

# Massacres of El Mozote and Nearby Places v. El Salvador

## ABSTRACT<sup>1</sup>

*This case is about the massacre, rape, and forcible displacement of hundreds of non-combatants in a rural area of El Salvador. The events took place within a span of three days in December 1981, during a scorched-earth operation by members of El Salvador's armed forces fighting members of the Farabundo Martí National Liberation Front. After having passed amnesty laws in the 1990s, the State eventually admitted responsibility during proceedings before the Court.*

## I. FACTS

### A. Chronology of Events

#### 1. Events pertaining to the massacre in the village of El Mozote

**December 8, 1981:** The Atlacatl Rapid Deployment Infantry Battalion (“Atlacatl”) of the State Army, along with two other counterinsurgency groups, begin an operation to eliminate an alleged insurgency staging area in the La Guacamaya canton.<sup>2</sup> As a part of this plan, Atlacatl plans to eliminate the entire non-combatant population in the northern area of Morazán, where the villages of El Mozote, Ranchería, Los Toriles, Jocote Amarillo, the cantons of La Joya and Cerro Pando, and the area known as Cerro Ortiz are located.<sup>3</sup>

Civilian residents of El Mozote, a village consisting of about twenty houses, and civilians from surrounding hamlets, gather for safety in the El Mozote village center.<sup>4</sup> State soldiers previously advised them that a military operation was underway, and that only those within the

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1. Alexandra Gonzalez, Author; Sean Lask, Editor; Hayley Garscia, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Massacres of El Mozote and Nearby Places v. El Salvador, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 252, ¶ 83 (Oct. 25, 2012).

3. *Id.* ¶¶ 82, 85.

4. *Id.* ¶ 88.

city of El Mozote would be safe.<sup>5</sup>

**December 10, 1981:** The State Air Force bombards the village of El Mozote.<sup>6</sup> Subsequently, Atlacatl troops converge on El Mozote and remove all civilians from their houses.<sup>7</sup> Atlacatl gathers all of the civilians in the village center, and forces them to lie face down on the ground as they question them about the insurgents in the surrounding area.<sup>8</sup> The villagers are stripped of their belongings and told to return to their homes, and warned that if they leave their homes, they will be shot.<sup>9</sup>

**December 11, 1981:** At approximately 5:00 a.m., soldiers force all people in El Mozote to leave their homes and once again assemble in the center of the village.<sup>10</sup> The villagers are forced to stand there for two hours, and are then divided into two groups: one group of men and older boys, and another of women and young children.<sup>11</sup>

The men and older boys are sent to the town's church, where State soldiers blindfold, bind, and execute them by decapitation or machine gun fire.<sup>12</sup> The women and children are taken in groups of twenty, to various homes in the village, where soldiers execute them with machine guns.<sup>13</sup> The younger women are taken to the outskirts of the village, where the soldiers rape and murder them.<sup>14</sup> The soldiers then burn down all of the houses in the village with the bodies of the victims inside, some of whom are still alive and injured.<sup>15</sup>

Approximately 498 people are murdered by State Army troops in the village of El Mozote.<sup>16</sup>

## 2. Events pertaining to the massacre in the canton of La Joya

**December 10, 1981:** State troops arrive in the canton of La Joya, which

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5. *Id.*

6. *Id.* ¶ 89.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.* ¶ 90.

11. *Id.*

12. *Id.* ¶¶ 92, 159.

13. *Id.*

14. *Id.* ¶ 93.

15. *Id.* ¶ 94.

16. *Id.* ¶ 97.

is approximately three kilometers from El Mozote, via helicopter.<sup>17</sup> The soldiers begin to fire mortars and guns, causing some residents to flee and hide in the nearby woods.<sup>18</sup>

**December 11, 1981:** State soldiers enter La Joya and eject the residents from their homes.<sup>19</sup> The soldiers murder those in the canton, and then set fire to their homes, possessions, and animals.<sup>20</sup>

Those who fled to the woods the previous day are forced to flee further for safety, where they hide in caves, on hills, or near a river for many days.<sup>21</sup> After returning to bury their deceased loved ones, many of the now-homeless survivors flee to Honduras.<sup>22</sup>

Approximately 152 people are murdered by State troops in the canton of La Joya.<sup>23</sup>

### 3. Events pertaining to the massacre in the village of Ranchería

**December 12, 1981:** The Third Company of Atlacatl heads toward Ranchería to continue the mass executions of civilian villagers.<sup>24</sup> Ranchería is a small village less than a mile from El Mozote, and consists of approximately seventeen houses.<sup>25</sup>

Atlacatl soldiers murder the families of Ranchería in their houses, one family at a time, and then set fire to the houses.<sup>26</sup> Some of the victims are found with their throats slit or otherwise mutilated.<sup>27</sup> Approximately fifty-six people are murdered in the village of Ranchería.<sup>28</sup>

### 4. Events pertaining to the massacre in the village of Los Toriles

**December 12, 1981:** Los Toriles, located immediately next to the village of Ranchería, is invaded by Atlacatl soldiers and the families are

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17. *Id.* ¶ 99.

18. *Id.*

19. *Id.* ¶ 100.

20. *Id.*

21. *Id.* ¶ 101.

22. *Id.* ¶ 103.

23. *Id.* ¶ 105.

24. *Id.* ¶ 107.

25. *Id.* ¶ 106.

26. *Id.* ¶ 107.

27. *Id.* ¶ 108.

28. *Id.* ¶ 109.

murdered by machine gun fire one at a time in their homes.<sup>29</sup> The soldiers then set fire to the homes, crops, animals, and possessions of the victims.<sup>30</sup> Approximately eighty-two people are murdered in the village of Los Toriles.<sup>31</sup>

5. Events pertaining to the massacre in the village of Jocote Amarillo

**December 13, 1981:** Upon hearing the news of the massacres in the surrounding villages, many people flee the village of Jocote Amarillo to hide in the woods prior to the arrival of the State troops.<sup>32</sup>

Atlatatl soldiers arrive and murder the inhabitants of the village they can find, and then burn down all of the houses in the small village.<sup>33</sup> Approximately twenty-three people are executed in the village of Jocote Amarillo.<sup>34</sup>

6. Events pertaining to the massacre in the canton of Cerro Pando and in Cerro Ortiz

**December 13, 1981:** Atlatatl soldiers enter the canton of Cerro Pando and murder all those who had not previously fled to the nearby woods or caves.<sup>35</sup> The soldiers then burn down all of the homes with the victims inside.<sup>36</sup> Approximately 141 people are murdered in Cerro Pando.<sup>37</sup>

About twenty people from Cerro Pando seek refuge in a cave on Cerro Ortiz while the murders are taking place.<sup>38</sup> A child in the cave begins to cry, and upon hearing this, Atlatatl soldiers throw a grenade into the cave, killing about fifteen of those inside.<sup>39</sup>

7. Events pertaining to all the massacres in El Mozote and nearby places

**October 26, 1990:** Mr. Pedro Chicas Romero, one of the survivors, files

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29. *Id.* ¶ 111.

30. *Id.*

31. *Id.* ¶ 112.

32. *Id.* ¶ 114.

33. *Id.* ¶ 115.

34. *Id.* ¶ 116.

35. *Id.* ¶ 118.

36. *Id.*

37. *Id.* ¶ 119.

38. *Id.* ¶ 120.

