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CASE 12.916

MERITS

**NITZA PAOLA ALVARADO, ROCÍO IRENE ALVARADO REYES,
JOSÉ ÁNGEL ALVARADO HERRERA, AND OTHERS
MEXICO**

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¹ Pursuant to the provision of Article 7.2 of the Commission's Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, a Mexican national, did not participate in either the discussion or the decision of the present case.

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I. SUMMARY

1. On June 26, 2011, the Inter-American Commission on Human Rights (hereinafter the IACHR, the Commission, or the Inter-American Commission) received a petition filed by the Women's Human Rights Center (Centro de Derechos Humanos de las Mujeres—CEDEHM), the Human Rights Solidarity and Defense Commission (Comisión de Solidaridad y Defensa de los Derechos Humanos—COSYDDHAC), Justice for our Daughters (Justicia Para Nuestras Hijas—JPNH), and the Paso del Norte Human Rights Center (Centro de Derechos Humanos Paso del Norte—CDHPN) (hereinafter the petitioners),³ representing Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera, as well as their next of kin, where it was alleged that the United Mexican States (hereinafter also Mexico, the State or the Mexican State) violated rights enshrined in the American Convention on Human Rights (hereinafter also the American Convention or the Convention).

2. The petitioners asserted that, on December 29, 2009, in the Ejido Benito Juárez, in the Municipality of Buenaventura in the State of Chihuahua, a group of between eight and ten soldiers detained Nitza Paola Alvarado Espinoza and José Ángel Alvarado Herrera while they were inside a motor vehicle parked outside the house of a relative and subsequently they proceeded to arrest Rocío Irene Alvarado Reyes when she was inside her mother's home. They indicated that, to date, they do not know the whereabouts of the three persons indicated. The petitioners allege the absence of any effective investigation or due diligence regarding these incidents, as well as international responsibility for a series of violations to the detriment of the next of kin of the alleged victims. The petition was presented after a request for precautionary measures that were granted on March 4, 2010 and subsequently presented to the Inter-American Court as provisional measures.

3. The State indicated that it has taken a series of judicial steps aimed at finding the missing persons, as well as prosecuting and punishing those responsible for the incidents. It pointed out that, in cases of forced disappearance, investigations must follow a specific line of investigation but that the investigation must be assessed as a whole taking into account that it involves an obligation to provide means rather than to produce results, and not any omission by the State is a determining factor to establish its international responsibility. In that respect, the State's response to the petition consisted essentially of informing about the steps taken by the investigation internally.

4. After reviewing the positions of the parties, the Inter-American Commission concluded that the Mexican State is responsible for violating rights enshrined in Articles 3, 4, 5, 7, 8, 11, 19, 22, and 25 of the American Convention, in connection with the obligations set forth in Articles 1.1 and 2 of the same instrument, of Articles I and IX of the Inter-American Convention on Forced Disappearance of Persons (hereinafter the IACFDP) to the detriment of the persons who are specified throughout the present report. In addition, the Commission concluded that it has no evidence in its possession to rule on the alleged violation of

² Pursuant to the provision of Article 17.2 of the Commission's Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, a Mexican national, did not participate in either the discussion or the decision of the present case.

³ After the initial filing, in the brief of December 24, 2012, the petitioners requested that the following persons also be included as petitioners: Patricia Reyes Rueda representing her daughter Rocío Irene Alvarado Reyes; María de Jesús Alvarado Espinoza representing her sister Nitza Paola Alvarado Espinoza; and Rosa Olivia Alvarado Herrera, representing her brother José Ángel Alvarado Herrera.

article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter the Belém do Pará Convention). Finally, the Commission made its respective recommendations.

II. PROCEEDINGS WITH THE COMMISSION

A. Processing of the case since the Admissibility Report

5. On June 26, 2011, the Commission received the petition and filed it under number 880-11. Processing of the case up to the decision taken on its admissibility is explained in detail in Report No. 48/13 of July 12, 2013.⁴ In that report, the IACHR declared that the petition was admissible in order to examine the possible violation of rights enshrined in Articles 3, 4, 5, 7, 8, 11, 19, and 25 of the American Convention, in connection with Articles 1.1 and 2 of said instrument; Articles I and XI of the Inter-American Convention on Forced Disappearance of Persons; as well as Article 7 of the Belém do Pará Convention.

6. On August 5, 2013, the Commission notified the parties of the Admissibility Report. Likewise, pursuant to Article 38.2 of its Rules of Procedures, it advised the parties it was at their disposal to reach a friendly settlement on the matter and requested the petitioners to submit their additional observations on the merits of the case within four months. On December 6, 2013, the petitioners submitted their observations on the merits. These observations were forwarded to the Mexican State, which was requested to submit its additional observations on the merits within the regulatory time-limits of four months. As for the State, it submitted its observations on the merits on June 6, 2014. Subsequently, the petitioners submitted briefs on November 3, 2014 and June 9, 2015. The State also submitted briefs on August 27, 2014, November 7, 2014, July 27, 2015 and April 12, 2016.

B. Proceedings for precautionary and provisional measures

7. On January 8, the IACHR received information regarding the disappearance of Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera. On January 12, 2010, pursuant to the provisions of Article XIV of the Inter-American Convention on Forced Disappearance of Persons, the Commission urgently requested the Mexican State to provide information on the whereabouts of Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera. The State's response was received on January 15, 2010.

8. On March 1st, 2010, the petitioners requested precautionary measures, which were granted on March 4, 2010 (MC 55-10) in favor of Rocío Irene Alvarado Reyes, Nitza Paola Alvarado Espinoza, and José Ángel Alvarado Herrera, calling on the Mexican State to inform on their whereabouts, health, and safety. It also requested a report on the actions undertaken by state authorities to investigate the facts that led to the adoption of precautionary measures and to secure clarification of the facts. On March 18, 2010 the State presented its response. On May 13, 2010, the Commission decided to file a request for provisional measures with the Inter-American Court of Human Rights (hereinafter the Inter-American Court or the Court). The Inter-American Court granted provisional measures on May 26, 2010.

9. Subsequently, the Commission filed requests with the Inter-American Court to extend the provisional measures for the benefit of the next of kin of the alleged victims and their representatives as a result of the alleged threats received. The Court has issued five rulings in the present case, calling on the Mexican State to immediately adopt the measures that are needed to determine the whereabouts of Rocío Irene Alvarado Reyes, Nitza Paola Alvarado Espinoza, and José Ángel Alvarado Herrera, as well as to protect their personal integrity, personal liberty, and life.⁵ Likewise, the Court has partially accepted the requests for

⁴ IACHR, Report No. 48/13, Petition 880-11, Admissibility, Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera, Mexico, July 12, 2013, paras. 5 and 6.

⁵ Decisions of the Inter-American Court in the Matter of Alvarado Reyes et al. regarding Mexico, May 26, 2010, November 26, 2010, April 1, 2011, May 15, 2011, and November 23, 2012.

extension submitted by the Commission, calling on the State to adopt the measures that are needed to protect the life and integrity of 36 members of the Alvarado family and one of its representatives, Emilia González Tercero.⁶

10. In June 2013, the IACHR notified the parties that the information appearing in the case files for the precautionary measures and the provisional measures in connection with the present case would also be taken into account when reviewing the case being disputed.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

11. To provide a context to the incidents, the petitioners indicated that, for two decades in the State of Chihuahua, there have been forced disappearances on a continuous basis, with that State recording the highest incidence. They pointed out that this situation became even worse as of March 2008, with the implementation, in the State of Chihuahua, of the Joint Operation Chihuahua, aimed at dismantling the networks and logistics of organized crime, but in practice it entailed the violation of various human rights of the inhabitants by the army and the police force, such as forced disappearances, torture, and extrajudicial executions.

12. They indicated that, in that context, on December 29, 2009, in the Ejido Benito Juárez in the Municipality of Buenaventura in the State of Chihuahua, a group of between eight and ten soldiers illegally detained Nitza Paola Alvarado Espinoza and José Ángel Alvarado Herrera when they were inside a motor vehicle parked outside the house of a relative; and afterwards they proceeded to arrest Rocío Irene Alvarado Reyes when she was in her mother's home. They indicated that, to date, there is no knowledge of the whereabouts of any of these three members of the family.

13. The petitioners indicated that there are enough clues to contend that the incidents tend to establish a forced disappearance perpetrated by state agents which has not been investigated effectively or with due diligence. Specifically, they mentioned the context of heavy presence of the military in the area and the human rights violations committed by them. Moreover, they indicated that there are several witnesses of the detention as well as of information given by State agents regarding the fact that the three persons disappeared were under custody of the 35 Battalion. Additionally, they mentioned that different State entities, including the National Commission of Human Rights (CNDH), have stated the participation of the Military in the facts. They asserted that, although the next of kin have used all remedies to report the forced disappearance, the State not only has not carried out any search and investigation actions but also, on the contrary, the reports filed have led to life threats, harassment, and aggression against the next of kin of the alleged victims, situation that have caused the displacement of an important group of relatives.

14. The details about the facts and process of the investigation in connection with the forced disappearance of Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera, and Rocío Irene Alvarado Reyes shall be referred to in the Commission's review of the facts on the basis of information provided by both parties. This section provides a summary of the principal arguments of law outlined by the petitioners.

15. They alleged that the State violated **the right to recognition of juridical personality**, because the deprivation of liberty leads to the impossibility of exercising any right or having access to legal safeguards and procedural guarantees to call for enforcement of the rights that are being undermined.

16. They pointed out that the State violated **the right to life**, taking into account four elements: a) there is considerable suspicion indicating that Infantry Colonel José Elfego Luján Ruiz is responsible for the forced disappearance of Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera; b) various media charge this person with perpetrating various extrajudicial executions; c) the

⁶ Decision in the Matter of Alvarado Reyes et al. regarding Mexico. November 23, 2012, Second *resolves* clause.

detention of Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes , and José Ángel Alvarado Herrera was conducted with excessive use of force; and d) four years have elapsed since the detention without any clues about whether or not the disappeared persons have survived.

17. The petitioners argued that the State violated **the right to humane treatment [personal integrity]** because, in the arrest of Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera, verbal, physical, and psychological violence was used to subdue them. They indicated that said violation has been upheld during the alleged victims' prolonged solitary confinement and has forced them to remain incommunicado, which constitutes cruel and inhumane treatment.

18. The petitioners claim that **the right to personal liberty** was violated because it is not possible to think of the forced disappearance of a person without the necessary appearance of a breach of said right.

19. They alleged the violation of **the rights to a fair trial and judicial protection** because of the absence of an investigation of the facts with due diligence. They added that the criminal investigation was divided into various investigation files, which were opened in various agencies and for diverse crimes. They pointed out that they were made aware of at least eight case files that were opened on various dates and that these proceedings did not provide the safeguards of due process of law because, to date, no substantial progress has been made in identifying those responsible or in locating the alleged victims. Likewise, they argued that they filed an appeal on constitutional grounds (*amparo*) but, because this appeal requires ratification by the victims, it cannot be effective in the case of forced disappearances.

20. They stated that Nitza Paola Alvarado Espinoza made a phone call on February 3, 2010 to a friend asking for help. They added that, despite this, the call was not duly investigated. They indicated that the State justified its absence of thoroughness by pointing out that the call was for purposes of extortion although the facts do not indicate that it involved any ransom payment, which is an essential element for that crime.

21. They also alleged that the State failed to fulfill its duty to condemn forms of violence against women as set forth in Article 7 of the Belém do Pará Convention regarding Nitza Paola Alvarado Espinoza and Rocío Irene Alvarado Reyes. According to the petitioners, their gender status placed them in a situation of vulnerability, which is all the more severe in the face of the armed forces in the context of widespread violence against women in the country.

22. The petitioners also contended that the Mexican State failed to observe Articles I.a, I.b, I.c, and IX of the IACFDP because there are enough elements to consider that Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera disappeared with the use of force by army troops and that the State had not undertaken any of the measures needed to conduct a thorough investigation. In addition, part of the criminal investigation was carried out in the jurisdiction of the military, where it remained from February 20, 2010 to December 29, 2011.

23. As for the next of kin of the disappeared persons, the petitioners alleged that the rights to humane treatment [personal integrity], a fair trial [judicial guarantees], and judicial protection, in connection with the right to the truth, were violated. They specified that these violations are based on the threats, harassment, and other acts of violence perpetrated against them. They also indicated the absence of judicial protection with respect to these actions, which have remained unpunished. They highlighted the suffering entailed as a result of the displacement of some of the next of kin from the place where they lived for security reasons. Additionally, they mentioned that both the disappearances as well as the subsequent events, resulted in the fragmentation of the family and have caused a deep impact in each of its members.

24. They also alleged that the State violated **the right to private and family life** to the detriment of Jaime Alvarado Herrera, Sandra Luz Rueda Quezada, and their children Jaime Obett, Reyna Guadalupe, Cindy Nallely, and Joel Eduardo, all bearing the surname Alvarado Rueda, who as a result of their activities of filing reports and looking for their next of kin have sustained a series of aggressions and threats

such as the illegal search of the home of the Alvarado Rueda family, where a death threat was left. They indicated that, according to witnesses, this threat had been made by Federal Police Officers who used patrol cars and uniforms belonging to that institution. They added that the Municipal Police Force was notified but it never showed up. They added that, although the criminal complaint for the illegal search and threats was filed with the General Prosecution Service of the State, after more than two years have elapsed, the testimonies of the neighbors who witnessed the illegal search were never taken and there has been no other concrete action taken or substantial progress made to identify those responsible, as a result of which they indicated that this incident continues to go unpunished

25. Finally, the petitioners alleged the violation of the rights of the child, because at the time of the arrest of Rocío Irene Alvarado Reyes, the children A.A.R. and R.A.A.R., siblings of Rocío Irene Alvarado Reyes, as well as A.M.U.A., daughter of Rocío, were there at the place of her detention and who was, at that time, only two years old.⁷ In this matter, they stressed that the soldiers who broke into the home, violently ordered them to lock themselves in the bathroom and that one of them even remembers that they threatened to take them all.

B. Position of the State

26. The State indicated that it is making institutional efforts to find the victims, punish those responsible, and secure the truth behind the incidents, stressing that the investigations in the case are especially complex. It indicated that, although in cases of forced disappearance, the investigations must follow a particular line, the investigation must be evaluated as a whole, considering that it involves an obligation to provide means rather than to produce results and that certain omissions in the case are not determining factors to establish the State's international responsibility. Based on the aforementioned, it requested the Commission to allow it to make progress in the investigation before reaching a decision on the merits of the case.

27. The State indicated that, although the facts of the case led to the start of various investigations, on April 4, 2013, as a result of the establishment of the Unit for the Search of Missing Persons, preliminary inquiry AP/PGR/SDHAVSC/M5/66/2013 was launched by the Attorney General's Office of the Republic (Procuraduría General de la República, hereinafter the PGR), which brought together all of the court proceedings and actions, both local and federal, that had been taken since the first complaint was filed.

28. The State reported that, as part of said investigation, three lines of investigation have been established: a) probable participation of troops of the Mexican Army; b) participation of the Federal Police Force; and c) involvement of criminal groups in the Ejido Benito Juárez. It added that, nevertheless, it has not been possible to satisfactorily vouch for any line of investigation. It indicated that none of these lines of investigation can be dismissed, which means that as yet it cannot attribute any criminal responsibility nor can it conclude that state agents were the ones who carried out the disappearance.

29. The State indicated that, as part of the investigations conducted up until now dating back to the year 2010 and that were stepped up as of the year 2011, the PGR has to date taken various steps, among which can be highlighted the securing of 155 statements of testimony as evidence, including 94 statements from various authorities and 18 testimonies provided by next of kin, neighbors, co-workers, and friends of the victims. It also explained that 206 elements of documentary proof were gathered, including reports and logs in connection with the actions of personnel. In addition, 18 pieces of evidence by experts have been secured in the search of the missing persons, securing expert opinions from various forensic science areas, which have not yielded any results.

30. The State underscored that, among the elements of documentary evidence, there are reports from the Prosecution Services and the Offices of the Attorney General and District Attorneys for more than

⁷ When admissibility report 48-13 of July 12, 2013 was approved, the Commission decided that it would thereafter keep the names of the children appearing as victims in the case being examined confidential.

half of all federal bodies, on the basis of which it has been confirmed that no results have been obtained in the search for Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera, and Rocío Irene Alvarado Reyes in their records of unidentified persons or on their lists for the identification of missing persons. In addition to the above, the State reported that it secured 31 pieces of evidence from experts and conducted 10 inspections aimed at locating the possible remains of said persons.

31. It indicated that, in the months of August to October 2014, statements were taken from various troops of the Mexican Army and ballistic tests were conducted, on the basis of which it was possible to identify the probable brands of firearms used in the cave areas located in the Ejido Benito Juárez in the Municipality of Buenaventura in the State of Chihuahua. It indicated that, within this lapse of time, 16 pieces of documentary evidence were obtained and a series of short-term steps were scheduled to look for and locate the victims.

32. The State argued that, as part of the preliminary inquiry in the PGR's Unit for the Search of Missing Persons and as a result of the steps and investigations conducted, on March 31, 2014, the PGR filed with a Federal Judge a request for the above-mentioned preliminary inquiry against one person of the military probably responsible for the disappearance of Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera, and Rocío Irene Alvarado Reyes. It pointed out that, although the federal judge with which the request was filed refused to issue the warrant of arrest against this person of the military, the PGR filed an appeal against this ruling, which was declared inadmissible by the Fourth Unitary Court, upholding the refusal to issue the warrant of arrest against the above-mentioned person.

33. In that regard, the State reported that, because in this procedural stage of the proceedings it was not possible to challenge the ruling by filing an appeal on constitutional grounds (*amparo*) because that could only be done by the victim, on August 21, 2014, the PGR notified the legal representative of the next of kin of the ruling of the Fourth Unitary Court. It specified that at present the appeal on constitutional grounds (*amparo*) is an effective remedy that is available for the victims under domestic law.

