister, Julio Roberto Gutiérrez and Brenda Mercedes Gutiérrez, who were members of guerrilla groups at the University of San Carlos.<sup>160</sup> The State also failed to investigate whether someone might have taken Ms. Gutiérrez Hernández for her work in the investigation of human trafficking or for her membership in guerrilla groups during the Guatemalan armed conflict.<sup>161</sup> In fact, the State only investigated to see if she made herself disappear or that she was killed in a crime of passion.<sup>162</sup>

The Court additionally opined that women are subjected to culturally dominant and persistent stereotypes which are underpinnings to violence against women.<sup>163</sup> Particularly, these stereotypes can disqualify the credibility of a victim during an investigation into her disappearance.<sup>164</sup> State officials may also assume the victim is responsible for the violence against her, based on her clothing, occupation, sexual behavior, or relationship with her aggressor.<sup>165</sup> Accordingly, international guidelines for the investigation of violence against women dictate that evidence of a victim's sexual background is inadmissible, because it is largely a

---

155. *Id.* ¶ 161.

156. *Gutiérrez Hernández and Family v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, ¶ 161.

157. *Id.* ¶ 162.

158. *Id.*

159. *Id.* ¶ 163.

160. *Id.* ¶ 164.

161. *Id.* ¶¶ 165-166.

162. *Gutiérrez Hernández and Family v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, ¶ 167.

163. *Id.* ¶ 169.

164. *Id.* ¶ 170.

165. *Id.*

manifestation of policies based on gender stereotypes.<sup>166</sup> Thus, the Court rejected the State's investigation of Ms. Gutiérrez Hernández's disappearance as a crime of passion, because it puts blame on the victim and supports the aggressor's reason for attack.<sup>167</sup> Moreover, the Court indicated that State investigative officials were personally prejudiced by gender stereotypes, allowing them to discredit witnesses, Ms. Gutiérrez Hernández, and whether or not she was actually subjected to violence.<sup>168</sup> This behavior reinforces, institutionalizes, and reproduces violence against women.<sup>169</sup> Consequently, because of the State's failure to investigate plausible theories of Ms. Gutiérrez Hernández's disappearance, the State's prejudice based on gender stereotypes, and the lack of judicial controls, the State denied the right of access to justice to Ms. Gutiérrez Hernández and her family.<sup>170</sup>

Furthermore, the State failed to create a database of identifying characteristics of female corpses so that it could positively identify Ms. Gutiérrez Hernández.<sup>171</sup> Also, the State's investigation into Mr. A has remained inactive for fifteen years without a conclusion.<sup>172</sup> The State failed to investigate another suspect identified by Ms. Gutiérrez Hernández's brother Armando, who stated that Ms. Gutiérrez Hernández realized the suspect was taking money from the University of San Carlos.<sup>173</sup> In fact, the Public Ministry's investigation became completely inactive after 2007.<sup>174</sup> Because the Public Ministry's investigation has been inactive for ten years, and the State has been investigating Ms. Gutiérrez Hernández's disappearance for more than seventeen years, the State failed to investigate within a reasonable time.<sup>175</sup>

Accordingly, the State violated Articles 24 (Right to Equal Protection), 1(1) (Obligation of Non-Discrimination), 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection) in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention and Article 7(b) (Duty

---

166. *Id.*

167. *Id.* ¶ 171.

168. *Gutiérrez Hernández and Family v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, ¶ 173.

169. *Id.*

170. *Id.* ¶ 177.

171. *Id.* ¶ 179.

172. *Id.* ¶ 180.

173. *Id.* ¶ 181.

174. *Gutiérrez Hernández and Family v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, ¶ 182.