39. *Id.*

an initial complaint with the Second First Instance Court of San Francisco Gotera (Second Court) denouncing the events that occurred on December 11 and 13, 1981 in El Mozote, on December 11, 1981 in La Joya, on December 12, 1981 in Rancheria and Los Toriles, and on December 13, 1981 in Jocote Amrillo, Guacamaya, and Cerro Pando.<sup>40</sup>

**November 3, 1990:** The special prosecutor asks the trial judge to order an inspection and exhumation, and to issue a communication to the President of the Republic and Commander-in-Chief of the Armed Forces to obtain the names of the commanders and officers in charge of the military operations in the places where the massacres occurred.<sup>41</sup>

**November 9, 1990:** The trial judge denies the special prosecutor's request to issue an order to obtain the names of those in charge of the military operations where the massacres occurred.<sup>42</sup> The trial judge argues that it has not been established that it was the State Army who participated in the events rather than a terrorist group.<sup>43</sup> (The trial judge will eventually do that on June 19, 1991).<sup>44</sup> However, the Second Court issues an order to the Commander-in-Chief requesting information on which military unit of the Army conducted operations during that time and in those places.<sup>45</sup> The Second Court reiterates this request on three separate occasions after the initial request and the Ministry of the Presidency responds that no military orders were found to have been conducted on those dates and in those places.<sup>46</sup>

On the same date, the Second Court orders the inspection of the site and the exhumation of the corpses, but it is not until June 19, 1991 that the Second Court sets a date, July 23, 1991, for the inspection and exhumation to be carried out.<sup>47</sup> The Second Court requests the Director of the Dr. Roberto Masferrer Institute of Forensic Medicine to perform the exhumations and autopsies.<sup>48</sup> However, the Director responds that much more notice is required to perform the exhumations.<sup>49</sup>

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40. *Id.* ¶ 211.

41. *Id.* ¶ 213.

42. *Id.* ¶ 214.

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.* ¶ 215.

48. *Id.*

49. *Id.*

Consequently, the exhumations are postponed to future date.<sup>50</sup>

**April 27, 1991:** The Truth Commission for El Salvador is established with the mandate to investigate “grave acts of violence that had occurred since 1980, whose impact on society demands, with the utmost urgency, that the public may know the truth,” and to provide a report on conclusions and recommendations for the State.<sup>51</sup> The State agrees to comply with the recommendations of the Truth Commission.<sup>52</sup>

**May 7, 1992:** The Second Court orders inspections of the places where the events took place.<sup>53</sup> On May 27, 1992, inspections are conducted on El Mozote.<sup>54</sup> On June 3, 7, and 10, 1992, inspections are conducted on Cerro El Chingo, Cerro La Cruz, and La Joya respectively.<sup>55</sup> On July 8, 15, 22, and 29, 1992 inspections are conducted on Guacamaya, Ranchería, Los Toriles, and Jocote Amarillo, respectively.<sup>56</sup> On August 12, 1992, an inspection is conducted on Cerro Pando.<sup>57</sup> During the inspections made in El Mozote, Ranchería, La Joya, and Cerro Pando, skeletal remains are found and collected to be sent to the Institute of Forensic Medicine.<sup>58</sup>

**July 13, 1992:** The Truth Commission begins its activities and publishes a report on March 15, 1993 describing the patterns of violence during the armed conflict between the State agents and members of the Farabundo Martí National Liberation Front.<sup>59</sup>

**July 20, 1992:** The Director of the Institute for Forensic Medicine informs the trial judge that since the Truth Commission is now installed, it is appropriate to proceed with exhumation and to take the pertinent judicial and expert measures.<sup>60</sup>

**October 13–November 17, 1992:** The Argentine Forensic Anthropology

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50. *Id.*

51. *Id.* ¶ 270.

52. *Id.*

53. *Id.* ¶ 227.

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.* ¶ 228.

59. *Id.* ¶ 273.

60. *Id.* ¶ 230.

Team (EAAF) performs excavations and exhumations at a site in El Mozote called “the Convent,” and writes two reports, concluding that the evidence found at the site indicates that a massive crime took place there.<sup>61</sup> The EAAF continue to perform exhumations continue in El Mozote and nearby places where the facts occurred until November 2004.<sup>62</sup> Regarding the exhumations that took place from 2000 to 2004, many victims are identified and their remains returned to their family or the community so that they can conduct a burial.<sup>63</sup>

**March 20, 1993:** Five days after the presentation of the Truth Commission’s report, the State Legislative Assembly enacts the Law of General Amnesty for the Consolidation of Peace, which establishes, in pertinent part, that all perpetrators of the massacres of El Mozote and nearby places are granted amnesty.<sup>64</sup> The Second Court terminates the exhumations based on this new law.<sup>65</sup>

**September 1, 1993:** Based on the Law of General Amnesty for the Consolidation of Peace, the Second Court dismisses the proceedings against the persons who belonged to the Atlacatl Battalion at the time the events occurred.<sup>66</sup>

**November 23, 1994:** The trial judge authorizes the return of the human remains from some of the earlier exhumations.<sup>67</sup>

**September 26, 2000:** The Constitutional Chamber of the Supreme Court of Justice (“Supreme Court”) affirms the judgment of the Second Court dismissing the criminal charges based on the Amnesty Law.<sup>68</sup> The Supreme Court also upholds the constitutionality of the Amnesty Law.<sup>69</sup>

**November 23, 2006:** The Legal Aid Office of the Archbishop of San Salvador (*Oficina de Tutela Legal del Arzobispado*, “OTLA”) files an action against five members of the State Armed Forces and five

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61. *Id.* ¶¶ 230-231.

62. *Id.* ¶¶ 233-240.

63. *Id.* ¶ 240.

64. *Id.* ¶ 275.

65. *Id.* ¶ 253.

66. *Id.* ¶ 276.

67. *Id.* ¶ 241.

68. *Massacres of El Mozote and Nearby Places v. El Salvador*, Admissibility Report, Report No. 24/06, Inter-Am. Comm’n H.R., Case No. 10.720, ¶ 28 (Mar. 2, 2006).

69. *Id.*

members of the Atlacatl Battalion requesting that the decision to dismiss be revoked.<sup>70</sup> It reiterates that request again on August 13, 2007.<sup>71</sup>

**February 4, 2009:** The Second Court issues a decision declaring the complaint inadmissible.<sup>72</sup> On February 9, 2009, OTLA requests to annul the decision.<sup>73</sup> Since then, no other relevant steps have been taken.<sup>74</sup>

### *B. Other Relevant Facts*

From 1980 to 1991, the State was engaged in an internal armed conflict.<sup>75</sup> In 1980, the Farabundo Martí National Liberation Front ("FMLN") was formed from five armed political opposition groups.<sup>76</sup> In their attempts to overthrow the Governing Junta, the FMLN occupied areas, near many small rural villages.<sup>77</sup>

With financial and military assistance from the United States, the State formed special units that were trained specifically for counterinsurgency combat and targeted areas in which the FMLN operated.<sup>78</sup> However, this targeting included torturing and then systematically performing mass executions on peasants, men, women, and children who were not involved in the insurgency efforts, but merely lived near the areas where FMLN had chosen to occupy.<sup>79</sup> In the village of El Mozote and the surrounding areas alone, State counterinsurgency forces murdered approximately 1,000 people, the majority of whom were children.<sup>80</sup>

## II. PROCEDURAL HISTORY

### *A. Before the Commission*

**October 30, 1990:** OTLA submits a petition to the Commission on

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70. *Massacres of El Mozote and Nearby Places v. El Salvador, Merits Reparations and Costs*, ¶ 279.

71. *Id.*

72. *Id.* ¶ 280.

73. *Id.*

74. *Id.*

75. *Id.* ¶ 62.

76. *Id.* ¶ 64.

77. *Id.*

78. *Id.* ¶ 67.

79. *Id.* ¶ 69.