34. The State also reported that on October 12, 2015 it called the Operational Supervisor of the Federal Investigation Agency in Ciudad Juarez at the time of the facts of the case, to testify, who said he does not know the alleged victims because at the time of the events occurred he was on medical leave .

35. With regard to the search of the missing persons, the State reported that it has taken a series of steps for the purpose of finding the victims, involving the use of state-of-the-art techniques in the matter. It indicated that the PGR has coordinated actions with the institutions administering justice in all federal entities to compare genetic profiles of their databases, and that it has also hired the services of the Argentine Team of Forensic Anthropology and international experts who were part of the Project of Assistance for the General Prosecution Service of the State of Chihuahua.

36. Regarding this, the State argued that, in the framework of the investigation conducted by FEVIMTRA, on August 9, 2011, a search party was organized in a mineshaft in the Municipality of Buenaventura in the State of Chihuahua, where it was possible to recover human remains which were transferred, for analysis, to the City of Chihuahua. It pointed out, however, that the results concluded that none of the rests pertained to the three missing persons, and this was duly reported to their next of kin.

37. It also indicated that it conducted six additional search parties: the first in a plot of land located in the Ejido Benito Juárez in the Municipality of Buenaventura in the State of Chihuahua, where there are three mines; the second in an area known as "Las Emes," located along a stretch of highway between Buenaventura and Zaragoza in the State of Chihuahua; the third search was conducted in "Janos", the fourth and fifth search were conducted in the premises called "Los Zorritos" and "Las Albercas el Capricho" and the sixth search in the premises of a place known as "El Espolón". The remains recovered in both of these search parties were examined and, on the basis of these analyses, it was also concluded that there was no connection with the profiles provided by the next of kin of the missing persons.

38. The State reported that genetic information and fingerprints of six next of kin of the beneficiaries of the proceedings were cross-checked with all of the unidentified human remains in the State of Chihuahua, which indicated that they did not match the remains in the State's custody. Likewise, in view of the queries of the next of kin and representatives of the alleged victims, a meeting was held with some of them with the Department of Expert Services of the State of Chihuahua to explain onsite the techniques and processes used to assemble the genetic profiles. Regarding this, the State reported that, between December 2014 and February 2015, various States of the Federation reported that, after comparing the genetic samples of the next of kin of the missing persons with their databases, but the results were negative.

39. The State said that, on March 14, 2014, those samples of non-biological evidence located in various parts of Chihuahua were put on display for the next of kin and representatives; however, the next of kin did not recognize any piece of evidence displayed.

40. The State also reported that, in the framework of the provisional measures filed with the Inter-American Court, it has granted a series of measures for the education, housing, health, and pensions of the nuclear families of the victims of the case.

41. Regarding the protection measures for the next of kin, the State reported that, on May 26, 27, and 28, 2014, technical visits were made by specialized staff to assess the special conditions of each one of the beneficiaries and their environment. On the basis of said visits, in July 2014, a proposal for security measures was sent to the beneficiaries, and three of them accepted the proposed measures, which have been installed and include infrastructure measures that enhance their security and reduce their vulnerability to situations of risk. One of the beneficiaries also indicated that she turned down the protection measures because she felt that they would put her in a situation of greater vulnerability. Two other beneficiaries requested different protection measures on the basis of their mobility and employment needs, as a result of which the State sent them a new proposal, which continues to be appraised by the beneficiaries.

42. The State explained that the General Prosecution Service of the State of Chihuahua, via its Specialized Unit for the Investigation of Crimes against Physical Integrity and Damages (Unidad Especializada en Investigación en Delitos contra la Integridad Física y Daños) has started an investigation for the purpose of clarifying the facts in connection with the threats received by the next of kin of the missing persons.

IV. PROVEN FACTS

43. The Commission deems important to recall that the case law of the Inter-American System has indicated that the criteria for assessing evidence are less rigid than under domestic legal systems and has stated that it can "assess the evidence freely."⁸ In that respect, the Inter-American Court has pointed out that it "must apply an assessment of the evidence that takes into account the gravity of attributing international responsibility of a State and that, despite this, is able to create confidence in the truth of the facts have been alleged."⁹ The Court has indicated that "it is legitimate to use circumstantial evidence, indications and presumptions to found a judgment, provided that conclusions consistent with the facts can be inferred from them."¹⁰

44. The Commission recalls that this practice in relation to evidence stems precisely from the nature of forced disappearance itself, the purpose of which is to erase all physical traces of the crime and is usually followed by a series of acts and omissions by state officials designed to cover up the deed by means of maneuvers that start with denial of the deprivation of liberty, followed by disinformation or lies about the

⁸ I/A Court H.R. *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, paras. 127 and 128.

⁹ I/A Court H.R. *Case of González Medina and family v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para. 132.

¹⁰ I/A Court H.R. *Case of González Medina and family v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para. 134. Quoting: *Case of the "Las Dos Erres" Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 21, para. 197.

whereabouts or fate of the victim, and finally ineffective or slipshod investigations that, far from getting at the truth, help to perpetuate ignorance of the victim's fate.¹¹

45. In the same line, the Court has indicated that dealing specifically with a case of alleged forced disappearance, indicatory and presumptive evidence is of special importance because "this type of violation is characterized by the attempt to eliminate any element that would allow the detention, whereabouts and fate of the victims to be determined."¹²

46. The facts shall be described on the basis of the following order: A) about the context of forced disappearances in Mexico; B) about the situation of Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera before their detention and disappearance; C) about the facts surrounding the disappearance of Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera; D) about internal proceedings conducted in connection with the disappearance of Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera; and E) about the harassment, threats, and impacts on the next of kin after the disappearance of Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera.

A. Context of forced disappearances in Mexico

1. General information about forced disappearances and response by the judiciary

47. The IACHR and other international agencies, nongovernmental organizations, and national bodies have voiced their concern about the incidence of, and rise in, forced disappearances in Mexico, perpetrated by agents of the state, especially the military.

48. In 2011, the Commissioner Rapporteur for Mexico of the Inter-American Commission, in the framework of his working visit to Mexico, voiced his deep concern about information received that there is a rise in reports filed for incidents of forced disappearance. Likewise, the IACHR stated that it received information about the absence of a rapid and efficient response from the state to this situation as there are no effective search mechanisms, no official investigations, and no programs for helping the victims. On the basis of the above, the Rapporteur at that time urged the State to promote the actions and measures needed to act with due diligence to investigate these reports, punish those responsible, and provide the victims with support.¹³

49. Furthermore, on December 20, 2011, the United Nations Working Group on Forced or Involuntary Disappearances (hereinafter the WGEID) issued a report after the mission it carried out on March 18 to 31, 2011 in the Mexican State. Said report indicated that, as of the year 2006, with the security policy called the "war against drug trafficking" or the "fight against organized crime," the Federal Government decided to grant the Armed Forces public security duties, which would not be confined to acting as assistants to civilian authorities and accepting orders as set forth in the Constitution and the decisions of the National Supreme Court of Justice (Suprema Corte de Justicia Nacional, hereinafter the SCJN), but rather carrying out tasks that pertain exclusively to civilian authorities. This report indicated that these operations consist of deploying thousands of members of the Armed Forces in urban areas or strategic locations such as highways and checkpoints, as well as the customary search of homes, individuals and motor vehicles, oftentimes without any court warrant issued by an authority having jurisdiction in the regular judiciary system.¹⁴

¹¹ IACHR. Report No. 111/09. Case 11.324. Merits. Narciso González Medina. Dominican Republic. November 10, 2009. Para. 56.

¹² I/A Court H.R. *Case of González Medina and family v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para. 134.

¹³ IACHR. Press Release No. 105/11 - IACHR culminates visit to Mexico. Mexico City, September 30, 2011.

¹⁴ United Nations. Report of the Working Group on Enforced or Involuntary Disappearances. Mission to Mexico. A/HRC/19/58/Add.2. December 20, 2011. Para. 23.

50. The WGEID also indicated that, because of this deployment of the Armed Forces, the number of complaints filed with the National Human Rights Commission (Comisión Nacional de Derechos Humanos, hereinafter the CNDH) in connection with human rights violations perpetrated by the National Defense Secretariat (Secretaría de Defensa Nacional, hereinafter the SEDENA) has risen from 182 in 2006 to 1,230 in 2008; to 1,791 in 2009; and to 1,415 in 2010. Regarding these complaints, between 2006 and 2010, the CNDH had issued more than 60 recommendations (22 in 2010 alone), confirming human rights violations perpetrated by the Army.¹⁵

51. Likewise, the CNDH, in its annual activities reports, indicated that between 2009 and 2012, it had received 359 complaints about incidents of alleged forced disappearances.¹⁶ It was also indicated that, during the same period of time, on the basis of the investigations that were conducted, said state body issued 10 recommendations, all of which were addressed to the State's security agencies, including the SEDENA. In these recommendations, the incidents were described as forced disappearances, after finding proof of the participation of state agents in each case. This situation is also reflected in the 2013 annual report of Human Rights Watch, which indicated that, at June 2013, 2,443 disappearances were being investigated with evidence of the possible involvement of state agents.¹⁷ According to reports of SEDENA, between December 2006 and September 19, 2012, not one member of the Armed Forces was convicted in a military court of justice for the crime of forced disappearance.¹⁸

52. Along the same line, WGEID concluded in its report that, in the Mexican State, impunity is a chronic pattern that is present in cases of forced disappearances and that not enough efforts are being made to identify the fate or whereabouts of missing persons, punish those responsible, and safeguard the right to the truth and reparations.¹⁹

53. Also with respect to the flaws in the investigations, the WGEID indicated that it had received many testimonies about cases where the illegal or arbitrary deprivation of liberty was classified under different types of offenses, such as kidnapping or abuse of authority, or where the persons were simply considered to be "missing" or "lost" (especially among groups such as women, children, and migrants) without adequate investigation to discard the possibility that these cases involved forced disappearances.²⁰ This report points out that, in many cases, information was received on the basis of which the agents of the Public Ministry refuse to accept complaints about forced disappearances and only agree to issue "records of circumstances" without ordering the court to conduct an adequate investigation.²¹

54. Regarding the situation of absence of response from the judiciary, the Human Rights Committee of the International Covenant on Civil and Political Rights (hereinafter the Human Rights Committee) indicated its concern over the impunity prevailing in many cases of disappearances and

¹⁵ United Nations. Report of the Working Group on Enforced or Involuntary Disappearances. Mission to Mexico. about the violence against women, as well as about the deployment of the armed forces to safeguard public security, aspects about which recommendations had already been made in the preceding report. The Committee on Human Rights voiced its concern about the role played by the Armed Forces to safeguard public order and about the increasingly numerous complaints about human rights violations that, it seems, are being committed by the military. United Nations Committee on Human Rights (UNHRC). Review of the Reports submitted by the States Parties in accordance with Article 40 of the Covenant. (CCPR/C/MEX/CO/5). April 7, 2010, para. 4.

¹⁶ CNDH. Informes de actividades Anual 2009 (p. 55), 2010 (p. 60), 2011 (p. 57), and 2012 (p. 73).

¹⁷ Human Rights Watch. 2014 World Report: Mexico.

¹⁸ Human Rights Watch. Report "The Disappeared of Mexico. The persistent cost of a crisis ignored." February 2013. ISBN: 1-56432-988-7. P. 159.

¹⁹ United Nations. Report of the Working Group on Enforced or Involuntary Disappearances. Mission to Mexico. A/HRC/19/58/Add.2. December 20, 2011. Para. 76.

²⁰ United Nations. Report of the Working Group on Enforced or Involuntary Disappearances. Mission to Mexico. A/HRC/19/58/Add.2. December 20, 2011. Para. 18.

²¹ United Nations. Report of the Working Group on Enforced or Involuntary Disappearances. Mission to Mexico. A/HRC/19/58/Add.2. December 20, 2011. Para. 34.

homicides of women in various states of Mexico.²² Likewise, the Human Rights Committee observed with concern that, at the time of the publication of its 2010 report, military courts of the State had the jurisdiction to hear cases of human rights violations perpetrated by persons belonging to the military, even when the victim was a civilian.²³

55. The above is reflected in figures according to which, in 2007 and July 2011, the Military Criminal Justice System processed 3, 671 investigations of human rights violations, allegedly perpetrated by soldiers.²⁴

56. Likewise, in October 2013, the United Nations Human Rights Council conducted Mexico's second Universal Periodic Review. Among the principal challenges and recommendations made by the States, there was the concern about how the Mexican State was tackling problems stemming from human rights violations, especially forced disappearances, violence against women, and torture. The Council urged the State to take such measures as to put into practice the principal recommendations from the 2011 Report of the WGEID. It also urged the State to require the regular criminal justice system to hear human rights violations perpetrated by the military.²⁵

2. Situation of the State of Chihuahua after implementation of the Joint Operation Chihuahua

57. As of March 28, 2008, taking into account the grave situation of violence in the State of Chihuahua,²⁶ in said State the Joint Operation Chihuahua was implemented for the purpose of dismantling the networks and logistics of organized crime, involving the participation of more than two thousand Federal Police Force officers and army troops, who together conducted security activities under the orders of the Commander of the Fifth Military Region.²⁷

58. The Joint Operation Chihuahua changed its strategies on the Municipality of Buenaventura, the Ejido Benito Juárez, after the killing of a federal police officer, a civil servant working closely with the Public Security Secretary, and the disappearance of three federal agents,²⁸ whose bodies were found with signs of torture in the bottom of a mine in said municipality. Because of this, more than 500 army and federal police troops were sent to the Ejido Benito Juárez to investigate the persons of the area who were suspects of being involved in organized crime. According to complaints, the army started patrolling the community in unmarked cars and according to some of the inhabitants of said municipality, the soldiers started to kidnap and torture persons as a method of investigation to obtain information and would then let them go.²⁹

²² United Nations Committee on Human Rights (UNCHR). Review of the Reports submitted by the States Parties in accordance with Article 40 of the Covenant. (CCPR/C/MEX/CO/5). April 7, 2010, para. 9.

²³ United Nations Committee on Human Rights (UNCHR). Review of the Reports submitted by the States Parties in accordance with Article 40 of the Covenant. (CCPR/C/MEX/CO/5). April 7, 2010, para. 18.

²⁴ Human Rights Watch. Report "The Disappeared of Mexico. The persistent cost of a crisis ignored." February 2013. ISBN: 1-56432-988-7. Page 187.

²⁵ Human Rights Watch. 2014 World Report: Mexico. Available at <http://www.hrw.org/es/world-report/2014/country-chapters/121995>.

²⁶ United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions. Preliminary observations on the official visit of the Special Rapporteur on extrajudicial, summary or arbitrary executions to Mexico, April 22 to May 2, 2013.

²⁷ Annex XX. Narrative provided by the petitioners in the petition filed with the Inter-American Commission on June 26, 2011; Annex XX. Narrative provided by the petitioners in the petition filed with the Inter-American Commission on December 6, 2013.

²⁸ Annex I. Case file. Volume XV. Newspaper article published in *El Universal*. "Sigue búsqueda de Federales "levantados" en Chihuahua," page 481 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

²⁹ Annex I. Case file. Volume XVII. Information provided by the petitioners in the framework of precautionary measure 55-10 with the IACHR, page 262 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

59. According to various national and international organizations, when implementing this operation, the authorities committed severe human rights violations.³⁰ Regarding this, according to public information from the CNDH, in the year 2008 Chihuahua ranked first in terms of complaints filed for human rights violations perpetrated by army troops, with a total of 199 complaints. According to this information, in the framework of the Joint Operation Chihuahua, persons would be forced out of their homes and transferred to military facilities without immediately presenting them to an authority having jurisdiction. Some of the violations reported in Chihuahua included "torture, arbitrary detention, illegal search of homes, illegal seizures, cruel or degrading treatment, theft, illegal detention, threats, forced disappearance, intimidation, damage to property and violations of the right to liberty and juridical security."³¹ In January 2009, CNDH reported that it had received 22 complaints for forced disappearances and extrajudicial executions (between March 2008 and December 2009).³² Some international organizations have also reported that the Joint Operation Chihuahua especially affected women, leading to a 400% rise in the disappearance of women since said operation started to be implemented.³³

B. About Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes , and José Ángel Alvarado Herrera and their next of kin

60. Nitza Paola Alvarado Espinoza was born on November 2, 1978. At the time of the incidents, Nitza Paola Alvarado Espinoza was 31 years old³⁴ and had a motor disability in her right hand and leg, as a result of a stroke, because of which she received a pension from the Mexican Social Security Administration (Instituto Mexicano del Seguro Social).³⁵ According to the petitioners, the next of kin of Nitza Paola Alvarado Espinoza are: i) her mother María de Jesús Espinoza Peinado; ii) her father Ascensión Alvarado Fabela; iii) her three daughters N.S.A.E, M.P.A.E, and D.A.E; iv) her sister María de Jesús Alvarado Espinoza; iv) her brother-in-law Rigoberto Ambriz Marrufo; and v) her four nephews R.A.A, I.A.A.A, J.E.A.A, and A.Y.A.A.³⁶

61. Rocío Irene Alvarado Reyes was born on January 1, 1991. At the time of the incidents, she was 18 years old³⁷ and worked in a grocery store.³⁸ According to the petitioners, the next of kin of Rocío Irene Alvarado Reyes are: i) her mother Patricia Reyes Rueda; ii) her daughter A.M.U.A; iii) her two brothers A.A.R. and R.A.A.R; and iv) her grandparents Manuel Reyes Lira and María de Jesús Rueda Villanueva.³⁹

³⁰ Annex I. Case file. Volume XVII. Information provided by the petitioners in the framework of precautionary measure 55-10 with the IACHR, page 261 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

³¹ Newspaper article published in *Diario La Jornada*, "Chihuahua, primer lugar en abusos militares: CNDH, July 16, 2008.

³² Annex XX. Narrative provided by the petitioners in the petition filed with the Inter-American Commission on June 26, 2011.

³³ Newspaper article published in <eluniversal.com> Denuncian creciente desaparición de muchachas en la mexicana Ciudad Juárez, August 24, 2010.