175. *Id.* ¶ 183.

to Prevent, Investigate, and Punish Violence) of the Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women, to the detriment of Ms. Gutiérrez Hernández and her family.<sup>176</sup>

Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection) in relation to Articles 1(1) (Obligation of Non-Discrimination) of the American Convention, to the detriment of Ms. Gutiérrez Hernández and her family,<sup>177</sup> because:

*In cases of forced disappearances, States have an independent obligation to seriously, effectively, and objectively investigate ex officio and without delay.<sup>178</sup> The investigation is not dependent on the victim or her family's initiative.<sup>179</sup> The State must provide all resources necessary to access relevant documentation and information to investigate the facts and locate the victim.<sup>180</sup> All State authorities should collaborate in the investigation provide all information to judicial authorities, and refrain from obstructing the investigation.<sup>181</sup> Generally, a writ of habeas corpus is the ideal judicial mechanism in cases of forced disappearances so long as it effectively determines the legality of an arrest or detention.<sup>182</sup>*

*Here, three writs of habeas corpus were filed on behalf of Ms. Gutiérrez Hernández.<sup>183</sup> These appeals were closed in 51 days, 12 days, and approximately 10 months.<sup>184</sup> Even though judicial authorities investigated detention centers and military commissaries and barracks, and even conducted a "live" review for Ms. Gutiérrez Hernández, the State did not provide information as to how the centers were investigated.<sup>185</sup> Moreover, it appears as though the State randomly selected centers for live review.<sup>186</sup> Because the State only investigated to*

---

176. *Id.* ¶ 185.

177. *Id.* ¶ "Declares," ¶ 5.

178. *Id.* ¶ 186.

179. *Id.*

180. Gutiérrez Hernández and Family v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 186.

181. *Id.*

182. *Id.* ¶ 187.

183. *Id.* ¶ 189.

184. *Id.*

185. *Id.* ¶¶ 189-190.

186. Gutiérrez Hernández and Family v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 190.

*formally verify Ms. Gutiérrez Hernández was not detained in these centers, this was not a diligent investigation.*<sup>187</sup>

*Next, despite the fact that the State received information that connected Ms. Gutiérrez Hernández's disappearance with the action of State officials, the State dismissed the possibility that it was involved in her disappearance.*<sup>188</sup> *The Court stated this was an inappropriate act by the State.*<sup>189</sup> *Furthermore, the State also dismissed the theory that Ms. Gutiérrez Hernández was forcibly disappeared because it could not locate her body.*<sup>190</sup> *The Court opined that the failure to find a corpse is an insufficient reason to dismiss an investigation into a forced disappearance.*<sup>191</sup>

*Finally, although the State declassified an Army file containing information on Ms. Gutiérrez Hernández in 2000, the State did not attempt to study it in connection with the investigation into Ms. Gutiérrez Hernández's disappearance.*<sup>192</sup> *Simply declassifying a file does not per se lift the mantle of state secrecy.*<sup>193</sup> *Thus, for seventeen years, the State failed to determine whether the file is relevant to the investigation.*<sup>194</sup>

*Accordingly, the State violated Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection) in relation to Articles 1(1) (Obligation of Non-Discrimination) of the American Convention, to the detriment of Ms. Gutiérrez Hernández and her family.*<sup>195</sup>

The Court unanimously found that Guatemala had not violated:

Articles 3 (Right to Judicial Personality), 4 (Right to Life), 5 (Right to Humane Treatment), and 7 (Right to Personal Liberty) of the American Convention in relation to Articles I (Obligation to Adopt Measures) and II (Definition of Forced Disappearance) of the Inter-American

---

187. *Id.*

188. *Id.* ¶ 191.

189. *Id.* ¶ 192.

190. *Id.*

191. *Id.*

192. *Gutiérrez Hernández and Family v. Guatemala, Preliminary Objections, Merits, Reparations and Costs*, ¶¶ 193-194.

193. *Id.* ¶ 194.

194. *Id.* ¶ 195.

195. *Id.* ¶ 196.

Convention on Forced Disappearances of Persons, to the detriment of Ms. Gutiérrez Hernández and her family,<sup>196</sup> because:

*The Court opined that a disappearance must meet three factors to qualify as a forced disappearance: (1) the victim's liberty must be deprived; (2) the state must directly intervene; and (3) the state must refuse to acknowledge the detention of the victim or reveal her fate.<sup>197</sup> Where there is little direct evidence of a forced disappearance, the Court may consider circumstantial evidence to establish a judgment.<sup>198</sup>*