80. *Id.* ¶ 2.



behalf of the victims.<sup>81</sup>

**May 14, 1995:** Despite the Commission's three requests for a response from the petitioners, the petitioners do not respond to comment on the information supplied by the State.<sup>82</sup> Thus, the Commission archives the case without prejudice, so that if the petitioners want to file comments in the future, they will be able to.<sup>83</sup>

**April 5, 2000:** The petitioners name the Center for International Justice and Law (*Centro por la Justicia y el Derecho Internacional*, "CEJIL") as co-petitioners.<sup>84</sup>

**March 3, 2005:** The petitioners request that the case be reopened.<sup>85</sup>

**March 9-10, 2005:** The Commission reopens the case.<sup>86</sup>

**November 3, 2010:** The Commission adopts Report on the Merits No. 177/10.<sup>87</sup> The Commission finds violations of Articles 4 (Right to Life), 5 (Right to Humane Treatment), and 7 (Right to Personal Liberty) of the American Convention to the detriment of those who were murdered; violations of Article 19 (Rights of the Child) of the American Convention with respect to the children who were murdered; violations of Articles 5 (Right to Humane Treatment) and 11 (Right to Privacy) of the American Convention to the detriment of the women who were raped; violations of Article 21 (Right to Property) of the American Convention to the detriment of the victims who had their property taken or houses burned; violations of Article 5 (Right to Humane Treatment) of the American Convention to the detriment of the survivors and the next of kin of the deceased; violations of Article 22 (Freedom of Movement and Residence) of the American Convention to the detriment of the people who were forcibly displaced; violations of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, and Articles 1 (Obligation to Prevent and Punish

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81. *Massacres of El Mozote and Nearby Places v. El Salvador*, Admissibility Report, Report No. 24/06, Inter-Am. Comm'n H.R., Case No. 10.720, ¶ 4 (Mar. 2, 2006).

82. *Id.* ¶¶ 4-5.

83. *Id.* ¶ 5.

84. *Id.* ¶ 6.

85. *Id.*

86. *Id.*

87. *Massacres of El Mozote and Nearby Places v. El Salvador*, Report on Merits, Report No. 177/10, Inter-Am. Comm'n H.R., Case No. 10.720 (Nov. 3, 2010).

Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture, as well as Article 7 (Duty to Prevent, Punish, and Eradicate Violence Against Women) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women.<sup>88</sup>

The Commission recommends that the State publicize the truth of the events, commemorate those who were murdered, and create a system to ensure that the survivors and relatives of the deceased receive adequate psychological care.<sup>89</sup> The Commission also recommends that the State exhume and identify the remains of those murdered in the massacres, in order to identify additional recipients of reparations.<sup>90</sup>

The Commission also asks the State to immediately launch an impartial investigation into the events of the massacres and to nullify the General Amnesty Law for the Consolidation of Peace and eliminate any other obstacles to the effective investigation and prosecution of those responsible.<sup>91</sup> Finally, the Commission recommends that the State train its armed forces in human rights and international humanitarian laws in order to prevent similar events from occurring.<sup>92</sup>

### *B. Before the Court*

**March 8, 2011:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>93</sup>

#### 1. Violations Alleged by Commission<sup>94</sup>

To the detriment of the victims who were killed:

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 7 (Right to Personal Liberty)

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88. *Id.* ¶ 340.

89. *Id.* ¶ 341(1).

90. *Id.* ¶ 341(2).

91. *Id.* ¶¶ 341(3)-(5).

92. *Id.* ¶ 341(6).

93. Press Release, Inter-Am. Comm'n H.R., IACHR Takes Cases Involving Colombia, El Salvador and Honduras to Inter-American Court, ¶ 3 (Mar. 25, 2011). 008.

94. *Massacres of El Mozote and Nearby Places v. El Salvador*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 252, ¶ 4 (Oct. 25, 2012).

*all in relation to:*

Article 1(1) (Obligation to Respect Rights) of the American Convention.

To the detriment of the children who were killed:

Article 19 (Rights of the Child)

*in relation to:*

Article 1(1) (Obligation to Respect Rights) of the American Convention.

To the detriment of the women who were raped:

Article 5 (Right to Humane Treatment)

Article 11 (Right to Privacy) of the American Convention.

To the detriment of the executed victims who were robbed of their possessions and the survivors whose houses and means of subsistence were destroyed:

Article 21 (Right to Property)

*in relation to:*

Article 1(1) (Obligation to Respect Rights) of the American Convention.

To the detriment of the survivors and next of kin of those who were executed:

Article 5 (Right to Humane Treatment)

Article 8 (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

*all in relation to:*

Article 1(1) (Obligation to Respect Rights)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

Article 1 (Obligation to Prevent and Punish Torture)

Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment)

Article 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture.

Article 7 (Duty to Prevent, Punish, and Eradicate Violence Against Women) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women.

To the detriment of those who were forcibly displaced:

Article 22 (Freedom of Movement and Residence)

*in relation to:*

Article 1(1) (Obligation to Respect Rights) of the American Convention.

## 2. Violations Alleged by Representatives of the Victims<sup>95</sup>

Same Violations Alleged by the Commission, plus:

Article 13 (Freedom of Thought and Expression)

*in relation to:*

Article 1(1) (Obligation to Respect Rights) of the American Convention.

**December 26, 2011:** The State waives its right to file preliminary objections, and does not elect to name lay or expert witnesses.<sup>96</sup>

**January 16, 2012:** The State publicly acknowledges responsibility for the massacres in El Mozote and nearby places with a ceremony in the village of El Mozote commemorating the twentieth anniversary of the signing of the Peace Accords that ended the internal conflict in the State.<sup>97</sup> The President of El Salvador is in attendance, and had consulted with a group of victims and the representatives of the victims of the massacres a month before the ceremony to aid in the coordination of the ceremony.<sup>98</sup> The Court recognizes this as a form of publicly acknowledging responsibility.<sup>99</sup>

**April 20, 2012:** Mr. Oscar Humberto Luna, Ombudsman of El Salvador,

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95. *Id.* ¶ 7. CEJIL and OTLA served as representatives of the victims and the next of kin of the victims of the massacres in El Mozote and nearby places.

96. *Id.* ¶ 9.

97. *Id.* ¶ 354.

98. *Id.*

99. *Id.* ¶ 357.

submits an *amicus curiae* brief to the Court.<sup>100</sup>

**April 23, 2012:** A public hearing is held in Guayaquil, Ecuador, in which the parties and the Commission present their final oral arguments on the merits, reparations and costs, and expert witnesses.<sup>101</sup>

**May 7, 2012:** Mr. Ezequiel Heffes, a lawyer who specializes in International Humanitarian and Human Rights law, submits an *amicus curiae* brief to the Court.<sup>102</sup>

### III. MERITS

#### A. *Composition of the Court*

Diego García-Sayán, President  
Manuel E. Ventura Robles, Vice President  
Leonardo A. Franco, Judge  
Margarette May Macaulay, Judge  
Rhadys Abreu Blondet, Judge  
Alberto Pérez Pérez, Judge  
Eduardo Vio Grossi, Judge

Pablo Saavedra Alessandri, Secretary  
Emilia Segares Rodríguez, Deputy Secretary

#### B. *Decision on the Merits*

**October 25, 2012:** The Court issues its Judgment on Merits, Reparations and Costs.<sup>103</sup>

The Court found unanimously that the El Salvador had violated:

Articles 4 (Right to Life), 5(1) (Right to Physical, Mental, and Moral Integrity), 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), 21(1) (Right to Use and Enjoyment of Property), and 21(2) (Right to Compensation in Case of Expropriation), in relation to Articles 1(1) (Obligation to Respect Rights) and 19 (Rights of the

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100. *Id.* ¶ 16.

101. *Id.* ¶¶ 12, 13.

102. *Id.* ¶ 16.