³⁴ Annex XX. Narrative provided in the brief of the petitioners of observations on the merits of the case received on February 18, 2014. The State did not challenge this information.

³⁵ Annex I. Case file. Volume XXI. Disability Report from the Mexican Social Security Administration, page 209 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

³⁶ Annex XX. Brief by the petitioners sent as part of the admissibility proceedings on December 24, 2012. The State did not challenge this information.

³⁷ Annex XX. Narrative provided by the petitioners in the brief of observations on the merits of the case received on February 18, 2014. The State did not challenge this information.

³⁸ Annex I. Case file. Volume XVII. Official letter from FEVIMTRA to the Director General of International Cooperation, page 870 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

³⁹ Annex XX. Brief by the petitioners sent as part of the admissibility proceedings on December 24, 2012. The State did not challenge this information.

62. José Ángel Alvarado Herrera was born on March 23, 1978. At the time of the incidents, he was 31 years old⁴⁰ and worked for a spare parts company.⁴¹ According to the petitioners, the next of kin of José Ángel Alvarado Herrera are: i) his wife Obdulia Espinoza Beltrán; ii) his mother Concepción Herrera Hernández; iii) his father José Ángel Alvarado Fabela; iv) his three children J.A.E, J.A.A.E, and A.E.B; v) his brother Jaime Alvarado Herrera; vi) his sister-in-law Sandra Luz Rueda Quezada; vii) his four nephews and nieces J.O.A.R, R.G.A.R, C.N.A.R, and J.E.A.R; viii) his sister Rosa Olivia Alvarado Herrera; ix) his brother-in-law Felix García García; x) his four nephews and nieces Karina Paola Alvarado Espinoza, F.A.H, J.G.A., and A.G.A; xi) his brother Manuel Melquíades Alvarado Herrera; xii) his sister-in-law Mayra Daniela Salas Rodríguez; and xiii) his two nephews D.J.A.S and X.A.S.⁴²

C. About the facts surrounding the disappearance of Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera, and Rocío Irene Alvarado Reyes

1. Detention of Nitza Paola Alvarado Espinoza, José Angel Alvarado Herrera, and Rocío Irene Alvarado Reyes on December 29, 2009

63. According to several testimonies, on December 29, 2009, between eight and nine o'clock at night, José Ángel Alvarado Herrera and Nitza Paola Alvarado Espinoza were inside a pickup truck parked outside the home of Adela Beltrán Espinoza, mother of José Angel's wife, which was located on the streets Belisario Domínguez and Díaz Ordas in the Ejido Benito Juárez in the Municipality of Buenaventura in the State of Chihuahua, when they were taken out of said motor vehicle by about 10 persons wearing army uniforms who forced them to climb into an unmarked car, which took off for an unknown destination. Likewise, according to testimonies, minutes later persons wearing army uniforms broke into the home of Rocío Irene Alvarado Reyes located on the street Primera Norte 1, in Buenaventura in Chihuahua, when she was with her two brothers who were children, her two-year-old daughter, and her mother; they proceeded to detain her and forced her to climb into a motor vehicle that sped away from the place. Below the Commission recapitulates the statements that were taken about both detentions.

64. Regarding the detention of José Angel Alvarado Herrera and Nitza Paola Alvarado Espinoza, the wife of the José Ángel Alvarado Herrera, that is, Obdulia Espinoza Beltrán, who witnessed the incidents, indicated consistently and in various statements that when she was inside her mother's home, she saw from the window two unmarked cars arriving, one gray-colored double cab diesel Chevrolet and a white-colored Hummer from which eight to ten soldiers disembarked wearing sand-colored camouflage uniforms⁴³ and forced her husband and Nitza Paola Alvarado Espinoza out of the pickup truck,⁴⁴ searched the motor vehicle where both had been sitting, took out the stereo equipment, hit her husband and forced him to climb with Nitza Paola Alvarado Espinoza into the double cab Chevrolet, and proceeded to leave.⁴⁵

65. Maria de Jesús Alvarado reported in her statement that she went to the place of the incidents after being notified by Obdulia Espinoza Beltrán, where she only found the motor vehicle from which José

⁴⁰ Annex XX. Narrative provided by the petitioners in the brief of observations on the merits of the case received on February 18, 2014. The State did not challenge this information.

⁴¹ Annex I. Case file. Volume XVII, Proof of employment from the Vientek Mexico company, January 4, 2010, page 135 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁴² Annex XX. Brief by the petitioners sent as part of the admissibility proceedings on December 24, 2012. The State did not challenge this information.

⁴³ Annex XX. Brief of the petitioners sent as part of the MP 10-10 proceedings with the I/A Court H.R. on September 7, 2011. Annex No. 3, CNDH - Recommendation 43/11.

⁴⁴ Annex XX. Brief of the petitioners sent as part of the MP 10-10 proceedings with the I/A Court H.R. on September 7, 2011. Annex No. 3, CNDH - Recommendation 43/11.

⁴⁵ Annex XX. Brief of the petitioners sent as part of the MP 10-10 proceedings with the I/A Court H.R. on September 7, 2011. Annex No. 3, CNDH - Recommendation 43/11; Annex I. Case file. Volume XXI. Resolution on the lack of jurisdiction of the Agent of the Public Ministry attached to the Special Prosecution Service for Crimes of Violence against Women and Human Trafficking September 11, 2011, page 152 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

Ángel Alvarado Herrera and Nitza Paola Alvarado Espinoza were forced out, and she proceeded to examine it and noticed that there were no keys in the car or stereo equipment and that on the right-hand side there was some blood on the floor next to the tire.⁴⁶

66. As for the detention of Rocío Irene Alvarado Reyes, according to various testimonies provided by her mother, Patricia Reyes, on December 29, 2009, between 21:00 and 22:00, eight to ten persons came to her home and insistently asked her to open the door. She indicated that, in view of the insistence of these persons, she decided to open the door at which time persons wearing military uniforms and bearing rifles entered the house.⁴⁷ She specified that she identified them as army troops because their voices and body languages belonged to that of troops.⁴⁸ She indicated that, once the anonymous persons had entered, she was locked in bathroom with her two younger children and her granddaughter⁴⁹ and that they told Rocío Irene Alvarado Reyes that she was being arrested. Mrs. Patricia Reyes specified the following in her statement: “I asked them why and they shouted at me to shut up” after which they took Rocío Irene Alvarado Reyes with them.⁵⁰ She indicated that, when they were taking her daughter away, the soldiers said that it was a detention in the framework of Operation Chihuahua.⁵¹

67. R.A.A.R, the ten year old brother of Rocío Irene Alvarado Reyes at the time of the events, eyewitness to the incidents, indicated that, on December 29, 2009, at about 9:00 p.m., he was sleeping in his home with his mother Patricia Reyes, his sister Rocío Irene Alvarado Reyes, his niece A.M.U.A and her brother A.A.R, when his mother and sister opened the door and eight or nine soldiers wearing desert-sand-colored clothing, hooded with helmets and bearing rifles with light entered the home. He indicated that they told him to put sneakers on and then ordered them to go into the bathroom and then they took away his sister Rocío Irene Alvarado Reyes, in a double-cab motor vehicle, previously taking away five cell phones. He indicated that, because of the latter, they went to the neighbor's house to call their grandmother by phone. He added that afterwards he did not know anything.⁵²

⁴⁶ Annex XX. Brief of observations about the merits of the case from the petitioners, received on February 18, 2014. Annex No. 2, Statement made by María de Jesús Alvarado Espinoza to the Agent of the Public Ministry of Buenaventura, Aarón Enríquez Duarte, attached to what was then PGJE-Chihuahua, on December 31, 2009; Annex I. Case file. Volume XVII. Statement of testimony by Patricia Reyes Rueda to the Agent of the Public Ministry of the Federation on January 6, 2010, page 213 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁴⁷ Annex XX. Brief of observations about the merits of the case from the petitioners, received on February 18, 2014. Annex No. 2, Statement made by Patricia Reyes to the Agent of the Public Ministry of Buenaventura, Aarón Enríquez Duarte, attached to what was then PGJE-Chihuahua, on December 31, 2009.

⁴⁸ Annex I. Case file. Volume XVIII. Minutes of the ministerial inspection by the Deputy Director of Strategic Studies attached to the Special Prosecution Service for Crimes of Violence against Women and Human Trafficking with reference to a communication initiated by the Second General Visit of the CNDH with Rocío Irene Alvarado Reyes, page 767 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁴⁹ Annex XX. Brief of the petitioners sent as part of the MP 10-10 proceedings with the I/A Court H.R. on September 7, 2011. Annex No. 3, CNDH - Recommendation 43/11.

⁵⁰ Annex XX. Brief of observations about the merits of the case from the petitioners, received on February 18, 2014. Annex No. 2, Statement made by Patricia Reyes to the Agent of the Public Ministry of Buenaventura, Aarón Enríquez Duarte, attached to what was then PGJE-Chihuahua, on December 31, 2009. See also Annex I. Case file. Volume XVI. Statement made by Patricia Reyes Rueda on January 6, 2010 to the Agent of the Public Ministry of the Federation, page 477 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014); Annex I. Case file. Volume XVII. Report of the Agent of the Public Ministry of the Federation of the Special Prosecution Service for Crimes of Violence Against Women and Human Trafficking where the statement of Patricia Reyes Rueda appears, page 354 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁵¹ Annex I. Case file. Volume XVIII. Report of the Investigation Department of the Federal Police Force addressed to the Agent of the Public Ministry of the Federation, page 266 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014), where it is informed that, according to Patricia Reyes Rueda, Rocío Irene Alvarado Reyes was taken out of her home by military personnel (covered in ski masks) who said it involved Operation Chihuahua thus depriving her of her liberty. It was also indicated that, on January 9, 2010, the next of kin of the missing persons met in the Fifth Military Region with staff from various committees and elements of the Mexican Army, among whom General Felipe de Jesús Espitia y Guillen and Major Carlos Sergio Ruvalcaba, who denied the incidents and accused the missing persons and María de Jesús of holding police records for car theft.

⁵² Annex I. Case file. Volume XII. Statement of testimony made by R.A.A.R on January 15, 2010 to the CNDH, page 112 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014); Annex XX. Brief of the

[continues ...]

68. As for A.A.R., the eleven year old brother of Rocío Irene Alvarado Reyes at the time of the events, who was in the place of the incidents, he stated that, on a Tuesday of the month of December, at 9:00 p.m., he was sleeping in his home along with his mother, brother, sister Rocío Irene Alvarado Reyes, as well as his niece, when army troops dressed in "light green," hooded with helmets and bearing rifles came and entered his house and put him and his mother alone in the bathroom, while his brother, sister, and niece were in the bedroom. He indicated that after that they took him out and had him sit down in an armchair and they told him they would be taking them, but they did not take them, only his sister Rocío Irene Alvarado Reyes, pushing her into a truck. He said that afterwards they went to the neighbor's house to talk to their uncles and relatives, with whom they went to look for his sister and his cousins, because relatives who came to their house notified them that they had also been taken.⁵³

69. Likewise, Marissa Reyes Rueda stated that two days before the disappearance of her relatives, she saw from her house soldiers of the Mexican Army passing by in a gray-colored pickup truck, which drew her attention because they were in the back of the vehicle and they were not circulating in the green pickup trucks belonging to the Mexican Army. She stressed that the gray motor vehicle was a double-cab Chevrolet pickup truck, whose features matched those of the pickup truck in which his relatives disappeared according to eyewitness accounts.⁵⁴

2. Search by next of kin after detention

70. In view of the above-mentioned incidents, the days after the disappearance of Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera, the next of kin started reporting the incidents and looking for their missing relatives.

71. As indicated by the petitioners and not challenged by the State, on December 29, 2009, the day of the disappearance, Jaime Alvarado Herrera and other relatives followed the alleged convoy of troops taking Nitza, Rocío, and José Ángel Alvarado Herrera until they lost sight of them.⁵⁵ Afterwards they went to the commander of the local police in the town of Benito Juárez to report the incidents.⁵⁶ In addition, on that same day, the next of kin looked for the alleged victims in the town without managing to locate them.⁵⁷

72. On December 30, 2009, the next of kin looked for the alleged victims in Villa Ahumada Chihuahua, Casas Grandes Chihuahua, and at the 35th Infantry Battalion, where they were told that the

[... continuation]

petitioners sent as part of the MP 10-10 proceedings with the I/A Court H.R. on September 7, 2011. Annex No. 3, CNDH - Recommendation 43/11.

⁵³Annex I. Case file. Volume XII. Statement of testimony made by A.A.R. on January 15, 2010 to the CNDH, page 110 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014); Annex XX. Brief of the petitioners sent as part of the MP 10-10 proceedings with the I/A Court H.R. on September 7, 2011. Annex No. 3, CNDH - Recommendation 43/11.

⁵⁴ Annex I. Case file. Volume XV. Statement of testimony made by Marisa Reyes Rueda on February 21, 2010 to the CNDH, page 315 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁵⁵ Annex XX. Brief of observations on the merits of the case by the petitioners, received on December 5, 2013.

⁵⁶ Annex I. Case file. Volume I. Complaint filed by Jaime Alvarado Herrera with the National Human Rights Commission in Ciudad Juárez, Chihuahua, January 4, 2010, page 26 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014)

⁵⁷ Annex I. Case file. Volume III. Statement of testimony made by Verónica Colomo Reyes to Military Justice on March 9, 2010, page 35 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

missing persons were not there⁵⁸ and that they would ask a commander whose last name was Luján and that if he had any information he would give it to them.⁵⁹

73. On that same day, the next of kin went to the Federal Investigation Agency (Agencia Federal de Investigación), where they were told that they did not have anyone in detention and if soldiers had arrested their relatives then they would have access to them within 72 hours.⁶⁰

74. On December 31, 2009, Patricia Reyes Rueda filed a complaint with the Public Ministry of Buenaventura for the illegal deprivation of liberty of Rocío Irene Alvarado Reyes.⁶¹ On that same day, María de Jesús Alvarado filed a complaint with the Public Ministry of Buenaventura for the illegal deprivation of liberty of Nitza Paola Alvarado Espinoza and José Ángel Alvarado Herrera.⁶²

75. On the same day, December 31, 2009, next of kin went to the State Investigation Agency (Agencia Estatal de Investigación) of Nuevo Casas Grandes and they realized that the pickup truck from which Nitza Paola Alvarado Espinoza and José Ángel Alvarado Herrera were taken was in the courtyard of this institution.⁶³ In the subsequent days they were able to take pictures of the pickup truck that was under State custody.⁶⁴

76. On January 4, 2010, Jaime Alvarado Herrera filed a complaint with the National Human Rights Commission in Ciudad Juárez Chihuahua.⁶⁵ On the same day, he also made a statement to the staff of the State Investigation Agency.⁶⁶

77. On the same day, Patricia Reyes Rueda filed a complaint for the disappearance of her next of kin with the Program for Processing Complaints and Reports about the Joint Operation Juárez (Programa para la Atención de Quejas y Denuncias sobre el Operativo Conjunto Juárez).⁶⁷

78. On January 6, 2010, María de Jesús Alvarado Espinoza and Patricia Reyes Rueda filed a complaint with the Attorney General's Office of the Republic (PRG).⁶⁸

⁵⁸ Annex I. Case file. Volume III. Statement of testimony made by Verónica Colomo Reyes to Military Justice on March 9, 2010, page 35 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁵⁹ Annex I. Case file. Volume III. Statement of testimony made by Verónica Colomo Reyes to Military Justice on March 9, 2010, page 35 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁶⁰ Annex I. Case file. Volume III. Statement of testimony made by Verónica Colomo Reyes to Military Justice on March 9, 2010, page 35 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁶¹ Annex I. Case file. Volume I. Complaint filed by Patricia Reyes Rueda with the Public Ministry of Buenaventura, December 31, 2009, page 13 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁶² Annex I. Case file. Volume I. Complaint filed by María de Jesús Alvarado Espinoza with the Public Ministry of Buenaventura, December 31, 2009, page 14 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁶³ Annex I. Case file. Volume II. Statement of testimony to the Attorney General's Office of the State, February 12, 2010, page 456 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁶⁴ Annex XX. Pictures of the pickup truck used by Nitza Paola Alvarado Espinoza and José Angel Alvarado Herrera (Annex 6 of the submission of the petitioners dated March 1, 2010 within the precautionary measures).

⁶⁵ Annex I. Case file. Volume I. Complaint filed by Jaime Alvarado Herrera with the National Human Rights Commission in Ciudad Juárez, Chihuahua, January 4, 2010, page 26 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁶⁶ Annex XX. Brief of observations on the merits of the case by the petitioners, received on December 5, 2013.

⁶⁷ Annex I. Case file. Volume VI. Complaint filed by Patricia Reyes Rueda with the Program to Process Complaints and Reports about the Joint Operation, January 4, 2010, page 4 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁶⁸ Annex XX. Brief of observations on the merits of the case by the petitioners, received on December 5, 2013.

79. Also on January 6, 2010, José Ángel Alvarado Favela filed an appeal on constitutional grounds (*amparo*) identifying Colonel Elfego Luján of the 35th Infantry Battalion as the person responsible for the incidents.⁶⁹ The available information indicates that this remedy was denied *in limine* as a result of the lack of ratification on the part of the beneficiaries, which are the same persons disappeared.

80. On January 9, 2010, relatives María de Jesús Alvarado, Rosa Olivia Alvarado Herrera, Obdulia Espinoza Beltrán, and the representatives Emilia González and Luz Estela Castro went to the facilities of the Fifth Military Region in Chihuahua to report the disappearance of their next of kin, in the presence of the Lieutenant Colonel of the 35th Infantry Battalion of Nuevo Casas Grandes, Elfego José Luján Ruiz, who denied the incidents.⁷⁰

81. On January 22, 2010, María de Jesús Alvarado Espinoza appeared at the Public Ministry of Chihuahua to broaden her complaint for the crime of forced disappearance.⁷¹

3. Information about the presence of José Ángel Alvarado Herrera, Nitza Paola Alvarado Espinoza, and Rocío Irene Alvarado Reyes in the 35th Battalion and the participation of state agents in the incidents

82. There are various statements indicating that, on various occasions, state agents told the next of kin of the alleged victims—and this was not challenged by the State—that the latter were being detained in the 35th Infantry Battalion in Nuevo Casas Grandes, State of Chihuahua (hereinafter the 35th Battalion).