*Here, Ms. Gutiérrez Hernández's brother and sister were forcibly taken in 1982 and 1985 for their guerilla activity at the University of San Carlos.<sup>199</sup> The State declassified a military file that mentioned Ms. Gutiérrez Hernández, along with 650,000 state nationals.<sup>200</sup> The file was originally classified for national security purposes because it named people involved in guerilla organizations during the State's internal armed conflict from 1962 to 1996.<sup>201</sup> Although the State carried out forced disappearances during the internal armed conflict, the Court could not connect Ms. Gutiérrez Hernández's disappearance with the State's actions, because Ms. Gutiérrez Hernández disappeared four years after the internal armed conflict ended.<sup>202</sup> Additionally, it is unclear whether the declassified file was created during or after the internal armed conflict.<sup>203</sup> Accordingly, the Court determined that this circumstantial evidence was insufficient to establish that the State deprived Ms. Gutiérrez Hernández of her liberty.<sup>204</sup>*

*Additionally, even though the Court noted that Ms. Gutiérrez Hernández's investigations into child trafficking in the State could have provoked her disappearance, there is not enough information in the record to determine whether or not this actually happened.<sup>205</sup> Accordingly, the Court declared it cannot find the State responsible for violations of Articles 3 (Right to Judicial Personality), 4 (Right to Life),*

---

196. *Id.* "Declares," ¶ 6.

197. *Id.* ¶ 123.

198. Gutiérrez Hernández and Family v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 125.

199. *Id.* ¶ 126.

200. *Id.* ¶ 129.

201. *Id.* ¶ 130.

202. *Id.* ¶¶ 130-131.

203. *Id.* ¶ 131.

204. Gutiérrez Hernández and Family v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 131.

205. *Id.* ¶ 134.

5 (Right to Humane Treatment), and 7 (Right to Personal Liberty) of the American Convention in relation to Articles I (Obligation to Adopt Measures) and II (Definition of Forced Disappearance) of the Inter-American Convention on Forced Disappearances of Persons, to the detriment of Ms. Gutiérrez Hernández and her family.<sup>206</sup>

Articles 4 (Right to Life) and 5 (Right to Humane Treatment), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention,<sup>207</sup> because:

*Beginning in 2001, the State was aware of increasing homicidal violence against women.<sup>208</sup> However, Ms. Gutiérrez Hernández's disappearance occurred in April of 2000, well before the documented rise in homicidal violence.<sup>209</sup> Additionally, a State is not liable for any human rights violations committed between individuals within its jurisdiction.<sup>210</sup> For a State to violate the rights to life and personal integrity, it must have: (1) known or should have known of a real and immediate risk to life; and (2) failed to adopt necessary measures to prevent the risk.<sup>211</sup> Here, the State did not receive any threats or information indicating a need to protect Ms. Gutiérrez Hernández from a forced disappearance.<sup>212</sup> Accordingly, the State did not violate Articles 4 (Right to Life) and 5 (Right to Humane Treatment), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention.<sup>213</sup>*

Article 5 (Right to Humane Treatment), to the detriment of the family of Ms. Gutiérrez Hernández,<sup>214</sup> because:

*The Court already determined that it was impossible to find that Ms. Gutiérrez Hernández was a victim of forced disappearance.<sup>215</sup> Therefore, the presumption that her personal integrity was violated does not apply.<sup>216</sup> Furthermore, the suffering of her family from her disappearance*

---

206. *Id.* ¶ 136.

207. “Declares,” ¶ 7.

208. *Id.* ¶ 138.

209. *Id.* ¶ 139.

210. *Gutiérrez Hernández and Family v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, ¶ 140.

211. *Id.*

212. *Id.* ¶ 141.

213. *Id.* ¶ 142.

214. *Id.* “Declares,” ¶ 8.

215. *Id.* ¶ 197.