103. *Id.* ¶ 1.

Child) of the American Convention, to the detriment of the victims who were executed,<sup>104</sup> because:

*Article 4 (Right to Life) imposes two duties on a State: first, to refrain from arbitrarily killing people, and second, to adopt measures to protect and preserve people's right to life.<sup>105</sup> These measures include establishing state institutions that protect the people, such as police or armed forces, and creating criminal laws and a judicial system that will prevent and punish those who take the lives of others.<sup>106</sup>*

*The Court held, and the State acknowledged, that the State's armed forces indiscriminately executed defenseless civilians in the villages of El Mozote, Ranchería, Los Toriles, Jocote Amarillo; the cantons of La Joya and Cerro Pando; and in a cave on Cerro Ortiz between December 11 and 13, 1981.<sup>107</sup> These executions of non-armed civilians violated the State's duty to refrain from arbitrarily murdering individuals, as well as the State's duty to protect individuals from arbitrary deprivation of life.<sup>108</sup>*

*Next, the Court found violations of Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhuman or Degrading Treatment) based upon the events that preceded the executions of the civilians in the villages of El Mozote, Ranchería, Los Toriles, Jocote Amarillo; the cantons of La Joya and Cerro Pando; and in a cave on Cerro Ortiz.<sup>109</sup> Prior to their executions, the victims were aware of the operation and thus suffered anguish and fear prior to the arrival of the soldiers.<sup>110</sup> Once the soldiers arrived, the victims were subjected to cruel and inhuman treatment in violation of Article 5(2) (Prohibition of Torture, and Cruel, Inhuman or Degrading Treatment), such as being blindfolded, bound, and physically assaulted before being decapitated, gunned down, or burned alive.<sup>111</sup> Additionally, the children were murdered last, causing them to suffer extreme abandonment and anguish in the moments leading up to their deaths.<sup>112</sup>*

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104. *Id.* ¶ 203.

105. *Id.* ¶ 144.

106. *Id.* ¶ 146.

107. *Id.* ¶ 151.

108. *Id.* ¶ 156.

109. *Id.* ¶ 162.

110. *Id.* ¶ 161.

111. *Id.* ¶¶ 159, 170(b).

112. *Id.* ¶ 160.

*Finally, the Court held that the State violated Articles 21(1) (Right to Use and Enjoyment of Property) and 21(2) (Right to Compensation in Case of Expropriation), which protect people's rights to property, when the State Armed Forces took the possessions of the victims, burned down their homes and crops, and killed their animals.*<sup>113</sup>

Article 7 (Right to Personal Liberty), in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention, to the detriment of the individuals killed in the village of El Mozote,<sup>114</sup> because:

*The Court found evidence of additional violations specific to the executions in El Mozote, because the people there were detained, illegally and arbitrarily, by the State Armed Forces in violation Article 7 (Right to Personal Liberty).*<sup>115</sup> *Prior to systematically executing them, the State Armed Forces detained the civilians in the village of El Mozote for twelve to twenty-four hours.*<sup>116</sup> *They were intentionally subjected to intense suffering, through threats and intimidation, locked up and guarded for hours, and interrogated about the guerrilla forces in the area.*<sup>117</sup>

Articles 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), and 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor and Dignity), in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention, to the detriment of the women who were raped in the village of El Mozote,<sup>118</sup> because:

*The Court recognized that systematic rape has been used as a weapon in times of conflict.*<sup>119</sup> *Not only are women degraded, humiliated, punished, intimidated, and repressed through rape, but the psyche of a community as a whole suffers when rape is perpetrated in furtherance of an armed conflict.*<sup>120</sup> *The Court analogizes the severe suffering and*

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113. *Id.* ¶ 168.

114. *Id.* ¶ 203.

115. *Id.* ¶ 158.

116. *Id.*

117. *Id.*

118. *Id.* ¶ 167.

119. *Id.* ¶ 165.

120. *Id.*

*consequences of rape to the suffering and consequences of torture, and thus concludes that the rape of the women in El Mozote constituted a violation of Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment).*<sup>121</sup>

*Article 11 (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor and Dignity) protects the privacy of individuals, including prohibiting interference with a person's private life.*<sup>122</sup> *The Court noted that inclusive of the right to privacy is the right to privacy in one's sexual life.*<sup>123</sup> *By raping women in El Mozote, the State violated aspects of their private lives and interfered with their right to choose their own sexual partners.*<sup>124</sup>

Articles 5(1) (Right to Physical, Mental, and Moral Integrity), 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor and Dignity), 21(1) (Right to Use and Enjoyment of Property), and 21(2) (Right to Compensation in Case of Expropriation), in relation to Articles 1(1) (Obligation to Respect Rights) and 19 (Rights of the Child) of the American Convention, to the detriment of the victims who survived,<sup>125</sup> because:

*The invasion of the soldiers violated the personal integrity of the survivors in several horrifying ways: (1) residents fled their homes out of fear and survived on very little food or water; (2) those that managed to escape had to endure as they listened and witnessed the soldiers torture and kill their neighbors, friends, and families; and (3) after the massacres, when they returned to their respective villages, many residents found their homes burned and the severely disfigured or incomplete bodies of their loved ones.*<sup>126</sup> *Many were unable to find the remains of their families, and those that did were often unable to give them a proper burial due to the damaged state of the corpses.*<sup>127</sup> *Based on these experiences, as well as the failure of the State to punish those*

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121. *Id.*

122. *Id.* ¶ 166.

123. *Id.*

124. *Id.*

125. *Id.* ¶ 205.

126. *Id.* ¶ 170.

127. *Id.* ¶¶ 170-171.



responsible for the massacres for approximately thirty years, the Court concluded that the acts of the State consisted of cruel, inhuman, and degrading treatment that violated Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment).<sup>128</sup>

The Court found that the State violated the survivors' rights to property pursuant to Articles 21(1) (Right to Use and Enjoyment of Property) and 21(2) (Right to Compensation in Case of Expropriation) when members of the Army set fire to the survivors' homes, stole their personal items, murdered their livestock, and burned their harvested crops and crops growing in the fields.<sup>129</sup> The soldiers did this with the intention that these people would have nothing left to aid in their survival.<sup>130</sup> Additionally, the Court found that the destruction of the victims' homes and livelihoods constituted a violation of Article 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor and Dignity), which protects from interferences in people's private life and home.<sup>131</sup>

Articles 5(1) (Right to Physical, Mental, and Moral Integrity), 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), 21(1) (Right to Use and Enjoyment of Property), and 21(2) (Right to Compensation in Case of Expropriation), in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention, to the detriment of the next of kin of the victims who were executed,<sup>132</sup> because:

*The Court references recent case law that classifies the next of kin of victims of massacres as having their own personal, mental, and moral integrity violated pursuant to Articles 5(1) (Right to Physical, Mental, and Moral Integrity).<sup>133</sup> The Court also noted that in this case, the next of kin of those who were murdered suffered additional anguish and violations of their mental and moral integrity as a result of the State's inaction in investigating and punishing those who perpetrated these massacres.<sup>134</sup> Additionally, many of the next of kin of the victims who*

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128. *Id.* ¶¶ 174, 299.

129. *Id.* ¶ 176.

130. *Id.*

131. *Id.* ¶ 182.

132. *Id.* ¶ 206.

133. *Id.* ¶ 197.