83. Regarding this, María de Jesús Alvarado, the mother of Nitza Paola Alvarado Espinoza, stated that, when she went to the Public Ministry of San Buenaventura, the attorney Aarón Duarte received her complaint and told her that he had knowledge that her next of kin was at the 35th Battalion, but that of all of that had to be kept confidential.⁷² It must be mentioned that Mr. Aarón Duarte, when interrogated by the authorities within the military jurisdiction, indicated that what he stated was that, if the military had detained them, then it would be more advisable to request information at the 35th Battalion, but he denied that he had told them that he had knowledge that they could be found in said battalion.⁷³

84. María de Jesús Alvarado also indicated that, on January 6, 2010, at 1:00 p.m., she went to the Attorney General's Office of the Republic to file the complaint and was received by attorney Durazo of the Seventh Agency in Ciudad Juárez. She added that when she was in that office, she heard a person telling attorney Durazo that indeed her next of kin were in the "military garrison" but another person made gestures to him to keep his mouth shut.⁷⁴

⁶⁹ Annex XX. Brief of observations on the merits of the case by the petitioners, received on December 5, 2013.

⁷⁰ Annex XX. Brief of observations on the merits of the case by the petitioners, received on December 5, 2013.

⁷¹ Annex I. Case file. Volume I. Complained filed by María de Jesús Alvarado Espinoza with the Public Ministry of the Federation, February 22, 2010, page 21 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁷² Annex I. Case file. Volume XII. Statement of testimony made by María de Jesús Alvarado to the National Human Rights Commission on January 14, 2010, page 106. (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014); Annex I. Case file. Volume XVII. Narrative of the facts drafted by María de Jesús Alvarado Reyes to the representative of the Unit to Promote and Defend Human Rights of the Secretariat of the Governor's Office. Page 126 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014). In this brief, María de Jesús Alvarado indicated that: "when they took the complaint, the Public Ministry told us: "be patient, we know that the army detained them and, with an official letter, I will be asking the 35th Infantry Battalion for information about the detainees."

⁷³ Annex I. Case file. Volume VII. Statement made by Aarón Enrique Duarte to the Military Justice Major of the Fifth Military Region, May 24, 2010, page 203 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁷⁴ Annex I. Case file. Volume XII. Statement of testimony made by María de Jesús Alvarado to the National Human Rights Commission on January 14, 2010, page 106 (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014); Annex I. Case file. Volume XVII. Narrative of the facts drafted by María de Jesús Alvarado Reyes to the representative of the Unit to Promote and Defend Human Rights of the Secretariat of the Governor's Office. Page 126 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014). In this brief, María de Jesús Alvarado indicated that: "when they took

[continues ...]

85. Jaime Alvarado Reyes indicated that, on December 30, 2009, he went to the office of the Ministerial Police of Nuevo Casas Grandes, where he had an interview with a civil servant bearing the last name of Leyva, who told him that he knew that his next of kin were being held in the 35th Battalion.⁷⁵

86. As part of the case file, there also is the statement made by Alberto Hernández de la Cruz, First Sergeant Driver, on February 5, 2010 to the Official of the Public Ministry for the Military, indicating that Colonel Elfego Luján Ruiz, who was senior commander of 35th Battalion, carried out illegal activities and that he had information that "in the town of Benito Juárez they took a handicapped woman and a man, who were taken from their home by personnel wearing desert and jungle camouflage uniforms, which led to an intervention on the 35th Infantry Battalion and the 20th Motorized Regiment of Ciudad Juárez on the part of the Commander of the military garrison of Palomas Chihuahua to investigate the whereabouts of the civilians referred to."⁷⁶

87. According to the Official of the Public Ministry of the Federation regarding the records of the orders issued in the investigation against Elfego José Lujan Ruiz, it was understood that Nitzza Paola Alvarado Espinoza suffered from a paralysis of the left side of her body (hemiplegia), which matched the indication provided by First Sergeant Alberto Hernández de la Cruz in his statement of February 5, 2010, with reference to a persons that he described as a "handicapped woman."⁷⁷

88. In the same statement, First Sergeant Driver Alberto Hernández de la Cruz indicated that, on January 13, 2010, they went to supervise the staff of the Regional Individual Combat Training Center (Centro de Adiestramiento de Combate Individual Regional—CACIR), located in Parral, Chihuahua, and the following day the commanders referred to were summoned to a meeting with the staff of the National Human Rights Commission in the General Headquarters of the Fifth Military Region at about twelve o'clock noon.⁷⁸ Regarding what happened during the return trip to the Battalion, the statement indicates the following:

while they were travelling back to the battalion Colonel Luján Ruiz answered a phone call from one of the four cell phones that he carried and I heard that he was being alerted about the presence of the Commander of the Garrison of Palomas, and I realized that Colonel Luján Ruiz with notable concern asked 'and what do you know about the garbage I ordered them to get rid of, did they throw it away?' I heard that they said yes, although I did not understand what they meant by this question, but it really drew my attention, remembering that, on the cell phone from which he received the call he would only receive calls from the closest officers, among whom there were Captain Altamirano Mendoza and Lieutenants Díaz Pineda, Munguía Condado, Bonifacio Juárez, and Martínez Montiel.⁷⁹

[... continuation]

the complaint, the Public Ministry told us: "be patient, we know that the army detained them and, with an official letter, I will be asking the 35th Infantry Battalion for information about the detainees."

⁷⁵ Annex I. Case file. Volume XII. Complaint about the facts filed by the CNDH with the Attorney General for Military Justice on September 9, 2011, page 37 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁷⁶ Annex I. Case file. Volume XXII. Admittance order without a detainee of March 31, 2014, referring to the statement of testimony made by Alberto Hernández de la Cruz, First Sergeant Driver (driver of Colonel Elfego José Luján Ruiz) on February 5, 2010, page 381 del pdf (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁷⁷ Annex I. Case file. Volume XXII. Admittance order without a detainee of March 31, 2014, page 381 del pdf (Annex to the brief of observation s on the merits by the petitioners, received on November 3, 2014).

⁷⁸ Annex I. Case file. Volume XXII. Admittance order without a detainee of March 31, 2014, referring to the statement of testimony made by Alberto Hernández de la Cruz, First Sergeant Driver (driver of Colonel Elfego José Luján Ruiz) on February 5, 2010, page 381 del pdf (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁷⁹ Annex I. Case file. Volume XXII. Admittance order without a detainee of March 31, 2014, referring to the statement of testimony made by Alberto Hernández de la Cruz, First Sergeant Driver (driver of Colonel Elfego José Luján Ruiz) on February 5, 2010, page 38 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

89. The case file indicates that, afterwards, this witness recanted his eyewitness account, although the Official of the Public Federal Ministry deemed that "the supposed recanting of the above-mentioned driver must be dismissed because it is not substantiated by any kind of evidence, in addition it contradicts the circumstances he introduces in his first statement and basically the first statement is all the more prevalent as it was given soon after the incidents, freely and spontaneously, devoid of any elements that might undermine its accuracy."⁸⁰

90. In addition there is the testimony made at the Public Ministry for the Military by Damaris Baglietto Hernández, who was the Deputy Delegate for Criminal Proceedings (Subdelegada de Procedimientos Penales) at the time of the incidents, made on March 12, 2010 in front of the Official of the Public Ministry for the Military who indicated that that she heard of the disappearance of José Ángel Alvarado Herrera, Nitza Paola Alvarado Espinoza, and Rocío Irene Alvarado Reyes on December 31, 2009 because she received a call from the Agent of the Public Ministry of the Federation in Nuevo Casas Grandes, Ramón Iván Sotomayor Siller, who called her by phone between three and five o'clock in the afternoon and indicated that "he had received a call from attorney Argene Blázquez, who had asked him about three detained persons, but he had told her he did not have any detained person and she replied that 'in the course of the day soldiers will be remanding three detained persons in your custody,' that she wanted that when he had those detained persons in his custody, a commander of the Federal Police by the name of Meza would appear, and that he should help him out, lending him the detained persons or giving him the chance to see the detained persons because that commander Meza was conducting an investigation about those persons in connection with the disappearance of two or three federal police officers (...)."⁸¹

91. The core content of this statement was repeated by Damaris Baglietto in her testimony before the CNDH on the basis of the following terms:

on December 30, 2009, she received the phone call from SP3, who informed her that she should take three detained persons which AR5, commander of the Federal Police, who was in charge of investigating the death of two or three officers of his institution, which took place in November of that year in Buenaventura wished to interviewed, as a result of which he requested that she provide him with the facilities for this purpose, to which SP2 replied that no person had been remanded to his custody, and in response SP3 said that "in the course of the day, the soldiers will remand them in your custody."⁸²

92. Matching this statement is the testimony provided by Ramón Iván Sotomayor Siller himself, Agent of the Public Ministry of the Federation in Nuevo Casas Grandes, who indicated that, on December 30, 2009, he talked over the phone with Argene Blázquez, who was at that time in charge of Criminal Policy attached to the State Delegation of Chihuahua, who indicated that, in the course of the day, a Commander of the Federal Police called "Meza" would go over there to interrogate three persons who were in his custody at that time and he stated that he did not have any person detained there or the three that were mentioned or any other, and let alone any remanded into his custody, and Argene Blázquez indicated that, in the course of the day, soldiers would be remanding these three persons into his custody.⁸³

⁸⁰ Annex I. Case file. Volume XXII. Admittance order without a detainee of March 31, 2014, referring to the statement of testimony made by Alberto Hernández de la Cruz, First Sergeant Driver (driver of Colonel Elfego José Luján Ruiz) on February 5, 2010, page 38 del pdf (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁸¹ Annex I. Case file. Volume III. Statement made by Damaris Baglietto Hernández to the Official of the Public Ministry for the Military on March 12, 2010, page 174 (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁸² Annex XX. Brief of the petitioners sent as part of the MP 10-10 proceedings with the I/A Court H.R. on September 7, 2011. Annex No. 3, CNDH - Recommendation 43/11.

⁸³ Annex I. Case file. Volume III. Statement made by Ramón Iván Sotomayor Siller to the Official of the Public Ministry for the Military on March 12, 2010, page 179 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014); see also Annex XX. Brief of the petitioners sent as part of the MP 10-10 proceedings with the I/A Court H.R. on September 7, 2011. Annex No. 3, CNDH - Recommendation 43/11.

93. In that same statement, Agent Sotomayor indicated that, at 10:00 p.m. that same day, December 30, 2009, three persons dressed in civilian clothes appeared at the facilities of the agency of the Public Federal Ministry, bearing AR15 arms, who did not identify themselves, except one of them, who said he was Commander Meza and who requested Agent Sotomayor to lend him the detained persons José Ángel Alvarado Herrera, Nitza Paola Alvarado Espinoza, and Rocío Irene Alvarado Reyes whom he held in his custody, to which he replied that he did not have any detained persons or persons remanded into his custody as a result of which he could not help them, in response to which he asked if he could talk to the military garrison to ask the soldiers when they were going to remand them, indicating that he could do nothing until they were remanded into his custody.⁸⁴

94. Also matching what had been stated by Damaris Baglietto Hernández and Ramón Iván Sotomayor Siller, Argene Blázquez Morales indicated that she had received a phone call from someone who identified himself as a Federal Police Force Commander, who told her that he was aware of the detention of three persons by the Federal Police Force and that the detained persons were connected with the disappearance of agents of his institution, and she indicated that he should go to the Public Ministry and speak to the Deputy Delegate of said area. He specified that he had called Damaris Baglietto by cell phone or radio and he told her that she was on vacation, and that is why did not want to bother her with something so trivial, which was why he contacted the Public Ministry of Nuevo Casas Grandes and told her the content of the call, but he did not indicate how they were supposed to act.⁸⁵

95. From the time of disappearance up to the day of that the present report was adopted, the whereabouts of Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera are unknown. The only information in the case file is connected with the alleged phone call made by Nitza Paola Alvarado Espinoza on February 3, 2010.

96. Regarding this, on February 12, 2010, María de Jesús Alvarado stated that “[...] on the third of February of the present year, the house of Mrs. Ramona, who lives in Benito Juárez, received a phone call, the call was made at five thirty in the afternoon to phone number 636-69-80-101 which was received and answered by Juana Bustamante, who when she answered heard the voice a female person who identified herself as Nitza Paola Alvarado Espinoza, my sister told her to get her out of there, I don’t know where I am, Juanita also remarked that she heard another voice, that of a male persons with a Chilango tone who said: "Dammit the bitch has already spoken" and at that moment they hung up.”⁸⁶

97. As will be described in the following section, in the framework of the internal investigations, there is no information indicating that the authorities carried out a diligent and timely investigation on this call, and therefore the call did not shed any light on the whereabouts of neither Nitza Paola Alvarado Espinoza nor José Ángel Alvarado Herrera and Rocío Irene Alvarado Reyes.

⁸⁴ Annex I. Case file. Volume III. Statement made by Ramón Iván Sotomayor Siller to the Official of the Public Ministry for the Military on March 12, 2010, page 179 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014); Annex XX. Brief of the petitioners sent as part of the MP 10-10 proceedings with the I/A Court H.R. on September 7, 2011. Annex No. 3, CNDH - Recommendation 43/11. See also Annex I. Case file. Volume IV. Statement made by José Eduardo Rentería Martínez to the Major of Military Justice on March 19, 2010, page 254 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014). In his statement of testimony, José Eduardo Rentería Martínez indicated that, on December 30, 2009, a gray or silver-colored Chevy compact car arrived from which three persons carrying long arms climbed out and when they reached the reception point of the security guard, they said they belonged to the Federal Police Force, they did not show any identification and were not in uniform, the one who entered introduced himself to attorney Soto Mayor Siller as Commander Meza.

⁸⁵ Annex I. Case file. Volume IX. Statement made by Argene Blázquez Morales to the Major of Military Justice of the Fourth Military Region on March 30, 2011, page 177 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁸⁶ Annex XX. IACHR document requesting provisional measures. Annex 6 - Case file 124/2009, complaint filed by María de Jesús Alvarado on February 12, 2010 with the PGJE.

D. About domestic proceedings carried out in connection with the disappearance of Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera

1. Chihuahua Delegation of the Attorney General's Office of the Republic

98. On January 6, 2010, Patricia Reyes Rueda filed a complaint against army troops in the Office of the Program to Process Complaints and Reports of the Joint Operation Chihuahua in Ciudad Juárez, which was assigned No. 886/09⁸⁷.

99. On that same date, the case file for the preliminary inquiry AP/PGR/CHIH/JUAREZ/27/2010-VII was filed with the Seventh Agency of the Public Ministry of the Federation.⁸⁸ On January 13, 2010, said Agency declined to take jurisdiction claiming it was not competent to do so, but that Attorney General's Office of Military Justice did have jurisdiction because it believed that, on the basis of the evidence and records appearing in the preliminary inquiry, "it can be concluded that the offense of abuse of authority was possibly committed in which it seems that troops of the National Defense Secretariat were involved."⁸⁹

100. On February 10, 2010, the Deputy Attorney General's Office for Regional Monitoring, Criminal Proceedings, and Constitutional Appeals of the State Delegation of Chihuahua, Deputy Delegation of Criminal Proceedings "A" of the PGR authorized examination of the jurisdictional claim and ordered that the proceedings be filed with the Attorney General for Military Justice,⁹⁰ which was effectively forwarded on February 20, 2010.⁹¹

101. Furthermore, on February 15, 2010, the PGR opened the record No. AC/PGR/CHIH/NCG/219/2010, stemming from official letter No. SCRPPA/ST/01280 forwarded by the Technical Secretary of the Deputy Attorney General for Regional Monitoring, who requested that the disappearance of Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera be investigated.⁹²

⁸⁷ Annex XX. Receipt of the complaint filed by Patricia Reyes Rueda against army troops with the Program to Process Complaints and Reports about the Joint Operation Chihuahua in Ciudad Juárez. Annex No. 3 to the brief of the petitioners received on June 26, 2011; Annex I. Case file. Volume VI. Complaint filed by Patricia Reyes Rueda against army troops with the Program to Process Complaints and Reports about the Joint Operation Chihuahua in Ciudad Juárez, page 4 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁸⁸ Annex I. Case file. Volume II. Official letter informing the start of preliminary inquiry AP/PGR/CHIH/JUAREZ/27/2010-VII, January 6, 2010, page 19 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁸⁹ Annex I. Case file. Volume I. Resolution where the Seventh Agency of the Public Ministry of the Federation declined to take jurisdiction for preliminary inquiry AP/PGR/CHIH/JUAREZ/27/2010-VII of January 13, 2009, page 19 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁹⁰ Annex XX. IACHR document requesting provisional measures. Annex 4; Annex I. Case file. Volume I. Authorization to consult lack of competence for jurisdictional reasons of the PGR, February 10, 2010, page 20 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁹¹ Annex XX. IACHR document requesting provisional measures. Annex 4; Annex I. Case file. Volume I. Official letter suspending preliminary inquiry 27/2010 from the Deputy Attorney General's Office for Regional Monitoring, Criminal Proceedings, and Constitutional Appeals, February 20, 2010, page 22 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁹² Annex XX. Brief of the State sent as part of the MP 10-10 proceedings with the I/A Court H.R. on May 21, 2010. Annex Official Letter No. SJAI/CAIA/DGCI/867/2010. PGR. P. 3.