216. *Gutiérrez Hernández and Family v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, ¶ 197.

was already analyzed in a prior violation.<sup>217</sup> Accordingly, the Court found the State did not violate Article 5 (Right to Humane Treatment) of the American Convention.<sup>218</sup>

#### D. Dissenting and Concurring Opinions

[None]

#### IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

##### A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

###### 1. Investigate, Prosecute, and Punish Those Responsible

The Court ordered the State to open and conduct an investigation, “free of negative gender stereotypes,” into Ms. Gutiérrez Hernández’s disappearance, including identifying and punishing those responsible.<sup>219</sup> The State should specifically pursue the hypotheses that Ms. Gutiérrez Hernández’s disappearance was a forced disappearance and politically motivated.<sup>220</sup>

The Court ordered the State to allow Ms. Gutiérrez Hernández’s family to receive information about the progress of the investigation.<sup>221</sup> For example, if Ms. Gutiérrez Hernández’s body is located, the State must return the remains to her family and provide funeral expenses as agreed upon between the State and the family.<sup>222</sup>

###### 2. Implement Permanent Programs for State Officials

The Court ordered the State to implement permanent programs for public officials in the Judicial Branch, Public Prosecutor’s Office, and National Civil Police to train them and establish standards for preventing, punishing, and eradicating violence against women.<sup>223</sup>

---

217. *Id.*

218. *Id.*

219. *Id.* ¶ 206.

220. *Id.* ¶ 207.

221. *Id.* ¶ 208.

222. Gutiérrez Hernández and Family v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 209.

223. *Id.* ¶ 210.

### 3. Publish the Judgment

The Court determined that the Judgment is a per se form of reparation.<sup>224</sup> It ordered the State to publish the Judgment in the Official Gazette and in a widely circulated national newspaper.<sup>225</sup> The State must also publish the Judgment on an official State website, accessible for at least one year.<sup>226</sup> The State must report to the Court immediately upon starting to prepare the publications.<sup>227</sup>

#### *B. Compensation*

The Court awarded the following amounts:

#### 1. Pecuniary Damages

[None]

#### 2. Non-Pecuniary Damages

The Court awarded \$55,000 for Ms. Gutiérrez Hernández as compensation for non-pecuniary damages.<sup>228</sup> The Court also awarded \$20,000 for Ms. Ángela María del Carmen Argüello Gutiérrez and \$10,000 each for Ms. Nilda Gutiérrez Hernández and Mr. Armando Gutiérrez Hernández as compensation for non-pecuniary damages.<sup>229</sup>

#### 3. Costs and Expenses

The Court awarded \$20,000 between Mutual Support Group for the costs and expenses incurred to present the petition before the Commission and Ms. Gutiérrez Hernández's representatives for the costs and expenses incurred for proceedings before the Court.<sup>230</sup>

#### 4. Total Compensation (including Costs and Expenses ordered):

\$105,000

---

224. *Id.* “Disposes,” ¶ 9.

225. *Id.* ¶ 212.

226. *Id.*

227. *Id.*

228. *Gutiérrez Hernández and Family v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, ¶ 219.

229. *Id.*

230. *Id.* ¶ 226.

### C. Deadlines

The State must comply with the order of the court to open an investigation into Ms. Gutiérrez Hernández's disappearance within a reasonable time of notification of the Judgment.<sup>231</sup> The State must publish the Judgment in national newspapers within six months of notification of the Judgment.<sup>232</sup>

The State must report to the Court within one year of notification of the Judgment updating the Court on the measures the State adopted to comply with the Judgment.<sup>233</sup>

The State must pay the costs and expenses within one year of notification of the Judgment.<sup>234</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

**December 22, 2017:** Ms. Gutiérrez Hernández's representatives request an interpretation of the Court's Judgment of August 24, 2017.<sup>235</sup>

### A. Composition of the Court<sup>236</sup>

Eduardo Ferrer Mac-Gregor Poisot, President  
Humberto Antonio Sierra Porto, Judge  
Elizabeth Odio Benito, Judge  
Eugenio Raúl Zaffaroni, Judge  
L. Patricio Pazmiño Freire, Judge

Pablo Saavedra Alessandri, Secretary  
Emilia Segares Rodríguez, Deputy Secretary

---

231. *Id.* ¶ 206.

232. *Id.* ¶ 212.

233. *Id.* "Disposes," ¶ 13.

234. Gutiérrez Hernández and Family v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 227.

235. Gutiérrez Hernández and Family v. Guatemala, Interpretation of Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C), No. 357, ¶¶ 1-2 (Aug. 22, 2018).

236. Judge Eduardo Vio Grossi did not participate in the deliberation of the interpretation of the judgment for reasons of force majeure. *See id.* n. \*.