134. *Id.*

were not present at the time of the massacre suffered significant mental anguish when they returned to their homes to find their families and instead found charred, incomplete, or no remains at all.<sup>135</sup> As a result, many were unable to conduct a proper burial for their families.<sup>136</sup> The Court found that the suffering inflicted on the next of kin of the victims of the massacres constituted cruel, inhuman, and degrading treatment in violation of Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment).<sup>137</sup>

The Court also found that The State violated the next of kin of the victims' rights to property pursuant to Articles 21(1) (Right to Use and Enjoyment of Property) and 21(2) (Right to Compensation in Case of Expropriation) when State soldiers burned down their houses, killed their livestock and domestic animals, and burned their crops.<sup>138</sup>

Article 22(1) (Freedom of Movement and Residence),<sup>139</sup> in relation to Articles 1(1) (Obligation to Respect Rights) and 19 (Rights of the Child) of the American Convention, to the detriment of the people who were forcibly displaced within El Salvador and Honduras,<sup>140</sup> because:

Article 22 (Freedom of Movement and Residence) protects an individual's right to movement and to choose where to reside.<sup>141</sup> Article 22 (Freedom of Movement and Residence) prohibits a State from forcibly displacing persons within the State territory, as well as forcing persons living legally in the State to leave the State.<sup>142</sup> In perpetrating the massacres and destroying the victims' means of subsistence and their homes, the State displaced a majority of the survivors, as they had nothing in their former villages with which they could attempt to continue their lives.<sup>143</sup> In addition to a lack of resources, homes, and families, the survivors were especially vulnerable as there was still military presence in the area, and the State failed to provide protection or any aid to those who lost everything they had.<sup>144</sup> As a result, those

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135. *Id.* ¶ 198.

136. *Id.*

137. *Id.* ¶ 201.

138. *Id.* ¶ 202.

139. *Id.* ¶ 207.

140. *Id.* ¶ 207.

141. *Id.* ¶ 186.

142. *Id.*

143. *Id.* ¶ 183.

144. *Id.*

*who survived the massacre or who were absent but had their homes and livelihoods destroyed were deemed forcibly displaced.*<sup>145</sup>

Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right of Recourse Before a Competent Court),<sup>146</sup> in relation to Articles 1(1) (Obligation to Respect Rights) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention; Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture; and Article 7(b) (Duty to Prevent, Investigate, and Punish Violence) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, to the detriment of the surviving victims and the next of kin of the victims who were executed,<sup>147</sup> because:

*Article 25 (Right to Judicial Protection) of the American Convention mandates that States provide “effective judicial remedies to victims of human rights violations.”<sup>148</sup> Article 8 (Right to a Fair Trial) states that these remedies also must comport with the due process of law.<sup>149</sup> In order for a remedy to effectively redress human rights violations, there must be an effective investigation into the truth of the incidents, as well as an appropriate prosecution and punishment of those responsible for the violations.<sup>150</sup> The obligation to investigate the violation of rights increases in necessity and importance when the rights violated are particularly grave or systematically violated by the State, such as in the present case.<sup>151</sup>*

*Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture similarly require that a State “take. . . effective measures to prevent and*

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145. *Id.* ¶ 183.

146. *Id.* ¶ 301.

147. *Id.*

148. *Id.* ¶ 242.

149. *Id.*

150. *Id.*

151. *Id.* ¶¶ 244-245.

*punish torture within their jurisdiction.”<sup>152</sup> The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women protects the rights of women, and requires that states exercise due diligence in preventing, punishing, and eradicating violence against women.<sup>153</sup> It also mandates that a State effectively investigate cases of forced disappearances.<sup>154</sup>*

*The Court notes that there was a nine-year delay in investigating the massacres, and the investigation that eventually ensued was not undertaken by the State on its own volition, but rather, due to a complaint filed by a survivor.<sup>155</sup> Once the State finally began investigating, the Second Court did not effectively investigate the massacres.<sup>156</sup> First, the Second Court did not summon State authority to testify about the massacres nor did it exercise diligence in obtaining information about the massacres from the State.<sup>157</sup> In fact, the Second Court accepted the Ministry of Defense’s denial of any military operation in the area despite evidence to the contrary.<sup>158</sup> The Second Court also did not conduct judicial inspections of military facilities or summon government officials who were in office at the time of the massacres.<sup>159</sup> The Second Court did not make any attempt to contact soldiers involved in the massacres who had given statements to OTLA.<sup>160</sup> To make matters worse, the Second Court did not implement measures to follow up on the exhumation process or comply with the recommendations of the EAAF and the Truth Commission.<sup>161</sup> Those remains that were exhumed were not protected for identification and subsequent release to next of kin of the victims.<sup>162</sup> Finally, the Second Court ordered that the exhumations cease upon implementation of the Law of General Amnesty for the Consolidation of Peace and transferred the burden of proof to the victims as opposed to undertaking the court’s legal obligation to exhaustively investigate the circumstances on its own.<sup>163</sup>*

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152. *Id.* 243.

153. *Id.*

154. *Id.*

155. *Id.* ¶ 250.

156. *Id.* ¶ 253.

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

*The enactment of the Law of General Amnesty for the Consolidation of Peace protected the perpetrators of this massacre and caused the investigation in the Second Court to be terminated on September 1, 1993.<sup>164</sup> Another seven years passed with State authorities continually denying requests to reinvestigate the massacres.<sup>165</sup> The Court notes that the alleged investigation has been opened for twenty-one years, without a single prosecution.<sup>166</sup> The Court identifies the State's amnesty laws as well as its unwillingness to conduct a proper investigation into the massacres as the reason for the very long delay and ultimate denial of an investigation and judicial remedies for the victims who survived and the next of kin of the victims.<sup>167</sup> The Court held that the amnesty law, as well as all of the State's omissions that lead the victims, survivors, and next of kin of the victims of the massacres' denial of justice and truth in violation of Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right of Recourse Before a Competent Court) of the Convention; Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture; and Article 7(b) (Duty to Prevent, Investigate, and Punish Violence) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women.<sup>168</sup>*

The Court did not rule on:

Article 13 (Freedom of Thought and Expression), in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention, to the detriment of the next of kin of the victims who were executed<sup>169</sup>, because:

*The Court stated that the right for all people, including next of kin of those executed, to know the truth of what happened is protected by Articles 1(1) (Obligation to Respect Rights), 8(1) (Right to a Hearing*

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164. *Id.*

165. *Id.* ¶ 254.

166. *Id.*

167. *Id.* ¶ 255.

168. *Id.* ¶¶ 250-252, 295-296.

169. *Id.* ¶¶ 7, 298.

*Within Reasonable Time by a Competent and Independent Tribunal), and 25 (Right to Judicial Protection), but also by Article 13 (Freedom of Thought and Expression) in some cases.<sup>170</sup> The State has an obligation to establish the truth of the incidents through judicial proceedings.<sup>171</sup> Since the Court already analyzed the State's failure to investigate the massacres effectively and failed to provide its citizens with access to justice, the Court declined to rule on whether the State violated its obligation to provide the truth in connection with the people's rights to freedom of thought and expression.<sup>172</sup>*

### *C. Dissenting and Concurring Opinions*

#### 1. Concurring Opinion of Judge Diego García-Sayán

In a separate opinion, Judge García-Sayán sought to distinguish the State's Law of General Amnesty for the Consolidation of Peace from the other amnesty laws that have been analyzed by the Court in previous cases.<sup>173</sup> The present amnesty law is distinguishable because it arose in the context of ending a non-international armed conflict.<sup>174</sup> While the Court noted in the present Judgment that amnesty laws may be used to promote peace at the end of an internal armed conflict, they should never be used as a means of impunity for those who commit war crimes or crimes against humanity.<sup>175</sup>

Judge García-Sayán went on to weigh the value of the amnesty law, in the sense of promoting national reconciliation to a non-international armed conflict, against the detriment of the amnesty, that it may impede the identification, prosecution, and punishment of the perpetrators of the massacres.<sup>176</sup> Judge García-Sayán noted that the victims of non-international armed conflicts have the right to know the truth, and to have access to justice and reparations.<sup>177</sup> He mentioned that in a non-international armed conflict, there will be a large number of victims and a large number of perpetrators, and an investigation that is

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170. *Id.* ¶ 298.