102. On February 22, 2010, María de Jesús Alvarado appeared at the Public Ministry of the Federation where she voiced her wish to broaden the complaint and referred to the phone call received by Mrs. Juana Bustamante in which Nitza Paola Alvarado Espinoza presumably pleaded for help.⁹³

103. According to reports for the State date ay 21 and June 3, 2010, the Commission is aware that, in Record No. AC/PGR/CHIH/NCG/219/2010, information was requested from the 35th Infantry Battalion in Nuevo Casas Grandes about the detention of the alleged victims and in response it was told by this institution that there was no record of any detention of the persons referred to in that place. The Regional Head Office of the Federal Investigations Agency of Ciudad Juárez also responded the same, indicating that there were no data for Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera.⁹⁴

104. On July 26, 2010, the State reported that in Record No. AC/PGR/CHIH/NCG/219/2010, various steps had been taken, but this record could not lead to any preliminary inquiry until there was enough evidence demonstrating that army troops were involved in the incidents.⁹⁵

2. Attorney General's Office for Military Justice (Procuraduría General Justicia Militar–PGJM)

105. As a result of the refusal to begin preliminary inquiry No. AP/PGR/CHIH/JUAREZ/27/2010-VII, three proceedings were filed⁹⁶ in the military jurisdiction, which were ultimately joined for reasons of jurisdiction and territoriality on April 16, 2010 in preliminary inquiry No. PGJM/AMMPE/CDJUAREZ/196-II/2010.⁹⁷

106. According to a report forwarded by the State in the proceedings for the provisional measures, on November 17, 2011, as part of the preliminary inquiry, there were 24 statements taken from civilians (7 next of kin, 7 municipal authorities, 4 federal authorities, 3 neighbors, and 3 ejido authorities); 39 statements taken from military staff (28 soldiers, 7 officers, 3 commanders, and 1 general); 36 pieces of documentary evidence; ministerial inspections and requests for information from state and private institutions.⁹⁸ On the basis of the court case file, at the end of the investigation, 143 pieces of documentary evidence, 45 statements, and 4 eyewitness inspections had been assessed.⁹⁹

107. On December 29, 2011 the Second Investigating Official of the Public Ministry for the Military decided to shelve this Preliminary Inquiry and forward it to the Deputy Attorney General's Office for Regional Monitoring, Criminal Proceedings and Constitutional Appeals of the PGR, so that the Public Ministry of the Federation would continue to review the facts which were the target of the investigation. The reason behind shelving the inquiry was "that there is no evidence that military personnel has engaged in such illegal activities, so that, in the present case, in the opinion of this Military Social Representation, no military

⁹³ Annex XX. IACHR document requesting provisional measures. Annex 4; Annex I. Case file. Volume I. Statement of testimony made by María de Jesús Alvarado Espinoza to the Official of the Public Ministry of the Federation, page 21 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁹⁴ Annex XX. Brief of the State sent as part of the MP 10-10 proceedings with the I/A Court H.R. on May 21, 2010; and Annex XX. Brief of the State sent as part of the MP 10-10 proceedings with the I/A Court H.R. on June 3, 2010.

⁹⁵ Annex XX. Brief of the State sent as part of the MP 10-10 proceedings with the I/A Court H.R. on June 3, 2010.

⁹⁶ Annex XX. Brief of observations on the merits of the case sent by the State, received on November 7, 2014. See also Annex XX. Brief by the State sent as part of the admissibility proceedings with the IACHR, July 11, 2012. Page 5; Annex I. Case file. Volume II. Resolution to start preliminary inquiry 5ZM/04/2010 of January 15, 2010, page 71 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁹⁷ Annex I. Case file. Volume V. Resolution to file for preliminary inquiry PGJM/AMPME/CDJUAREZ/196-II-IV/2010, page 3 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

⁹⁸ Annex XX. Official Letter No. PGJM 65547 attached to the State's brief sent as part of the MP 10-10 proceedings with the I/A Court H.R. on December 7, 2011. P. 1-2.

⁹⁹ Annex I. Case file. Volume XV. Decision to terminate preliminary inquiry PGJM/AMPME/CDJUAREZ/196-II-IV/2010, page 570-689 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

discipline or law was infringed; nevertheless, it is highly likely that persons engaged in drug trafficking activities are involved in these illegal actions.”¹⁰⁰

108. As described by the State, a “breakdown” of preliminary inquiry PGJM/AMPME/CDJUAREZ/196-II-IV/2010 carried out by the Attorney General’s Office for Military Justice was incorporated into the preliminary inquiry being conducted by the Chihuahua Delegation of the PGR.¹⁰¹ The State did not explain what the above-mentioned “breakdown” consisted of nor does any further information appear in the case file about whether it was a partial or total remittance of what had been investigated by military criminal justice.

109. After the shelving of the preliminary inquiry on January 3, 2012, preliminary inquiry AP/PGR/DGCAP/ZNO-II/1^a/2012¹⁰² started, and as a part of it a series of steps were taken;¹⁰³ nevertheless, on February 9, 2012, the Directorate General for Monitoring Preliminary Inquiries declined to take jurisdiction on territorial grounds and referred the case to the Chihuahua Delegation of the Attorney General’s Office of the Republic.¹⁰⁴ Because of that, on February 13, 2012, the Chihuahua Delegation of the PGR started preliminary inquiry AP/PGR/CHIH/JUA/467/2012-XI-A, for the crimes of abuse of authority and forced disappearance.¹⁰⁵ As indicated below this preliminary inquiry was joined to others which were being conducted by the same investigative authority.

3. District Attorney's Office for Justice of the State of Chihuahua (Procuraduría General de Justicia Estado Chihuahua—PGJE-Chihuahua)

110. On December 31, 2009, Patricia Reyes (mother of Rocío Irene Alvarado Reyes) and María de Jesús Alvarado (sister of Nitza Paola Alvarado Espinoza) appeared at the Attorney General’s Office for Justice of the State with the Public Ministry of the regular jurisdiction of Buenaventura Chihuahua, where they filed a complaint with an official of the Public Ministry, Aarón Enríquez Duarte, for the incidents that occurred on December 29, 2009 to the detriment of Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera.¹⁰⁶

¹⁰⁰ As part of the considerations to decide shelving the case, the Official of the Public Ministry deemed : a) that the complaints filed by María de Jesús Alvarado Espinoza and Patricia Reyes Rueda are ambiguous because the pointed out that their next of kin were taken by persons dressed as military but do provide specifics about the latter that would make it possible to identify military personnel located in the entity where the incidents took place; b) it is only the civilian Patricia Reyes Rueda who is sure of the facts; c) military personnel of the Military Garrison of Ciudad Juárez, Chihuahua, are attached to the Fifth Military Region and its jurisdiction does not extend up to the Municipality of Buenaventura, Chihuahua; d) the 35th Infantry Battalion did not conduct any operations as of December 26, 2009 in Buenaventura, Chihuahua; e) the military personnel were not in charge of the motor vehicle from which Nitza Paola Alvarado Espinoza and José Ángel Alvarado Herrera were taken; f) there is no army officer called “Meza”; g) the civilians Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera were not found to be detained in the facilities of the 35th Infantry Battalion on the basis of the inspection that was carried out. Annex I. Case file. Volume XV. Decision to terminate preliminary inquiry PGJM/AMPME/CDJUAREZ/196-II-IV/2010; page 570-689 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹⁰¹ Annex XX. Brief of the State sent as part of the MP 10-10 proceedings with the I/A Court H.R. on April 10, 2012.

¹⁰² Annex I. Case file. Volume XV. Decision to start preliminary inquiry AP/PGR/DGCAP/ZNO-II/1^a/2012, January 3, 2012, page 690 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹⁰³ Annex I. Case file. Volume XV. Decision to terminate preliminary inquiry AP/PGR/DGCAP/ZNO-II/1^a/2012, February 9, 2012, pages 695-709 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹⁰⁴ Annex I. Case file. Volume XV. Decision to terminate preliminary inquiry AP/PGR/DGCAP/ZNO-II/1^a/2012, February 9, 2012, page 709 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹⁰⁵ Annex I. Case file. Volume XVI. Informative card about the start of preliminary inquiry AP/PGR/CHIH/JUA/467/2012-XI-A of February 13, 2012, page 3 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹⁰⁶ Annex XX. Brief of observations on the merits of the case by the petitioners, received on February 18, 2014. Annex No. 2, Statement made by Patricia Reyes and María de Jesús Alvarado to the Official of the Public Ministry of Buenaventura, Aaron Enríquez Duarte, attached to what was, at the time, PGJE-Chihuahua, on December 31, 2009; Annex I. Case file. Volume XVI. Complaint filed by Patricia Reyes Rueda with the Attorney General’s Office for Justice of Buenaventura on December 31, 2009, page 42 of the pdf file (Annex [continues ...])

111. On the basis of the complaints referred to, preliminary inquiry 124/2009 was opened for the crime of deprivation of personal liberty, which was assigned to the Special Unit for the Investigation of Missing and Lost Persons.¹⁰⁷ This assignment was questioned by the next of kin¹⁰⁸ to which the State responded by indicating that this assignment was governed by technical reasons and criteria of the institution.¹⁰⁹

112. As appearing in the case file, a series of steps were taken in this preliminary inquiry.¹¹⁰

113. In particular, on February 12 and 13, 2010, statements were taken from María de Jesús Alvarado and Juana Bustamante, who reported the phone call allegedly from Nitza Paola Alvarado Espinoza on February 3, 2010 calling for help.¹¹¹ On the basis of the statements taken, the State reported, without specifying the dates the steps being reported were carried out, that officials of the PGJE requested the company TELMEX to provide them with the list of calls received by phone number 6366980101 on February 3, 2010, which request was complied with by said company.¹¹² This report confirmed the data provided by Mrs. Juana Bustamante, regarding the phone number and the time at which the call was received. According to what the State said, on the basis of the inquiry made on the COFETEL page, it was determined that the phone number from which the call was received belonged to the company called Pegaso, to which a letter was sent requesting information about the owner of the phone line. The State indicated that it was not possible to provide the information requested because the line was purchased on the basis of a prepaid rate plan.¹¹³ The pattern of behavior of the phone line was also requested to establish related phone lines in order to secure

[... continuation]

to the brief of observations on the merits by the petitioners, received on November 3, 2014); Annex I. Case file. Volume XVI. Complaint filed by María de Jesús Alvarado Espinoza with the Attorney General's Office for Justice of Buenaventura on December 31, 2009, page 45 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹⁰⁷ Annex XX. IACHR document requesting provisional measures. Annex 6 - Case file 124/2009, Official Letter No. 384/2009.

¹⁰⁸ Annex XX. Brief of the State sent as part of the MP 10-10 proceedings with the I/A Court H.R. on February 21, 2011. Annex - Minutes of the Working Meeting on Provisional Measures for the Alvarado Case, February 18, 2011.

¹⁰⁹ Annex XX. Brief by the State sent as part of the MP 10-10 proceedings with the I/A Court H.R. on February 21, 2011. Annex - Minutes of the Working Meeting on Provisional Measures in the Alvarado Case on February 18, 2011.

¹¹⁰ Brief of the State sent as part of the MP 10-10 proceedings with the I/A Court H.R. on May 21, 2010. In particular, with respect to the record certifying termination of the preliminary inquiry, the following two steps appear: a) on December 31, 2009, the Assistant Official of the Public Ministry of San Buenaventura Chihuahua requested Special Coordinator "B" of the Ministerial Police of the State Investigation Agency to undertake relevant investigations to clarify the facts that constitute the crime perpetrated to the detriment of the alleged victims; b) the Police Force alerted the Specialized Unit on Probably Criminal Matters about the incidents that had occurred; c) interview that Special Agent B had with Jaime Alvarado Herrera on December 31, 2009; d) Official letter to the phone company for the purpose of requesting data referring to the owner of a phone line; e) interviews that Ministerial Police Agent B had with Karla Castro Castro, Arnoldo Gutiérrez Villareal, and Mario Castro García; f) informative report regarding the results obtained from a tracking exercise carried out in various places of the locality called Ejido Benito Juárez of the Municipality of San Buenaventura; g) minutes of May 19, 2011 indicating the onsite inspection and ministerial affidavit that were carried out in Ejido Benito Juárez. Annex I. Case file. Volume XVI. Statement where it is reported that jurisdiction for preliminary inquiry was declined 124/2009, May 28, 2012, page 516 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹¹¹ Annex XX. IACHR document requesting provisional measures. Annex 6 - Case file 124/2009, Complaint filed by Juana Bustamante on February 13, 2010 with the PGJE; and Annex XX. IACHR document requesting provisional measures. Annex 6 - Case file 124/2009, Complaint filed by María de Jesús Alvarado on February 12, 2010 with the PGJE; Annex I. Case file. Volume XVI. Witness statement made to the Attorney General's Office of Justice of Chihuahua on February 12, 2010, page 79 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014); Annex I. Case file. Volume XVI. Witness statement made to the Attorney General's Office of Justice of Chihuahua on February 13, 2010, page 79 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹¹² Annex I. Case file. Volume XVI. Response from the company Teléfonos de México to official letter 424/2010 of February 9, 2010, page 72 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹¹³ Annex XX. Brief of the State sent as part of the MP 10-10 proceedings with the I/A Court H.R. on May 21, 2010. This matches what was stated by the company Pegaso Comunicaciones in response to official letter 1123/2010. See Annex I. Case file. Volume XVI. Response from the company Pegaso Telecomunicaciones to official letter 1123/2010 of January 5, 2011, page 428 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

the identity of the holder. Analysis of said information was also requested from the Prosecution Service Specializing in Monitoring, Analysis, and Assessment.¹¹⁴

114. To date, the Commission does not have any further information about the results obtained from "processing" the information in the framework of preliminary inquiry No. 124/2009.

115. Furthermore, on February 15, 2010, María de Jesús Alvarado filed with the Special Unit for the Investigation of Missing and Lost Persons of the PGJE, Original Petition No. 070738427015124,¹¹⁵ requesting the return of the motor vehicle that belonged to her, which was impounded in the courtyard of the Deputy Attorney General's Office for Justice of the Northern Region (Subprocuraduría de Justicia Zona Norte).¹¹⁶

116. On that same date, the Special Unit for the Investigation of Missing and Lost Persons of the PGJE reached an agreement for the return of the motor vehicle which Nitza Paola Alvarado Espinoza and José Ángel Alvarado Herrera were using for transportation.¹¹⁷ This led to the issuance of official letter 246/2010 on February 16, 2010 by the Special Unit for the Investigation of Missing and Lost Persons of the PGJE for the return of the motor vehicle¹¹⁸ and the Special Unit for Motor Vehicle Theft Crimes carried out the material delivery of the motor vehicle to María de Jesús Alvarado.¹¹⁹

117. In February 2011, the PGJE issued an official letter requesting the collaboration of the PGR for the possibility of obtaining rescue personnel trained in rappelling to descend into a mine of the town of Benito Juárez to conduct a search, as well as to enter aerobic ponds, which required specialized troops for this purpose. This request was based on the possibility that bodies could be found there and that they could eventually be connected with the missing victims.¹²⁰

118. In March 2011, the General Prosecution Service of the State of Chihuahua (previously the PGJE) had identified three sites that could be of interest to conduct inspections with experts: the outer aerobic pond of the town of Benito Juárez; the Outer Colony of the town of Benito Juárez; and the Brecha del Jabalí (Boar's Pass), which is the country road to the mines. As indicated in the closing statement of preliminary inquiry 124/2009, from these inspections no results were obtained with respect to the search for possible elements or relevant information for the investigation.¹²¹

¹¹⁴ See Annex I. Case file. Volume XVI. Official letter of the Official of the Public Ministry attached to the Special Investigation Unit for Missing and Lost Persons and to the Specialized Prosecutor for Monitoring, Analysis, and Evaluation, of December 15, 2010, page 422 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹¹⁵ Annex I. Case file. Volume XVI. Petition 070738427015124, page 422 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹¹⁶ See Annex I. Case file. Volume XVI. Request to return the motor vehicle of Maria de Jesús Alvarado Espinoza filed with the Official of the Public Ministry attached to the Special Investigation Unit for Missing and Lost Persons, of February 15, 2010, page 84 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹¹⁷ Annex I. Case file. Volume XVI. Resolution to return the motor vehicle by the Attorney General's Office for Justice, Special Investigation Unit for Missing and Lost Persons of February 15, 2010, page 85 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹¹⁸ Annex I. Case file. Volume XVI. Official letter 246/2010 of February 16, 2010, page 89 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹¹⁹ Annex XX. IACHR document requesting provisional measures. Annex 6 - Case file 124/2009 - Official letter 246/2010.

¹²⁰ Annex XX. Brief of the State sent as part of the MP 10-10 proceedings with the I/A Court H.R. on April 21, 2011; Annex I. Case file. Volume XVI. Official letter from the District Attorney's Office of the Specialized Prosecution Service for Criminal Investigation and Prosecution of February 23, 2011, page 440-442 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹²¹ Annex I. Case file. Volume XVI. Statement where it is reported that jurisdiction for preliminary inquiry was declined 124/2009, May 28, 2012, page 519 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

119. On May 28, 2012, the General Prosecution Service of the State of Chihuahua (Fiscalía General del Estado de Chihuahua, hereinafter the la FGEC) declined to take jurisdiction and referred the case to the Chihuahua Delegation of the PGR for jurisdictional reasons¹²² because it involved a crime of forced disappearance of persons, for which the Official of the Public Ministry of the Federation attached to the Delegation of the State of Chihuahua of the Attorney General's Office of the Republic exercised the jurisdiction to hear the case of said crime.¹²³

120. In the statement declining jurisdiction, the General Prosecution Service of the State of Chihuahua deemed that,

(...) the existence of a group comprised of more than three persons, dressed in military-type clothes, in two motor vehicles, and who deprived persons of their personal liberty, is not a random incident, rather it is in keeping with logistics planned in an orderly fashion and with rules of conduct, which implies prior examination of the victims and their environment, as well preparation to commit the crime, displaying a certain amount of experience in committing this type of crime, bearing in mind the speed and degree of accuracy with which they proceeded, which indicates that it was done by trained persons. Likewise, the garments, the military type of clothes, and the off-road type of vehicle (Hummer), along with the complaint filed by C. Patricia Reyes Rueda, who mentioned word for word how she was bluntly denied the information she was requesting to locate her next of kin in the military garrison for which those accused of depriving the liberty of those called Rocío Irene Alvarado Reyes, Nitza Paola Alvarado Espinoza, and José Ángel Alvarado Herrera are organized, followed procedures, benefited from infrastructure, financial resources, and basic logistics, therefore the present authority believes there is a presumption, on the basis of the clues, that said criminal act was carried out by army troops.¹²⁴

4. Attorney General's Office of the Republic (PGR) – Special Prosecution Service on Crimes of Violence against Women and Human Trafficking (FEVIMTRA)

121. On March 8, 2010, FEVIMTRA started preliminary inquiry AP/PGR/FEVIMTRA/TRA/009/2010 for the crime of illegal deprivation of liberty and later on for the crime of human trafficking against Nitza Paola Alvarado Espinoza and Rocío Irene Alvarado Reyes, incidents that were reported by the Unit for Prevention and Human Rights Defense of the Secretariat of the Governor's Office, on the basis of communication. UPDDH/911/1240/2010¹²⁵.