*B. Merits*

The representatives requested clarification as to the legal character of Ms. Gutiérrez Hernández's disappearance.<sup>237</sup> The Court found unanimously that it cannot determine the character of Ms. Gutiérrez Hernández's disappearance until it monitors the State's compliance with the Judgment.<sup>238</sup>

The representatives also requested clarification as to how the Court weighed statements given by the Secretariat for Strategic Analysis of the Presidency of the Republic ("SAE") describing the State's military database of subversives.<sup>239</sup> The Court found unanimously that the request for clarification was inadmissible.<sup>240</sup> Because the SAE's statements could not be explored any further, it was clear from the Judgment that the statements were weighed equally to all the information regarding the military database of subversives.<sup>241</sup>

The representatives finally requested clarification as to which State institution was responsible for implementing the permanent programs and training for State officials.<sup>242</sup> The Court found unanimously that the request for clarification was inadmissible because the procedure for implementing the permanent programs was the same procedure used in the cases, *Veliz Franco and others* and *Velásquez Paiz and others*, as described in the Judgment.<sup>243</sup>

## VI. COMPLIANCE AND FOLLOW-UP

**September 26, 2018:** The Court noted that the State failed to submit a compliance report on its duty to investigate, prosecute, and punish those responsible for the human rights violations.<sup>244</sup> However, the Court did find that the State complied with its duty to publish and disseminate the Judgment both in print and on an official State website.<sup>245</sup> Moreover, the State complied with its obligation to pay non-pecuniary damages to all victims, except Mrs. Gutiérrez Hernández, and to pay all costs and

---

237. *Id.* ¶ 15.

238. *Id.* ¶ 19.

239. *Id.* ¶ 15.

240. *Id.* ¶ 22.

241. *Gutiérrez Hernández and Family v. Guatemala*, Interpretation of Preliminary Objections, Merits, Reparations and Costs, ¶ 22.

242. *Id.* ¶ 28.

243. *Id.* ¶¶ 31-32.

244. *Gutiérrez Hernández and Family v. Guatemala*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (ser. C) "Considering That" ¶ 3 (Sept. 26, 2018).

245. *Id.* "Considering That," ¶¶ 5-6.

expenses.<sup>246</sup> Accordingly, the State only partially complied with this reparation.<sup>247</sup>

## VII. LIST OF DOCUMENTS

### A. *Inter-American Court*

#### 1. Preliminary Objections

[None]

#### 2. Decision on Merits, Reparations and Costs

Mayra Angelina Gutiérrez Hernández and Family v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) (Aug. 24, 2017) (Available only in Spanish).

#### 3. Provisional Measures

[None]

#### 4. Compliance Monitoring

Gutiérrez Hernández and Family v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (ser. C) (Sept. 26, 2018).

#### 5. Review and Interpretation of Judgment

Gutiérrez Hernández and Family v. Guatemala, Interpretation of Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C), No. 357 (Aug. 22, 2018).

### B. *Inter-American Commission*

#### 1. Petition to the Commission

[Not Available]

---

246. *Id.* “Considering That,” ¶ 12.

247. *Id.* “Resolves,” ¶ 2.

## 2. Report on Admissibility

Mayra Angelina Gutiérrez Hernández and Family v. Guatemala, Admissibility and Merits Report, Report No. 13/15, Inter-Am. Comm'n H.R., Case No. 12.349 (Mar. 23, 2015).

## 3. Provisional Measures

[None]

## 4. Report on Merits

Mayra Angelina Gutiérrez Hernández and Family v. Guatemala, Admissibility and Merits Report, Report No. 13/15, Inter-Am. Comm'n H.R., Case No. 12.349 (Mar. 23, 2015).

## 5. Application to the Court

Mayra Angelina Gutiérrez Hernández and Family v. Guatemala, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.349 (Jul. 15, 2015).

## VIII. BIBLIOGRAPHY

Inter-Am. Comm'n H.R., *Fifth Report on the Situation of Human Rights in Guatemala* (Org.of Am. St., 2001).

Amnesty Int'l, *City of the Disappeared – Three Decades of Searching for Guatemala's Missing*, Amnesty.org (Nov. 19, 2012), <https://www.amnesty.org/en/latest/news/2012/11/city-disappeared-three-decades-searching-guatemalas-missing/> (last visited Sept. 4, 20