171. *Id.*

172. *Id.*

173. *Massacres of El Mozote and Nearby Places v. El Salvador, Merits, Reparations and Costs, Separate Opinion of Judge Diego García Sayán, Inter-Am. Ct. H.R. (ser. C) No. 252, ¶ 10 (Oct. 25, 2012).*

174. *Id.* ¶ 11.

175. *Id.* ¶ 18.

176. *Id.* ¶ 20.

177. *Id.* ¶ 23.

not thorough, or the awarding of reparations without actually determining what happened, is not likely to deter future violations.<sup>178</sup> Due to these competing interests, essentially justice and reconciliation,<sup>179</sup> the determining factor that weighs in favor of foregoing the amnesty law and prosecuting the perpetrators is the severity of the violations.<sup>180</sup> Judge García-Sayán argued that violations that can be classified as crimes against humanity or war crimes deserve special attention, and should be investigated promptly.<sup>181</sup>

Judge García-Sayán then dissected the rights to truth, justice, and reparation.<sup>182</sup> He argued that the right to justice entails an investigation and punishment of offenders.<sup>183</sup> The right to justice must be weighed by the transitional need to end the conflict at issue and move on.<sup>184</sup> Though serious crimes must not be treated with impunity, there are alternative solutions to fulfill the obligation to provide justice, such as reduced sentences, alternative punishment, direct reparation, and public acknowledgment.<sup>185</sup>

Judge García-Sayán stated that reparation is an essential element of justice in that it rebuilds trust in the State system and deters future violations.<sup>186</sup> He recognized the inherent difficulties in appropriating reparations in cases with many perpetrators, victims, and violations involved.<sup>187</sup> He also noted the importance that victims participate in reparation programs, and that the State acknowledge the truth and apologize, in order to deter future violations and help the victims move on.<sup>188</sup> Such mechanisms that provide reparations for victims and acknowledge the truth are truth commissions, establishment of reparations, programs to provide care and attention, protection to the vulnerable, eliminating the State officials who were responsible, and reforming the State policies, in combination with appropriate prosecution and punishment of those responsible.<sup>189</sup>

Finally, Judge García-Sayán concluded that the resolution of an internal armed conflict triggers unique factors that need to be weighed,

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178. *Id.*

179. *Id.* ¶ 21.

180. *Id.* ¶ 24.

181. *Id.*

182. *Id.* ¶¶ 25-35.

183. *Id.* ¶ 26.

184. *Id.* ¶ 27.

185. *Id.* ¶ 31.

186. *Id.* ¶ 32.

187. *Id.* ¶ 33.

188. *Id.* ¶ 34.

189. *Id.* ¶ 36.

and that strict compliance with a State's international obligations may hinder a nation's ability to achieve peace and move on.<sup>190</sup> However, the desire to create peace and move forward also cannot be used as a justification for serious human rights violations to be treated with impunity.<sup>191</sup> A balanced analysis must be made as to what solutions are available to ensure that the victims' rights are protected, while also promoting peace and closure.<sup>192</sup>

## 2. Concurring Opinion of Judge Eduardo Vio Grossi

In a separate opinion, Judge Vio Grossi requested that the Court clarify whether the fetuses of the pregnant women who died were also considered victims of the massacres.<sup>193</sup> Judge Vio Grossi acknowledged that the purpose of the Judgment on the Merits was to establish the responsibility of the State for the massacres, and not to interpret whether the fetuses of the pregnant women who were murdered are encompassed within the meaning of a human being under Article 4(1) (Prohibition of Arbitrary Deprivation of Life) of the Convention.<sup>194</sup> He thus implored the Court to state its opinion on whether fetuses are human beings in a future case that is more directly related to the issue of the precise definition of a human being.<sup>195</sup>

## IV. REPARATIONS

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

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

#### 1. Identify Victims Who Have Not Yet Been Identified

The Court commended the State for implementing measures to

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190. *Id.* ¶¶ 37-38.

191. *Id.*

192. *Id.*

193. *Massacres of El Mozote and Nearby Places v. El Salvador, Merits, Reparations and Costs, Separate Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 252, ¶ 1 (Oct. 25, 2012).*

194. *Id.* ¶ 2.

195. *Id.* ¶ 2.



identify all victims of the massacres who have not yet been identified.<sup>196</sup> The Court mandated that the State continue to allocate the necessary funding and diligence required to further identify potential victims of the massacres.<sup>197</sup> The Court clarified that any victims identified by the State would be entitled to the benefits of this Judgment, regardless of when they are identified.<sup>198</sup>

## 2. Investigate and Punish Those Responsible

The Court reiterates that the State's Law of General Amnesty for the Consolidation of Peace is an obstacle in the investigation and punishment of those responsible for the massacres in the past, and states that the law must not be used to hinder any investigation or prosecution of the massacres in the future.<sup>199</sup> The Court ordered the State to re-open the proceedings and investigations into the massacres, and to thoroughly investigate the circumstances surrounding the massacres.<sup>200</sup> The State must remove all obstacles to an effective investigation, provide adequate resources, and protect the witnesses, the victims, and their next of kin.<sup>201</sup> Lastly, the State must publish the results of any proceedings related to the massacres, and maintain and allow public access to archives that contain information relating to the various human rights violations that occurred during the armed conflict.<sup>202</sup>

## 3. Investigate and Punish State Officials who Obstructed the Investigations

The Court considered proven that various State officials contributed to the denial of an effective investigation and judicial proceedings regarding the massacres.<sup>203</sup> The Court ordered that the State investigate the circumstances surrounding the obstruction of justice in this case, and take appropriate actions, against the State officials responsible for obstructing the prior investigation and access to

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196. *Massacres of El Mozote and Nearby Places v. El Salvador*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 252, ¶ 310 (Oct. 25, 2012).

197. *Id.*

198. *Id.*

199. *Id.* ¶ 318.

200. *Id.* ¶ 319.

201. *Id.* ¶ 319(a)-(g).

202. *Id.* ¶¶ 320-321.

203. *Id.* ¶ 323.

pertinent information surrounding the massacres.<sup>204</sup>

#### 4. Exhume, Identify, and Return the Victims' Remains

The Court noted that the next of kin of the victims who were executed have the right to know where the remains of their loved ones are, and have the right to receive those remains in order to conduct a proper burial.<sup>205</sup> The Argentine Forensic Anthropology Team had begun exhuming, identifying, and returning some of the remains of the victims to their next of kin, however, these efforts were terminated in 1993, upon the application of the Law of General Amnesty for the Consolidation of Peace.<sup>206</sup> Further exhumations were conducted after initiative and funding from OTLA, however no exhumations or efforts to locate the victims have been made since 2004.<sup>207</sup>

Therefore, the Court ordered that the State collect information relating to the location of the remains of the victims and then follow up on the work of the Argentine Forensic Anthropology Team by exhuming, adequately preserving, and attempting to identify the remains of the victims, all in coordination and with the consent of the victims' next of kin.<sup>208</sup>

If the remains of the victims are identifiable, The State must return them to the next of kin at no cost to the families.<sup>209</sup> Additionally, the State must pay for all costs associated with transportation and burial of the remains in accordance with the families' beliefs and traditions.<sup>210</sup> Remains of victims that are not identifiable or go unclaimed must be buried in individual plots in a cemetery with information stating that the remains were unclaimed or unidentifiable, and the location where the remains were found.<sup>211</sup> The State must provide to the representatives of the victims and the Court periodic written information on the status of the exhumations and identifications.<sup>212</sup>

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204. *Id.* ¶¶ 325-326.