122. On April 8, 2011, at the request of FEVIMTRA, María de Jesús Alvarado, Obdulia Espinoza, and Jaime Alvarado went to the premises of the Special Prosecution Service to broaden their initial statements,¹²⁶ at which time they challenged the legitimacy of the Special Prosecution Service to conduct the

¹²² Annex XX. Brief of the State sent as part of the MP 10-10 proceedings with the I/A Court H.R. on January 29, 2013; Annex I. Case file. Volume XVI. Statement where it is reported that jurisdiction for preliminary inquiry was declined 124/2009, May 28, 2012, page 516 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹²³ Annex I. Case file. Volume XVI. Statement where it is reported that jurisdiction for preliminary inquiry was declined 124/2009, May 28, 2012, page 516 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹²⁴ Annex I. Case file. Volume XVI. Statement where it is reported that jurisdiction for preliminary inquiry was declined 124/2009, May 28, 2012, page 516 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹²⁵ Annex I. Case file. Volume XVII. Resolution to start preliminary inquiry AP/PGR/FEVIMTRA/TRA/009/2010 of March 8, 2010, page 3 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹²⁶ Annex I. Case file. Volume XVII. Statement made by María de Jesús Alvarado to FEVIMTRA on April 15, 2010, page 402 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014); Annex I. Case file. Volume XVIII. Report of FEVIMTRA addressed to the Attorney General's Office of the Republic, January 10, 2011, page 291 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014); Annex XX. Brief of the State sent as part of the MP 10-10 proceedings with the I/A Court H.R. on April 1, 2011.

investigation, the summons by phone, and the fact that they were called to appear in a private home.¹²⁷ The Prosecution Service argued that it was important to secure the largest amount of elements for the investigation and that they were summoned to a house that was safeguarded by the institution.¹²⁸ In turn the Prosecution Service considered that the open opposition of the legal representatives of María de Jesús Alvarado Espinoza, Patricia Reyes Rueda, Jaime Alvarado Herrera, and José Ángel Alvarado Favela for them to approach the Special Prosecution Service has been an obstacle in securing the best results in the investigation.¹²⁹

123. In addition, according to a report forwarded by the State on May 21, 2010, on the basis of the case file for the above-mentioned preliminary inquiry, information was requested on the incidents of the disappearance of the alleged victims from the Human Rights Promotion and Defense Unit of SEGOB¹³⁰, PGJE¹³¹, State Delegate of the Attorney General's Office of the Republic in the State of Chihuahua,¹³² the PGJM¹³³, Governor of the State of Chihuahua¹³⁴, President of the Municipality,¹³⁵ the Secretary of Federal Public Security of the State,¹³⁶ and the State,¹³⁷ as well as other bodies. Likewise, an intervention was carried out so that the Ministerial Federal Police Force would investigate the incidents and the preliminary investigation that had been conducted by PGJE was received from it.¹³⁸

¹²⁷ In a communication of March 11, 2011, the legal representative of the alleged victims indicated that the next of kin of Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera, and Rocío Irene Alvarado Reyes had provided all the information they had and that attending to the meeting referred to placed them in a situation of risk; he also indicated to the Prosecutor of FEVIMTRA that, at the meeting of March 4, she blamed the family for the absence of an investigation. Annex I. Case file. Volume XVIII. Response from the legal representative of the Paso del Norte Human Rights Center to the summons sent by FEVIMTRA, March 11, 2011, page 561 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014); Annex XX. Brief of the State sent as part of the MP 10-10 proceedings with the I/A Court H.R. on April 1, 2011.

¹²⁸ Annex I. Case file. Volume XVIII. Report of FEVIMTRA addressed to the Attorney General's Office of the Republic, January 10, 2011, page 291 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014); Annex XX. Brief of the State sent as part of the MP 10-10 proceedings with the I/A Court H.R. on April 1, 2011.

¹²⁹ Annex I. Case file. Volume XXI. Statement declining jurisdiction for the preliminary inquiry AP/PGR/FEVIMTRA/TRA/009/2010, September 30, 2011, page 158 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014); Annex XX. Brief of the State sent as part of the MP 10-10 proceedings with the I/A Court H.R. on April 1, 2011.

¹³⁰ Annex I. Case file. Volume XVII. Request for information addressed to the Secretariat of the Governor's Office, March 8, 2010, page 12 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹³¹ Annex I. Case file. Volume XVII. Request for information addressed to the District Attorney's Office for Justice of the State of Chihuahua, March 8, 2010, page 13 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹³² Annex I. Case file. Volume XVII. Request for information addressed to the State Delegation of the Attorney General's Office of the Republic in the State of Chihuahua, March 8, 2010, page 16 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹³³ Annex I. Case file. Volume XVII. Request for information addressed to the Attorney General for Military Justice, March 10, 2010, page 33 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹³⁴ Annex I. Case file. Volume XVII. Request for information addressed to the Governor of the State of Chihuahua, March 11, 2010, page 40 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹³⁵ Annex I. Case file. Volume XVII. Request for information addressed to the Municipal President of Buenaventura, Chihuahua, March 11, 2010, page 43 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹³⁶ Annex I. Case file. Volume XVII. Request for information addressed to the representative of the Public Security Secretariat, March 11, 2010, page 46 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹³⁷ Annex I. Case file. Volume XVII. Request for information addressed to the representative of the Public Security Secretariat of the State of Chihuahua, March 11, 2010, page 49 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹³⁸ Annex XX. Brief of the State sent as part of the MP 10-10 proceedings with the I/A Court H.R. on May 21, 2010.

124. Likewise, the representative of SEDENA was requested to inform if any operation had been carried out on December 29, 2009 in the Municipality of Buenaventura, in Chihuahua or in any nearby ejido and, if for that reason, it had detained Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera and his answer was no.¹³⁹

125. In the framework of the preliminary inquiry, the phone call received by Mrs. Juana Bustamante on February 3, 2010, allegedly from Nitza Paola Alvarado Espinoza, was also investigated and the companies to which the numbers 016363980101 and 5542773909 belong, as well as the digital location of the geographical positioning or physical location of the phone in real time, were identified.¹⁴⁰ In its report of December 7, 2011, the State concluded that "it involved a phone call linked to actions of extortion."¹⁴¹ Regarding this, as indicated in the case file, the phone call had been made from an address close to the Santa Martha Acatitla Federal Penitentiary Center.¹⁴² In addition, the number from which the call was received had been used in a previous extortion attempt and was involved in another preliminary inquiry.¹⁴³

126. On April 27, 2010, information was requested from the PGJE about another possible investigation in which Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera appeared as persons imputed, victims, offended; as well as what was told by the staff who had been working in their agencies on December 29 and 30, 2010 and who were the ones that received the complaints filed by the next of kin of Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera¹⁴⁴.

127. According to the report forwarded by the State on July 26, 2010, the place where Nitza Paola Alvarado Espinoza and José Ángel Alvarado Herrera were allegedly deprived of their liberty and Rocío Irene Alvarado Reyes 's home were inspected, as well as various statements taken from next of kin and state agents involved in the investigations.¹⁴⁵

128. Information was also requested from the Chair of the Banking and Securities Commission on August 3, 2010 about whether or not the alleged victims might have had bank accounts in the national banking system.¹⁴⁶ On February 11, 2011, information was received from the National Banking and Securities

¹³⁹ Annex I. Case file. Volume XVII. Request for information addressed to the representative of SEDENA, March 10, 2010, page 30 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014); Annex XX. Brief of the State sent as part of the MP 10-10 proceedings with the I/A Court H.R. on May 21, 2010.

¹⁴⁰ Annex XX. Brief of the State sent as part of the MP 10-10 proceedings with the I/A Court H.R. on December 7, 2011; in the case file it turns out that the ministerial federal police officers reached said conclusion because of the geographical location of the person who made the phone call. Annex I. Case file. Volume XVII. Report of the ministerial federal police officers, June 28, 2010, page 878 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹⁴¹ Annex XX. Brief of the State sent as part of the MP 10-10 proceedings with the I/A Court H.R. on December 7, 2011.

¹⁴² Annex I. Case file. Volume XVIII. Report by FEVIMTRA addressed to the Attorney General's Office of the Republic, January 10, 2011, page 302 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹⁴³ Annex I. Case file. Volume XVIII. Report by FEVIMTRA addressed to the Attorney General's Office of the Republic, January 10, 2011, page 306 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹⁴⁴ Annex XX. Brief of the State sent as part of the MP 10-10 proceedings with the I/A Court H.R. on May 21, 2010; Annex I. Case file. Volume XVII. Request for information addressed to the Attorney General's Office of the State of Chihuahua, April 27, 2010, page 452 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹⁴⁵ Annex XX. Brief of the State sent as part of the MP 10-10 proceedings with the I/A Court H.R. on July 26, 2010. Among these witness statements, the statement made by the Official of the Public Ministry of Regular Jurisdiction, Aarón Duarte, is noteworthy; he stated that on the day he took the complaint about the disappearance of Nitza Paola Alvarado Espinoza and two other persons, the next of kin mentioned that the subjects or persons were dressed as military, as a result of which he them that, if the soldiers were the ones who had taken them, they could go look for them or ask for information in the 35th Battalion in Nuevo Casas Grandes but that he didn't assured that they were being held there. Annex I. Case file. Volume XVIII. Statement of testimony made by Aarón Enríquez Duarte to FEVIMTRA on October 25, 2010, page 154 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹⁴⁶ Annex I. Case file. Volume XVIII. Official letter addressed to the Chair of the National Banks and Securities Commission, August 3, 2010, page 9 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

Commission of the Ministry of Finance and Public Credit about the records and transactions that the institutions had available and which could be used to locate the alleged victims.¹⁴⁷

129. As part of the investigation, information was requested from the head of the Emergency and Immediate Response Center of the State of Chihuahua, so that he could hand over a full copy of the recordings of the video cameras located in the municipalities of Buenaventura and Nuevo Casas Grandes, both in the State of Chihuahua, on December 29 and 30, 2009.¹⁴⁸

130. Furthermore, on November 4, 2010, as part of the investigation's development, the Public Security Secretary of the State of Chihuahua was requested to order the appearance of a member of the Public Security and Road Network Delegation at the Ejido Benito Juárez, Chihuahua, so that he could make a statement on the incidents being investigated, and the Attorney General for Military Justice was also requested to file various proceedings, on a collaborative basis, with respect to the facilities of the 35th Infantry Battalion.¹⁴⁹

131. On April 1, 2011, the PGR reported that the preliminary inquiry was being consolidated and that the preliminary inquiry included a police investigation report providing information about the criminal organizations operating in the State of Chihuahua, as well as the fact that they disguise themselves as if they were members attached to a government administration institution.¹⁵⁰

132. Furthermore, on August 9, 2011, in an action jointly taken by the General Prosecution Service of Chihuahua, the next of kin of the alleged victims, and FEVIMTRA, steps were taken in a mining area of the Municipality of Buenaventura, known as the "mineshaft,"¹⁵¹ from which human remains were recovered and transferred to experts for their analysis, on the basis of which it was concluded that it involved four men,¹⁵² and that none of the samples pertained to Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera, or Rocío Irene Alvarado Reyes.¹⁵³

133. Despite the above, when this preliminary inquiry was closed, it was indicated that it still could not be asserted whether or not the bodies found in the "mineshaft" of the Municipality of Buenaventura in Chihuahua pertained to any of the victims of these incidents, because the expert opinion stemming from the DNA compared to the biological samples taken from the next of kin of the victims is still pending.¹⁵⁴ The State has not provided any explanation for this contradiction regarding the remains found in the "mineshaft."

¹⁴⁷ Annex XX. Brief of the State sent as part of the MP 10-10 proceedings with the I/A Court H.R. on April 1, 2011.

¹⁴⁸ Annex XX. Brief of the State sent as part of the MP 10-10 proceedings with the I/A Court H.R. on October 5, 2010.

¹⁴⁹ Annex XX. Brief of the State sent as part of the MP 10-10 proceedings with the I/A Court H.R. on November 4, 2010; Annex I. Case file. Volume XVII. Request filed with Attorney General for Military Justice, July 27, 2010, page 943 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹⁵⁰ Annex XX. Brief of the State sent as part of the MP 10-10 proceedings with the I/A Court H.R. on April 1, 2011.

¹⁵¹ Annex I. Case file. Volume XIX. Minutes of the Ministerial Inspection, August 9, 2011, page 450 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹⁵² Annex I. Case file. Volume XX. Expert opinion on forensic dentistry from the Department of Forensic Dentistry of the PGR, August 26, 2011, page 269 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹⁵³ Annex XX. Brief of the State sent as part of the MP 10-10 proceedings with the I/A Court H.R. on December 7, 2011; Annex I. Case file. Volume XX. Expert opinion on forensic fingerprint data from the Executive Department of Laboratories of the PGR, August 22, 2011, page 224 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014); Annex I. Case file. Volume XX. Expert opinion on field criminalistics from the Department of Field Criminalistics, September 15, 2011, page 443 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014); Annex I. Case file. Volume XX. Expert opinion on forensic anthropology from the General Directorate for Expert Services and Forensic Science, page 302 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹⁵⁴ Annex I. Case file. Volume XXI. Termination of preliminary inquiry AP/PGR/FEVIMTRA/TRA/009/2010, page 159 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

134. The Prosecution Service sent an official letter to various state bodies requesting information about the post-mortem examination records bearing the name of the alleged victims, but all responses were negative.¹⁵⁵ In addition, it requested various bodies to report whether or not there was any record of the removal of dead bodies and/or bodies buried in mass graves which would match the characteristics of the alleged victims, which request did not yield any results either.¹⁵⁶

135. On July 13, 2011, the PGR published in the Official Gazette an agreement whereby a reward would be given to anyone who provided information for the location of José Ángel Alvarado Herrera, Nitza Paola Alvarado Espinoza, and Rocío Irene Alvarado Reyes, as well as for the identification, location, detention, and arrest of those probably responsible for the crime of illegal deprivation of liberty.¹⁵⁷

136. As appearing in the State's report of October 7, 2011, as well as in the case file, there are three lines of investigation in the preliminary inquiry: i) possible involvement of troops of the Mexican Army; ii) participation of organized crime; and iii) tracking down the phone call that Nitza Paola Alvarado Espinoza had supposedly made on February 3, 2011.¹⁵⁸

137. On September 30, 2011, FEVIMTRA declined to take jurisdiction to hear the case and referred it to the Chihuahua Delegation of PGR. It concluded that the facts did not reflect gender-based violence against a woman or girl.¹⁵⁹ In this refusal, FEVIMTRA deemed that there were no clues revealing the participation of organized crime in the incidents and that it did not discard the participation of the Mexican Army, because there are direct indications against them, in addition to the apathy shown by military authorities towards FEVIMTRA to collaborate in the investigation. It specified that this does not implicate that they had probably participated, nor does it lend credibility to the few ministerial actions that they apparently took.¹⁶⁰ This statement declining jurisdiction was authorized by the Official of the Public Ministry of the Federation on that same date.¹⁶¹

¹⁵⁵ Annex I. Case file. Volume XIX. Official letter from the Forensic Medicine Department of the Government of Michoacán, June 29, 2011, page 140-141 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹⁵⁶ See, for example, Annex I. Case file. Volume XIX. Official letter from the person in charge of the Forensic Medicine Service of the PGR in Baja California, June 27, 2011, page 149 of the pdf document (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014); Annex I. Case file. Volume XIX. Official letter from the PGR of the State of Oaxaca, July 2, 2011, page 191 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014); Annex I. Case file. Volume XIX. Official letter from the Attorney General's Office of San Luis Potosí, July 2, 2011, page 215 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹⁵⁷ Annex I. Case file. Volume XX. Resolution A/055/11, July 13, 2011, page 541 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹⁵⁸ Annex I. Case file. Volume XXI. Termination of preliminary inquiry AP/PGR/FEVIMTRA/TRA/009/2010, page 139 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹⁵⁹ Annex I. Case file. Volume XXI. Termination of preliminary inquiry AP/PGR/FEVIMTRA/TRA/009/2010, page 159 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

¹⁶⁰ Annex I. Case file. Volume XXI. Termination of preliminary inquiry AP/PGR/FEVIMTRA/TRA/009/2010, page 159 of the pdf file. (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014). When declining to take jurisdiction, FEVIMTRA also indicated that "the permanent secretiveness of the Mexican Army to collaborate with FEVIMTRA to shed light on these incidents has been a factor that has somehow reduced the horizon of possibilities to follow up on the investigations in that jurisdiction and, because of direct indications against it that witnesses of these incidents have upheld from the very start, reasons for which the present Special Prosecution Service does not exclude involvement of its troops in these incidents although it might only be a likelihood, and in similar terms extended the investigation to elements of the Federal Public Security Secretariat, in line with the complaint filed by the Legal Representative of the National Human Rights Commission, as specified in the minister agreement dated September 15, 2011."

¹⁶¹ Annex I. Case file. Volume XXI. Adoption of termination of preliminary inquiry AP/PGR/FEVIMTRA/TRA/009/2010, page 163 of the pdf file (Annex to the brief of observations on the merits by the petitioners, received on November 3, 2014).

5. Chihuahua Delegation of the Attorney General's Office of the Republic

138. Jurisdiction for AP/PGR/FEVIMTRA/TRA/009/2010 having been declined, preliminary inquiry No. AP/PGR/CHIH/JUA/3634/2011 was opened on November 19, 2011, for the crime of deprivation of liberty.¹⁶²

139. On November 5, 2011, a Public Ministry officer of the PGR filed for joinder of preliminary inquiry AP/PGR/CIHH/JUA/2503/2011-V-A¹⁶³ and preliminary inquiry AP/PGR/CHIH/JUA/3634/2011¹⁶⁴.

140. In the framework of AP/PGR/CHIH/JUA/3634/2011, on March 3, 2012, the Public Ministry officer received the results of the forensic genetics evaluation carried out to compare the genetic date of the next of kin of the three missing persons with those of unidentified bodies in the State of Chihuahua.¹⁶⁵

141. In addition, in processing AP/PGR/CHIH/JUA/3634/2011, the Public Ministry officer visited Ejido Benito Juárez, where he was able to get additional information from the victims' next of kin and from people living in the vicinity of where the events had transpired.¹⁶⁶

142. On October 31, 2012, the Deputy Attorney General's Office for Regional Monitoring, Criminal Proceedings, and Constitutional Appeals requested the joinder of preliminary inquiry AP/PGR/CHIH/JUA/3634/2011 and AP/PGR/CHIH/JUA/467/2012-XI-A,¹⁶⁷ the latter of which had been opened on February 13, 2012, in connection with the crimes of abuse of authority and forced disappearance.¹⁶⁸ That request was approved on the same date.¹⁶⁹

143. As part of preliminary inquiry 467/2012, several witness statements were received from the next of kin of the alleged victims¹⁷⁰ as well as from army personnel,¹⁷¹ along with reports from different entities. Among other things, an Official Letter was received from the Commander of the 5th Military Zone, which stated that there were no records of people detained in military installations since those records were turned over immediately to the corresponding authority.¹⁷² Furthermore, the Chihuahua Delegation of the Attorney General's Office of the Republic met at the site where the events occurred and questioned Patricia

¹⁶² Annex XX. State's brief submitted as part of the admissibility proceedings before the IACHR, April 16, 2013; Annex I. Case file. Volume XXI. Agreement on the opening of preliminary inquiry AP/PGR/CHIH/JUA/3634/2011, November 16, 2011, page 230 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

¹⁶³ Said preliminary inquiry had been opened on August 11, 2011, pursuant to a complaint from María de Jesús Alvarado Espinoza. Annex I. Case file. Volume XXI. Opening of AP/PGR/CIHH/JUA/2503/2011-V-A, August 11, 2011, page 280 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

¹⁶⁴ Annex I. Case file. Volume XXI. Submission of preliminary inquiry AP/PGR/CIHH/JUA/2503/2011-V-A, December 5, 2011, page 241 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

¹⁶⁵ Annex XX. State's brief submitted as part of the admissibility proceedings before the IACHR, April 16, 2013; Annex I. Case file. Volume XXI. Report of the Department of Forensic Genetics of the PGR, February 9, 2012, page 365 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

¹⁶⁶ Annex XX. State's brief submitted as part of the admissibility proceedings before the IACHR, April 16, 2013.

¹⁶⁷ Annex I. Case file. Volume XXI. Joinder request, October 31, 2012, page 445 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

¹⁶⁸ Annex XX. State's brief submitted as part of the admissibility proceedings before the IACHR, January 29, 2013.

¹⁶⁹ Annex I. Case file. Volume XXI. Approval of the joinder request, October 31, 2012, page 447 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

¹⁷⁰ Annex I. Case file. Volume XXI. Witness statements, pages 494-520 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

¹⁷¹ Annex I. Case file. Volume XXI. Witness statements, page 592 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

¹⁷² Annex I. Case file. Volume XXI. Decision on lack of competence due to specialization, June 30, 2013, page 650 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

Reyes Rueda, Obdulia Espinoza Beltrán, and a member of the municipal police force.¹⁷³ Also received were crime-scene field and photographic reports.¹⁷⁴

144. In the context of that inquiry, on June 13, 2013, a statement was made by Elfego José Luján Ruiz, who was in charge of the 35th Infantry Battalion at the time of the events. He denied the participation of the 35th Battalion in the disappearance of the alleged victims and indicated that he knew that three persons had been “taken away” on December 29, 2009, but that no operation had been carried out to look for them since no order had been received to do so.¹⁷⁵ He also said that patrols were conducted only on orders from his commanding officer, Major Felipe de Jesús Espitia Hernández.¹⁷⁶

145. In turn, on June 14, Captain Joel Sotelo Vázquez gave a statement in which he said he was unaware of the facts surrounding the disappearance of the three persons, but that he conducted an investigation in the 35th Infantry Battalion into the homicide of two people who were being questioned in the 235th Battalion, in which Infantry Colonel Elfego José Lujan Ruiz, Alfredo Bravo Alcaraz, and Captain Cludualdo presumably participated.¹⁷⁷

146. On June 30, 2013, the Deputy Attorney General's Office for Regional Monitoring, Criminal Proceedings, and Constitutional Appeals of the PGR decided to decline jurisdiction after receiving information that the Deputy Attorney General's Office for Human Rights, Crime Prevention, and Community Services had opened preliminary inquiry AP/PGR/SDHVSC/M5/66/2013 for the same acts. In this regard, the Deputy Attorney General's Office for Regional Monitoring considered that the Deputy Attorney General's Office for Human Rights had the specialized human resources to investigate the crime.¹⁷⁸ On July 18, 2013, the PGR authorized the decision to decline jurisdiction.¹⁷⁹

6. Attorney General's Office of the Republic (PGR)

147. Preliminary inquiry AP/PGR/SDHAVSC/M5/66/2013, headed up by the Attorney General Office of the Republic, was opened on April 4, 2013. According to the State, that preliminary inquiry took into account all of the proceedings and ministerial actions carried out since the date on which the first complaint was lodged.¹⁸⁰

148. In the course of the preliminary inquiry, the PGJM was asked, on April 24 and 29, 2013, for information on the data needed to locate Infantry Colonel Infantry Colonel Elfego José Lujan Ruiz, Infantry Lieutenant Colonel Alfredo Bravo Alcaraz, Infantry First Captain Joel Sotelo Vázquez, and General James Pedro Lohman Ituburu.¹⁸¹

¹⁷³ Annex I. Case file. Volume XXI. Decision on lack of competence due to specialization, June 30, 2013, page 530 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

¹⁷⁴ Annex I. Case file. Volume XXI. Decision on lack of competence due to specialization, June 30, 2013, page 650 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

¹⁷⁵ Annex I. Case file. Volume XXI. Statement given by Elfego José Lujan Ruiz to the officer of the Federal Public Ministry on June 13, 2013, page 606 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

¹⁷⁶ Annex I. Case file. Volume XXI. Decision on lack of competence due to specialization, June 30, 2013, page 650 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

¹⁷⁷ Annex I. Case file. Volume XXI. Witness statement given by Joel Sotelo Vázquez to the Federal Public Ministry on June 14, 2013, page 617 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

¹⁷⁸ Annex I. Case file. Volume XXI. Agreement on lack of competence due to specialization, June 30, 2013, page 661 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

¹⁷⁹ Annex I. Case file. Volume XXI. Official Letter authorizing the decision to decline jurisdiction, July 18, 2013, page 664 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

¹⁸⁰ Annex XX. State's brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., June 21, 2013.

¹⁸¹ Annex XX. State's brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., September 26, 2013.

149. On June 13 and 14, 2013, testimony was taken from Infantry Colonel Elfego José Lujan Ruiz, Infantry Lieutenant Colonel Alfredo Bravo Alcaraz, and Infantry First Captain Joel Sotelo Vásquez in the Military Prison of Camp Number 1, in Mexico City.¹⁸²

150. On June 18, 2013, testimony was taken from General James Pedro Lohman Ituburu, in the Permanent Ordinary War Council to Military Region III, Mazatlán, Sinaloa.¹⁸³

151. On October 30, 2013, information was requested on the criminal proceedings instituted against Colonel José Elfego Lujan Ruiz and Lieutenant Colonel Alfredo Bravo Alcaraz,¹⁸⁴ information that was received on November 7, 2013.¹⁸⁵ Likewise, on December 20, 2013, information was received on the accused as part of criminal proceedings 34/2013 and 35/2013.¹⁸⁶

152. On November 8, 2013, it was proposed that a thorough search for bodies be conducted in the zone known as “Las Cuevas” in San Buenaventura, an area near the place where the alleged victims disappeared.¹⁸⁷

153. On November 15, 2013, the PGR sent information on the genetic profiles involved in the case to the General Directorate for Forensic Expert Services and Sciences of the State of Chihuahua.¹⁸⁸

154. On November 21, 2013 the General Directorate for Forensic Expert Services and Sciences of the State of Chihuahua issued instructions for the genetic profiles to be entered and compared with others in the State of Chihuahua’s database but the comparison yielded negative results.¹⁸⁹

155. On March 31, 2014, a request for an arrest warrant request against Colonel Elfego José Lujan Ruiz for the forced disappearance of persons, to the detriment of Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera, and Rocío Irene Alvarado Reyes,¹⁹⁰ was submitted to a federal trial court judge.

156. On the same date, the Seventh District Judge of the District of Ciudad Juárez denied the arrest warrant requested by the Federal Public Ministry as he considered that it did not set out a third of the elements of the crime of forced disappearance stipulated in Article 215-A.¹⁹¹ The Federal Public Ministry filed

¹⁸² Annex XX. State’s brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., September 26, 2013.

¹⁸³ Annex XX. State’s brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., September 26, 2013.

¹⁸⁴ Annex I. Case file. Volume XXII. Official Letter from the PGR to the Attorney General for Military Justice, October 30, 2013, page 24 of the pdf. (Annex to the petitioners’ observations on the merits received on November 3, 2014).

¹⁸⁵ Annex I. Case file. Volume XXII. Official Letter from the Military General Prosecutor’s Office to the officer of the Federal Public Ministry, November 7, 2013, page 121 of the pdf. (Annex to the petitioners’ observations on the merits received on November 3, 2014).

¹⁸⁶ Annex I. Case file. Volume XXII. Official Letter from the Federal Public Ministry attached to the Specialized Unit for the Search of Missing Persons, November 8, 2013, page 47 of the pdf. (Annex to the petitioners’ observations on the merits received on November 3, 2014).

¹⁸⁷ Annex I. Case file. Volume XXII. Official Letter from the Deputy Attorney General’s Office for Regional Monitoring, Criminal Proceedings, and Constitutional Appeals to the Public Ministry officer attached to the Specialized Unit for the Search of Missing Persons, December 20, 2013, page 322 of the pdf. (Annex to the petitioners’ observations on the merits received on November 3, 2014).

¹⁸⁸ Annex XX. State’s brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., January 28, 2014.

¹⁸⁹ Annex XX. State’s brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., January 28, 2014.

¹⁹⁰ Annex I. Case file. Volume XXII. Official Letter from the Attorney General’s Office for Military Justice to the Federal Public Ministry officer, November 7, 2013, page 475 of the pdf. (Annex to the petitioners’ observations on the merits received on November 3, 2014); Annex I. Case file. Volume XXIII. Record of the preliminary inquiry with no one in custody, submitted to the district judge, March 31, 2014, page 4 of the pdf. (Annex to the petitioners’ observations on the merits received on November 3, 2014); Annex XX. Narrative in response to the State’s observations on the merits received on August 26, 2014.

¹⁹¹ Annex I. Case file. Volume XXIII. Ruling on the arrest warrant by the Seventh District Judge of Ciudad Juárez, March 31, 2014, page 21 of the pdf. (Annex to the petitioners’ observations on the merits received on November 3, 2014).

an appeal, drawing attention to the fact that the judge who denied the arrest warrant had examined a file of more than 11,000 pages, made up of 22 volumes and 10 annexes, in less than 24 hours.¹⁹² On April 24, 2014, the PGR filed complaints against the decision to deny the arrest warrant, on grounds that the judge failed to take into account the wealth of evidence that strongly suggested that members of the military had detained Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera, and Rocío Irene Alvarado Reyes.¹⁹³ That challenge stated that:

That being the case, there is no question that the material he disallowed points to the likely involvement of Colonel Elfego José Lujan Ruiz in the commission of the crime of forced disappearance of the victims, since the accused, under command responsibility, used the 35th Battalion to commit crimes, that is, by exercising control over his power organization (the battalion), and we are referring to an organization that was acting independently of, contrary to, or separately from the law, which caused personnel attached to it to commit the crime of forced disappearance to the detriment of the victims Nitza Paola Alvarado Espinoza [*sic*], Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera, as reported by those who witnessed the events and by the victims' relatives who were present when the acts occurred.¹⁹⁴

157. On June 27, 2014, the responsible official upheld the denial of the arrest warrant against Elfego José Luján Ruiz.¹⁹⁵ As a result, on September 11, 2014, counsel for the victims, Luz Estela Castro Rodríguez, filed for amparo in the federal courts against the Judge of the Fourth Unitary Court of the Seventeenth Circuit for upholding the denial of the arrest warrant against Elfego José Luján Ruiz for the crime of forced disappearance.¹⁹⁶

158. On December 31, 2014, that amparo petition was denied by the Third Unitary Court of the Seventeenth Circuit because it deemed groundless, among other things, the petitioner's arguments that the respondent official failed to meet existing international parameters on forced disappearance or improperly assessed the evidence.¹⁹⁷

159. At the same time as the foregoing, steps were being taken in connection with preliminary inquiry AP/PGR/SDHPDSC/UEBPD/M5/50/2014 as a result of the culling of documents that took place on April 8, 2014,¹⁹⁸ for the purpose of continuing the search for other responsible parties.¹⁹⁹

160. On May 14 and 15, 2014, as part of preliminary inquiry AP/PGR/SDHPDSC/UEBPD/M5/50/2014, the PGR conducted a Public Ministry inspection of the place

¹⁹² Annex I. Case file. Volume XXIV, part 2. Official Letter from the PGR to the CNDH, October 20, 2014, page 310 of the pdf. (Annex to the petitioners' observations on the merits received on June 9, 2015).

¹⁹³ Annex XX. State's observations on the merits received on August 26, 2014.

¹⁹⁴ Annex I. Case file. Volume XXIII. Formulation of damages by the PGS to the Fourth Unitary Tribunal of the Seventeenth Circuit, April 24, 2014, page 164 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

¹⁹⁵ Annex I. Case file. Volume XXV, part I. Amparo ruling of December 31, 2014, page 20 of the pdf. (Annex to the petitioners' observations on the merits received on June 9, 2015).

¹⁹⁶ Annex I. Case file. Volume XXV, part I. Amparo ruling of December 31, 2014, page 20 of the pdf. (Annex to the petitioners' observations on the merits received on June 9, 2015).

¹⁹⁷ Annex I. Case file. Volume XXV, part I. Amparo ruling of December 31, 2014, page 148 of the pdf. (Annex to the petitioners' observations on the merits received on June 9, 2015).

¹⁹⁸ Annex I. Case file. Volume XXIII. Communication on the opening of preliminary inquiry AP/PGR/SDHPDSC/UEBPD/M5/2014, April 8, 2014, page 44 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

¹⁹⁹ Annex I. State's observations on the merits received on November 3, 2014.

identified as “Tiro de Mina” in Ejido Benito Juárez, Buenaventura, Chihuahua, where skeletal remains²⁰⁰ were recovered and then sent for appropriate analysis.²⁰¹

161. As part of the process, on March 2, 2014, inspections were conducted of the vehicle that Colonel Elfego Lujan Ruiz returned when he gave up command of the 35th Battalion and whose characteristics were similar to those of one of the vans used to detain the alleged victims.²⁰² Then, on March 3, 2014, inspections were conducted of two places around Ejido Benito Juárez whose general coordinates an individual had provided to the victims’ attorneys.²⁰³

162. On March 4, 2015, PGR personnel went to the 35th Infantry Battalion installations to gain access to them and to view the Battalion’s photo archives and documentary records; however, they were denied access to the records requested,²⁰⁴ despite a written request from the PGR.²⁰⁵

163. On March 25, 2015, the physical space where the officer of the Public Ministry of the Attorney General’s Office for Military Justice exhumed the bodies of three federal policemen tortured and killed in October 2009 was found, which are the basis of one of the proceedings that Colonel Elfego Lujan Ruiz is facing.²⁰⁶

164. On March 26, 2015, PGR personnel went to the 35th Infantry Battalion once again to gain access to documentary, photographic, and digital materials, but they were only allowed to see the records of two people arrested in January 2010 for crimes against health and for violations of the Federal Arms and Explosives Law.²⁰⁷

165. The case file also indicates that measures were taken to identify “Commander Meza,” an individual who, according to the complaints, had asked by phone and in person to meet with Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera, and Rocío Irene Alvarado Reyes, who according to the Commander were allegedly connected to the disappearance and deaths of three Federal Police officers.²⁰⁸

²⁰⁰ Annex I. Case file. Volume XXIII. Public Ministry inspection report, May 14, 2014, page 199 of the pdf. (Annex to the petitioners’ observations on the merits received on June 9, 2015).

²⁰¹ Annex I. Case file. Volume XXIII. Submission of findings for the forensic anthropology report, the forensic genetics report, and the forensic ballistics report, May 19, 2014, page 209 of the pdf. (Annex to the petitioners’ observations on the merits received on November 3, 2014).

²⁰² Annex I. Case file. Volume XXVI, Official Letter to the Director General for Crime Prevention and Community Services in charge of the Deputy Attorney General’s Office for Human Rights, Crime Prevention, and Community Services, page 214 of the pdf. (Annex to the petitioners’ observations on the merits received on June 9, 2015).