205. *Id.* ¶ 331.

206. *Id.* ¶ 330.

207. *Id.*

208. *Id.*

209. *Id.* ¶ 333.

210. *Id.*

211. *Id.*

212. *Id.* ¶ 334.

### 5. Judgment as a Form of Reparation

The Court stated the judgment itself is a form of reparation.<sup>213</sup>

### 6. Implement Development Program

The Court mandated that the State implement a development program in the villages of El Mozote, Ranchería, Los Toriles, and Jocote Amarillo, and the cantons of La Joya and Cerro Pando.<sup>214</sup> The development program must improve public roads, enable access to water and electricity, establish a health care center with appropriate personnel and conditions that will be accessible for the majority of the people in the villages to receive medical and psychological care needed as a result of the massacres, establish a school that will be accessible for most of the villages, and establish a center for the elderly.<sup>215</sup>

### 7. Provide Adequate Conditions for Displaced Victims to Return

The Court ordered that the State must establish adequate conditions for those victims who were displaced and wished to return to their place of origin to do so.<sup>216</sup> The State must reach an agreement with those who were displaced and wish to return to their homes as to what exactly will constitute adequate conditions for return that are in compliance with the Court's order.<sup>217</sup> The State must at least provide the victims with adequate resources to live in a similar manner to the way they had before the massacre, in the region of Morazán, where El Mozote and the other places subject to the massacres are located.<sup>218</sup> The State must also implement a housing program in the villages and cantons for the displaced victims who wish to return but no longer have houses in the area.<sup>219</sup>

### 8. Provide Medical Treatment

The Court found that the State must establish a “permanent

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213. *Id.* ¶ 335.

214. *Id.* ¶ 339.

215. *Id.*

216. *Id.* ¶ 345.

217. *Id.*

218. *Id.*

219. *Id.* ¶ 346.

program of comprehensive care”<sup>220</sup> that will treat survivors of the massacre and the next of kin of the victims who were executed for their medical and mental health needs, free of charge.<sup>221</sup> This includes all medical, psychological or psychiatric, or psychosocial care that the victims may require, including tests and medications.<sup>222</sup> If the State cannot adequately provide for the treatment of the victims, then they must send them to a private or other State facility that can meet their needs.<sup>223</sup>

### 9. Publish the Judgment

The Court ordered the State to publish the official summary of this Judgment in the Official Gazette and in another national newspaper that is circulated throughout the State, and to publish the entire Judgment on an official State website.<sup>224</sup>

### 10. Produce and Distribute Audiovisual Material

The Court ordered the State to produce an audiovisual documentary that details the human rights violations perpetrated by the State during the massacres of this case and that explains the military’s “scorched earth”<sup>225</sup> policy that was used during the State armed conflict.<sup>226</sup> The victims, the next of kin of those executed, and their representatives must approve all content of the documentary.<sup>227</sup> The State must pay for the production and distribution of this video throughout the country, including to the victims and their next of kin, at schools and universities, and this video must also be aired during primetime on a national channel, and uploaded to the Salvadorian Armed Force’s webpage.<sup>228</sup>

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220. *Id.* ¶ 352.

221. *Id.* ¶¶ 352-353.

222. *Id.* ¶ 353.

223. *Id.*

224. *Id.* ¶¶ 361(a)-(c).

225. The scorched earth tactics implemented by State military forces are defined as “indiscriminate annihilation of one or several villages during a single operation,’ followed by destroying or setting fire to crops, homes and possessions of the victims who had previously been executed or fled the area.” *Id.* ¶ 70.

226. *Id.* ¶ 365.

227. *Id.*

228. *Id.*

### 11. Train the Armed Forces of El Salvador

The Court mandated that the State implement a permanent and compulsory training program or course for all ranks of the Salvadorian Army.<sup>229</sup> The program or course must teach the military about human rights norms and principles, and how they can ensure compliance with protecting human rights and abstinence from violating human rights.<sup>230</sup> The course or program must also include a specific emphasis on respecting the rights of children and women, and must include the present Judgment and other case law of the Court addressing grave human rights violations.<sup>231</sup>

#### *B. Compensation*

The Court awarded the following amounts:

##### 1. Pecuniary and Non-Pecuniary Damages

The Court acknowledged that it was not presented with evidence to prove loss of earnings or other consequential losses amounting to pecuniary damages, nor was any specified amount requested for non-pecuniary damages.<sup>232</sup> However, the Court decided that the egregious human rights violations perpetrated in this case would necessarily entail pecuniary and non-pecuniary damages in some amount.<sup>233</sup> Thus, the Court awarded \$35,000 to each of the victims who were executed in the massacres, \$20,000 to each of the victims who survived the massacres, and \$10,000 to each of the other family members of those who were murdered during the massacres, as pecuniary and non-pecuniary damages.<sup>234</sup> The damages to be paid to those who are deceased shall be paid to their heirs in accordance with domestic law.<sup>235</sup>

##### 2. Costs and Expenses

The State must compensate OTLA in the amount of \$70,000 as a reimbursement for litigation expenses incurred at the domestic and

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229. *Id.* ¶ 369.

230. *Id.*

231. *Id.*

232. *Id.* ¶ 383.

233. *Id.*

234. *Id.* ¶¶ 384(a)-(c).

235. *Id.* ¶ 397.

international levels since 1990, and for the expenses incurred in searching for and exhuming the bodies of those who had been executed.<sup>236</sup> The Court also ordered that the State pay \$30,000 to CEJIL for litigation expenses incurred since 2006.<sup>237</sup> The Court also reserved the right to order the State to pay the victims or their representatives expenses incurred during the proceedings associated with monitoring compliance with the present Judgment.<sup>238</sup>

Additionally, the Court ordered the State to reimburse costs paid by the Legal Assistance Fund set up by the Court to procure deponents in the proceedings in the amount of \$ 6,034.36.<sup>239</sup>

3. Total Compensation (including Costs and Expenses ordered):

\$ 17,706,034.36

*C. Deadlines*

The Court ordered that the State identify the victims who have not yet been identified within one year from the notification of this Judgment.<sup>240</sup> The Court also ordered the State to investigate and punish those responsible for the massacres and those State officials who obstructed the investigation within a reasonable time.<sup>241</sup>

The Court ordered that the State collect information relating to the location of the remains of the victims within six months of the issuance of this Judgment.<sup>242</sup> The State must then conduct all exhumations of victims of the massacre within two years of the issuance of this Judgment.<sup>243</sup>

The State must enact the development program specified in the reparations within five years of the issuance of this Judgment.<sup>244</sup>

All displaced victims that wish to opt into the housing program mandated by the Court must do so within one year, and the State must reach an agreement with the displaced persons who wish to return

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236. *Id.* ¶ 393.

237. *Id.*

238. *Id.*

239. *Id.* ¶ 396.

240. *Id.* ¶ 310.

241. *Id.* ¶¶ 319, 326.

242. *Id.* ¶ 332.

243. *Id.*

244. *Id.* ¶ 340.

within two years as to what constitutes adequate conditions to return.<sup>245</sup>

Additionally, the survivors and the next of kin of those who were executed who wish to participate in the medical treatment program have one year to opt in.<sup>246</sup>

The Court ordered that the State publish the pertinent parts of the Judgment within six months of the issuance of this Judgment, and the Judgment must remain published on the State's website for one year.<sup>247</sup> Additionally, the State has two years from the publication of this Judgment to create and distribute the audiovisual documentary mandated by the Court as a form of reparation.<sup>248</sup>

The State must train the State Armed Forces in compliance with human rights norms within one year of the issuance of this Judgment.<sup>249</sup>

The Court ordered the State to make payments for pecuniary and non-pecuniary damages and costs and expenses in non-taxable equal yearly installments over the next five years from the publication of this Judgment.<sup>250</sup> Any unclaimed compensation must be placed in an interest-accruing State bank account.<sup>251</sup> Only if the compensation goes unclaimed for ten years will it remit back to the State with the accrued interest.<sup>252</sup> Should the State fail to make payments within the established time frame, it must pay interest on the amount owed, at the banking rate in effect at the time in the State for overdue payments.<sup>253</sup>

#### V. INTERPRETATION AND REVISION OF JUDGMENT

**March 10, 2013:** The representatives submitted a request to the Court for an interpretation of the Judgment on the Merits, Reparations and Costs.<sup>254</sup> The representatives asked for clarification on two seemingly contradictory paragraphs in the Judgment.<sup>255</sup> One paragraph stated that only those who were within a certain territory delineated by the Court could be recognized as victims of the massacres of El Mozote and

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245. *Id.* ¶¶ 345-346.

246. *Id.*

247. *Id.* ¶¶ 361, 361(c).

248. *Id.*

249. *Id.* ¶ 322.

250. *Id.* ¶¶ 396, 401.

251. *Id.* ¶ 400.

252. *Id.*

253. *Id.*

254. *Massacres of El Mozote and Nearby Places v. El Salvador*, Interpretation of the Judgment on Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 264, ¶ 1 (Aug. 19, 2013).

255. *Id.*

nearby places, but the Court decided to apply Article 35(2) of the Court's Rules of Procedure, which states that the Court will decide whether to consider victims as individuals if some victims are not able to be identified.<sup>256</sup> Further, the representatives wanted to know how these relate to the obligation of the State to identify all of the victims of the massacres who were not yet identified in the Court's Judgment.<sup>257</sup> The representatives argued that the delineation of a specific territory in which massacres occurred that was addressed in the Court's decision is inconsistent with the indiscriminate nature of the massacres, and incompatible with the State's obligation to identify all of the victims of the massacres who were not identified by the Court.<sup>258</sup>

*A. Composition of the Court*<sup>259</sup>

Diego García-Sayán, President  
Leonardo A. Franco, Judge  
Margarette May Macaulay, Judge  
Rhadys Abreu Blondet, Judge  
Alberto Pérez Pérez, Judge  
Eduardo Vio Grossi, Judge

Pablo Saavedra Alessandri, Secretary  
Emilia Segares Rodríguez, Deputy Secretary

*B. Merits*

The Court noted that requests for interpretations of the Judgment cannot be used to alter a decision made in the Judgment, nor can be used to expand the scope of a measure of reparation.<sup>260</sup> The Court viewed the current request by the representatives as a means of expressing their disagreement of the scope of the case, because the representatives sought to include victims who had been massacred in the towns of Tierra Colorada, El Pinalito, Guacamaya, and Arambala, when the Court expressly stated in paragraph fifty-six that the analysis of this case would not include events that occurred in Tierra Colorada,

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256. *Id.* ¶ 25.

257. *Id.* ¶ 2.

258. *Id.* ¶ 22.

259. For reasons beyond his control, Judge Manuel E. Ventura Robles was unable to participate in the deliberation and signing of this judgment. *Id.* at n.\*.

260. *Id.* ¶ 18.



El Pinalito, Guacamaya, and Arambala.<sup>261</sup> Thus, the Court declared inadmissible the portion of the request for interpretation of the Judgment that sought to include places outside the delineated territory already established in the Judgment.<sup>262</sup>

However, the Court proceeded to clarify the territorial boundary established in the Judgment that identifies the locations of the massacres that were analyzed, as well as the State's duty to identify other victims of the massacres of El Mozote and nearby places.<sup>263</sup> The Court recalled that the lists of victims submitted by the representatives and the Commission differed, in that the list of the victims submitted by the representatives was larger and had names that were not listed on the Commission's list, and there were discrepancies in the names, ages, relationships, and locations of people listed as survivors and displaced.<sup>264</sup>

With regard to the geographic limitations decided by the Court, the Court clarified that when it named villages, the geographic location encompassed only the villages named,<sup>265</sup> whereas when it referenced the cantons,<sup>266</sup> this was akin to a territory, inclusive of the surrounding villages and hamlets within the canton.<sup>267</sup> The Court reiterated that victims of any massacres occurring in Arambala, the canton of Tierra Colorada, and the villages of El Pinalito and La Guacamaya were not meant to benefit directly from this Judgment.<sup>268</sup> The Court cited a desire for legal certainty as the reason for the territorial limitation on victims who may recover from this Judgment.<sup>269</sup>

With regard to the obligation of the State to identify other people who should be considered victims, the Court explained that in its Judgment on the Merits it identified injured parties and compiled them into four lists: victims who were executed, surviving victims, next of kin of victims who were executed, and victims who were forcibly displaced.<sup>270</sup> At the same time, the Court noted that due to the nature of the massacres, it was difficult to identify every single victim.<sup>271</sup> Thus,

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261. *Id.* ¶ 20.

262. *Id.*

263. *Id.* ¶ 23.

264. *Id.* ¶ 26.

265. The villages covered by the Judgment are El Mozote, Ranchería, Los Toriles, and Jocote Amarillo.

266. The cantons covered by the Judgment are La Joya and Cerro Pando.

267. *Id.* ¶ 30.

268. *Id.* ¶ 31.

269. *Id.*

270. *Id.* ¶ 32.

271. *Id.*

the Court said it was proper to apply Article 35(2) of the Court's Rules of Procedure, which means that the Judgment would apply not only to the individuals listed in the Judgment, but also those who have not yet been identified.<sup>272</sup> The Court also reiterated its order to the State to continue to identify those who were victims in this case who have not yet been identified as such, and once these people are identified, that they will benefit from the Judgment as all of the other identified victims have.<sup>273</sup>

## VI. COMPLIANCE AND FOLLOW-UP

[None]

## VII. LIST OF DOCUMENTS

### A. *Inter-American Court*

#### 1. Preliminary Objections

[None]

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

[Massacres of El Mozote and Nearby Places v. El Salvador, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 252 \(Oct. 25, 2012\).](#)

[Massacres of El Mozote and Nearby Places v. El Salvador, Merits, Reparations and Costs, Separate Opinion of Judge Diego García-Sayán, Inter-Am. Ct. H.R. \(ser. C\) No. 252 \(Oct. 25, 2012\).](#)

[Massacres of El Mozote and Nearby Places v. El Salvador, Merits, Reparations and Costs, Separate Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. \(ser. C\) No. 252 \(Oct. 25, 2012\).](#)

#### 3. Provisional Measures

[None]

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<sup>272.</sup> *Id.*

<sup>273.</sup> *Id.*

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[Massacres of El Mozote and Nearby Places v. El Salvador, Interpretation of the Judgment on Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 264 \(Aug. 19, 2013\).](#)

*B. Inter-American Commission*

1. Petition to the Commission

[None]

2. Report on Admissibility

[Massacres of El Mozote and Nearby Places v. El Salvador, Admissibility Report, Report No. 24/06, Inter-Am. Comm'n H.R., Case No. 10.720 \(Mar. 2, 2006\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Massacres of El Mozote and Nearby Places v. El Salvador, Report on Merits, Report No. 177/10, Inter-Am. Comm'n H.R., Case No. 10.720 \(Nov. 3, 2010\).](#)

5. Application to the Court

[None]

VIII. BIBLIOGRAPHY

U.S. Dep't. of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices (2012).

Human Rights Watch, *The Massacre at El Mozote: The Need to Remember*, in *News From America's Watch*, Vol. IV, Issue 2 (1992).