²⁰³ Annex I. Case file. Volume XXVI, Official Letter to the Director General for Crime Prevention, and Community Services in charge of the Deputy Attorney General’s Office for Human Rights, Crime Prevention, and Community Services, page 215 of the pdf. (Annex to the petitioners’ observations on the merits received on June 9, 2015).

²⁰⁴ Annex I. Case file. Volume XXV, part 2, Public Ministry inspection, March 4, 2015, page 99 of the pdf. (Annex to the petitioners’ observations on the merits received on June 9, 2015).

²⁰⁵ Annex I. Case file. Volume XXV, part 2. Official request from the PGR for a Public Ministry inspection, addressed to the Commander of the 35th Infantry Battalion of SEDENA, page 116 of the pdf. (Annex to the petitioners’ observations on the merits received on June 9, 2015).

²⁰⁶ Annex I. Case file. Volume XXVI, Expert opinion from the Office of State Coordination of Expert Services, March 26, 2015, page 256 of the pdf. (Annex to the petitioners’ observations on the merits received on June 9, 2015).

²⁰⁷ Annex I. Case file. Volume XXVI, Official Letter addressed to the Director General for Crime Prevention, and Community Services in charge of the Office of the Deputy Attorney General’s Office for Human Rights, Crime Prevention, and Community Services, page 216 of the pdf. (Annex to the petitioners’ observations on the merits received on June 9, 2015).

²⁰⁸ Annex I. Case file. Volume XXVI, Official Letter to the Director General for Crime Prevention and Community Services in charge of the Office of the Deputy Attorney General’s Office for Human Rights, Crime Prevention, and Community Services, page 218 of the pdf. (Annex to the petitioners’ observations on the merits received on November 3, 2014).

166. According to the case file, in the framework of implementation of the provisional measures granted by the Inter-American Court in March 2015, the General Prosecution Service of the State of Chihuahua requested technical assistance from the expert Pedro E. Díaz Romero to propose strategies for investigating the facts of the case, for which an international team of experts was set up.²⁰⁹

167. On March 31, 2015, the team of experts, made up of Pedro Díaz, Lucía Luna, Carlos Rodríguez, and Guillermo Bedoya, submitted its final report,²¹⁰ in which it concluded that the evidence collected by the PGR established that members of the 35th Infantry Battalion had taken part in the disappearance of the alleged victims and that said evidence supported a request to the judiciary to arrest Colonel Elfego José Lujan Ruiz. As described before, this request was denied by the federal judge and the court of second instance.²¹¹ That report also concludes that it may be inferred from the evidence that staff from the District Attorney's Office of the State of Chihuahua in the municipality of Buenaventura, Federal Police of the PGR, and some senior army officers were later instrumental in ensuring the removal and concealment of the victims and in continuing to refuse to provide information to their next of kin and legal counsel on their whereabouts.²¹²

168. The report made a series of recommendations of the steps required to strengthen lines of investigation to prosecute the perpetrators as well as to improve strategies for searching for the victims. Among other matters, the report raised the necessity of exploring ties between the murders of three federal police officers and the facts of the case and of strengthening, in keeping with the decision of the court that denied the request for an arrest warrant against Elfego Lujan, evidence of the participation of army personnel in this operation.²¹³

169. As reflected in the case file, four lines of investigation are being pursued: (a) participation of personnel from the Secretariat of National Defense; (b) participation of organized crime groups operating in the area where the incidents occurred; (c) participation of Federal Police officers; and (d) evidence leading to the whereabouts of the Alvarados.²¹⁴

170. In the course of preliminary inquiry AP/PGR/SDHPDSC/UEBPD/M5/50/2014, 126 witness statements and 196 pieces of documentary evidence have been collected, 10 inspections conducted, and 27 expert reports produced.²¹⁵

7. National Human Rights Commission (CNDH) - Recommendation 43/11

171. On January 4, 2010, Jaime Alvarado Herrera, Alvarado's brother, lodged a complaint with the National Human Rights Commission headquartered in Ciudad Juárez, Chihuahua, against SEDENA, requesting an investigation of the incidents that took place on December 29, 2009, to the detriment of Nitza

²⁰⁹ Annex I. Case file. Volume XXV, part 3. Request for collaboration from the PGR to the PGR of Chihuahua, March 19, 2015, page 112 of the pdf. (Annex to the petitioners' observations on the merits received on June 9, 2015).

²¹⁰ Annex XX. Final report of the International Team of Experts (EIP), March 31, 2015, page 9. (Annex to the petitioners' observations on the merits received on June 9, 2015).

²¹¹ Annex XX. Final report of the International Team of Experts (EIP), March 31, 2015, page 9. (Annex to the petitioners' observations on the merits received on June 9, 2015).

²¹² Annex XX. Final report of the International Team of Experts (EIP), March 31, 2015, page 9. (Annex to the petitioners' observations on the merits received on June 9, 2015).

²¹³ Annex XX. Final report of the International Team of Experts (EIP), March 31, 2015, page 64. (Annex to the petitioners' observations on the merits received on June 9, 2015).

²¹⁴ Annex I. Case file. Volume XXIV, part 2, Figures concerning the measures taken in response to the disappearance of Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera, and Rocío Irene Alvarado Reyes, October 16, 2014, page 267 of the pdf. (Annex to the petitioners' observations on the merits received on June 9, 2015).

²¹⁵ Annex I. Case file. Volume XXIV, part 2, Figures concerning the measures taken in response to the disappearance of Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera, and Rocío Irene Alvarado Reyes, October 16, 2014, page 340 of the pdf. (Annex to the petitioners' observations on the merits received on June 9, 2015).

Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera.²¹⁶ On the date, complaint file CNDH/2/2010/108/Q was opened, with the deputy investigators going into the field to collect witness statements and documents²¹⁷ and to request information from various State bodies which provided their respective replies.²¹⁸

172. Based on the foregoing, on June 30, 2011, the CNDH issued recommendation 43/11, addressed to the Secretary of National Defense, the Federal Secretary of Public Security, and the Governor of the State of Chihuahua²¹⁹. In said recommendation, the CNDH determined that:

The logical and legal analysis of the body of evidence collected by this National Commission points to violations of the human right to legality and legal security, to liberty, to humane treatment and personal safety, to access to justice, and to due process, by acts consisting of arbitrary detention and forced disappearance to the detriment of V1, V2, and V3, attributable to public servants of the Secretariat of National Defense and the Federal Police.²²⁰

173. The CNDH took into account the situation of militarization in Buenaventura, Chihuahua, with the deployment of about 3,000 public security troops who were investigating the deaths of José Alfredo Silly Peña, a Federal Police Commander, and the three Federal Police officers who accompanied him; and recognized that that situation helped determine who might have been involved in the disappearance of Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera, and the possible reasons for their detention.²²¹

174. The CNDH also assessed the testimony of relatives who, as eye witnesses, declared that Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera, and Rocío Irene Alvarado Reyes were detained by military personnel, and it considered that all the eye witness accounts were consistent in their descriptions of the time, manner, and place of the disappearance and were clear and precise, without any contradictions.²²²

175. The CNDH also points out that some of the State agents who made statements, such as Juan Manuel Rojas Díaz, of the Command Post of the Joint Chihuahua Operation, and Vázquez Orozco, Commander of the 35th Infantry Battalion in Nuevo Casas Grandes,²²³ “did not present evidence to prove the activities

²¹⁶ Annex XX. National Human Rights Commission headquartered in Ciudad Juárez, Chihuahua. Complaint. Annex No. 4 to the petitioners’ brief received on June 26, 2011; Annex I. Case file. Volume I. Complaint lodged by Jaime Alvarado Herrera with the CNDH on January 4, 2010, page 26 of the pdf. (Annex to the petitioners’ observations on the merits received on November 3, 2014).

²¹⁷ Annex XX. Petitioners’ brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., September 7, 2011. Annex No. 3, CNDH - Recommendation 43/11; Annex I. Case file. Volume XII. Complaint lodged by the CNDH to the Attorney General for Military Justice on September 9, 2011, page 22 of the pdf. (Annex to the petitioners’ observations on the merits received on November 3, 2014).

²¹⁸ Annex XX. Petitioners’ brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., September 7, 2011. Annex No. 3, CNDH - Recommendation 43/11. In this file, information was sought from SEDENA, the Federal Secretariat for Public Security, the PGR, the PGJE, the heads of the prosecuting agencies of the 31 states of the Republic of Mexico and the Federal District, the head of the Decentralized Administrative Organ for Prevention and Social Rehabilitation of the Subsecretariat for the Federal Prison System, and the head of the entities responsible for organizing, coordinating, and supervising the prison system of the 31 states of the Republic of Mexico and the Federal District,

²¹⁹ Annex I. Case file. Volume I, Recommendation 43/11 issued by the CNDH, page 46 of the pdf. (Annex to the petitioners’ observations on the merits received on November 3, 2014).

²²⁰ Annex I. Case file. Volume I, Recommendation 43/11 issued by the CNDH, page 46 of the pdf. (Annex to the petitioners’ observations on the merits received on November 3, 2014). The keys to this recommendation are located in Annex I. Case file. Volume I, Recommendation 43/11 issued by the CNDH, page 137 of the pdf. (Annex to the petitioners’ observations on the merits received on November 3, 2014).

²²¹ Annex I. Case file. Volume I, Recommendation 43/11 issued by the CNDH, page 61 of the pdf. (Annex to the petitioners’ observations on the merits received on November 3, 2014).

²²² Annex I. Case file. Volume I, Recommendation 43/11 issued by the CNDH, page 66 of the pdf. (Annex to the petitioners’ observations on the merits received on November 3, 2014).

²²³ Annex I. Case file. Volume I, Recommendation 43/11 issued by the CNDH, page 46 of the pdf. (Annex to the petitioners’ observations on the merits received on November 3, 2014).

carried out by the respective personnel that day at that time, for example, informative documents or the logbook from which it was possible to understand that they did not participated in the present events and, therefore, locate them in different circumstances as the ones described by the witnesses".²²⁴

176. Similarly, the CNDH took into account the statements of public officials indicating that they knew that Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera, and Rocío Irene Alvarado Reyes had been detained by military personnel. In this connection, it examined the statement made by Public Ministry officer Aarón Enríquez Duarte to Jaime Alvarado Herrera to the effect that, according to the latter, the former had told him that the alleged victims were being held in the Infantry Battalion. It also took into consideration the contact that Public Ministry Officer Iván Sotomayor Siller had had with Public Ministry Officer Argene Blázquez Morales in which the former was told that "Commander Meza" would go to the Public Ministry agency to meet with the victims, who would be made available to the soldiers, and considered that this meant that "Commander Meza" realized that the victims were being held by the army.²²⁵

177. As far as ongoing investigations in various State entities are concerned, the CNDH indicated in its Recommendation 43/11 that, while investigations were moving forward at local, federal, and military levels, those investigations had not made it possible to clarify the present facts or, as appropriate, to determine the whereabouts of the victims or identify those responsible for said unlawful act.²²⁶

178. The content of the recommendation was approved by the Government of the State of Chihuahua.²²⁷ For its part, the Secretariat of Public Security refused to approve it²²⁸ and the Secretariat of National Defense said that it would accept the recommendation, but with the clarification that "actions to implement it, in connection with the investigation into the facts and with compensation for damages, will be subject to the findings of the ministerial and administrative investigations by the competent authorities."²²⁹

8. Amparo

179. On January 6, 2010, José Ángel Alvarado Herrera Alvarado Favela, father of missing person José Ángel Alvarado Herrera, filed an amparo petition with the District Criminal Appeals Court in Ciudad Juárez, Chihuahua, to terminate the unlawful, procedurally groundless detention of Nitza Paola Alvarado Espinoza and José Ángel Alvarado Herrera. The amparo petition was filed against the head of the military garrison of the 35th Infantry Battalion; the commanding officer of the military garrison detached to Ciudad Juárez; the commanding officer of the Joint Chihuahua Operation detached to Ciudad Juárez; the head of the Ciudad Juárez Delegation of the Attorney General's Office of the Republic; the head of the preliminary inquiry department of the PGJE in Chihuahua, Lieutenant or Captain Lujan; and the head of the Public Ministry Office in the common jurisdiction of Buenaventura, Chihuahua.²³⁰

²²⁴ Annex I. Case file. Volume I, Recommendation 43/11 issued by the CNDH, page 66 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

²²⁵ Annex I. Case file. Volume I, Recommendation 43/11 issued by the CNDH, page 68 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

²²⁶ Annex I. Case file. Volume I, Recommendation 43/11 issued by the CNDH, page 46 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

²²⁷ Annex XX. Petitioners' brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., September 7, 2011. Annex 4. Official Letter DE-078-2011 from the Government of the State of Chihuahua accepting Recommendation 43/2011 of the CNDH; Annex I. Case file. Volume I. Official Letter DE-078-2011 from the Government of the State of Chihuahua accepting Recommendation 43/2011 of the CNDH, page 160 of the pdf (Annex to the petitioners' observations on the merits received on November 3, 2014).

²²⁸ Annex XX. Petitioners' brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., September 7, 2011. Annex 5. Official Letter SSP/SPPC/DGDH/6035/2011 from the Secretariat for Public Security rejecting the recommendation of the CNDH; Annex I. Case file. Volume I, Official Letter SSP/SPPC/DGDH/6035/2011 from the Secretariat for Public Security rejecting the recommendation of the CNDH, page 154 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

²²⁹ Annex I. Case file. Volume I, Official Letter R-8356 from the Secretariat of National Defense, page 237 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

²³⁰ Annex XX. Petitioners' brief dated October 10, 2012. Annex 2. Amparo Petition 009/2010 in the Sixth District Court.

180. On the same date, the Sixth District Court admitted the complaint and ordered the provisional suspension of the acts in question and an end to the complainants' being held *incommunicado*,²³¹ along with measures to ensure that those directly affected approve the *amparo* petition.

181. On January 7, 2010, that court issued an order for the respondent to produce the victims or to provide information on their whereabouts, since it was not possible to notify the petitioners as they were not located in the different units. That order required the respondent to produce the correct names of the authorities responsible, with a warning that if that information were not provided those authorities would be deemed to be *inexistent*.²³²

182. On May 17, 2011, it was decided that the petition was inadmissible as it had not been ratified by those directly concerned and it was deemed as not filed.²³³ Finally, on June 6, 2011, that decision became final and the court decided to dismiss the *amparo* petition owing to the absence of documentary relevance.²³⁴

E. About harassment, threats, and impact on the next of kin following the disappearance of Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera

183. According to the case file, the petitioners have reported that on at least two occasions army personnel went to the homes of family members of the three people who disappeared in order to intimidate them, with army vehicles also keeping them under surveillance by patrolling around their homes.²³⁵

184. In the framework of the provisional measures, the attorneys reported, and the State has not contested, that on January 24, 2011, PGR personnel from the Ciudad Juárez office and uniformed, armed federal police officers went to the home of José Ángel Alvarado Favela, José Ángel Alvarado Herrera's father, to try to get him to accompany them, alleging that he had filed for *amparo* to locate his son José Ángel Alvarado Herrera and his niece Nitza Paola Alvarado Espinoza and that he "should therefore go to that office to report on the whereabouts of his family members."²³⁶

185. Consequently, on January 28, 2011, José Ángel Alvarado Herrera's father, accompanied by his attorneys Luz Estela Castro and Gabino Gómez, decided to go to the PGR office. According to information provided by the petitioners, "upon their arrival in the reception area, Guillermina García told them that she

²³¹ Annex XX. Petitioners' brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., May 5, 2011. Annex - Provisional Suspension, Sixth District Court of the State of Chihuahua.

²³² Sixth District Court. Amparo File 009/2010. Single National File. 8367894. Principal Decree of January 7, 2010. <http://sise.cjf.gob.mx/SiseInternet/Reportes/VerCaptura.aspx?TipoAsunto=1&Expediente=009%2f2010&Buscar=Buscar&Circuito=17&CircuitoName=Decimos%ufffdptimo+Circuito&Organismo=334&OrgName=Juzgado+Sexto+de+Distrito+en+el+Estado+de+Chihuahua&TipoOrganismo=2&Accion=1>. Publicly available information.

²³³ Sixth District Court. Amparo File 009/2010. Single National File. 8367894. Principal Decree of January 7, 2010. <http://sise.cjf.gob.mx/SiseInternet/Reportes/VerCaptura.aspx?TipoAsunto=1&Expediente=009%2f2010&Buscar=Buscar&Circuito=17&CircuitoName=Decimos%ufffdptimo+Circuito&Organismo=334&OrgName=Juzgado+Sexto+de+Distrito+en+el+Estado+de+Chihuahua&TipoOrganismo=2&Accion=1>. Publicly available information.

²³⁴ Sixth District Court. Amparo File 009/2010. Single National File. 8367894. Principal Decree of June 3, 2010. <http://sise.cjf.gob.mx/SiseInternet/Reportes/VerCaptura.aspx?TipoAsunto=1&Expediente=009%2f2010&Buscar=Buscar&Circuito=17&CircuitoName=Decimos%ufffdptimo+Circuito&Organismo=334&OrgName=Juzgado+Sexto+de+Distrito+en+el+Estado+de+Chihuahua&TipoOrganismo=2&Accion=1>. Incidental Order of February 23, 2010. Publicly available information.

²³⁵ Annex I. Case file. Volume XVII. Report on the implementation of precautionary measures, March 10, 2010, page 318 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

²³⁶ Annex XX. Petitioners' brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., March 30, 2011.

had orders to take photos of Mr. Alvarado and to collect various additional information from him,"²³⁷ a request that the petitioners considered unusual.²³⁸

186. Also with regard to the provisional measures, the attorneys reported that on January 29, 2011, José Ángel Alvarado Favela, José Ángel Alvarado Herrera's father, had received a call on his cell phone and a voice, which he identified as male, told him: "We have your son and he's alive. We're going to kill you like a dog along with your children. You have 12 hours to leave your house and the city. If not, we'll kill all of you because you're talking too much."²³⁹

187. On February 18, 2011, at a meeting to follow up on provisional measures, at which State entities and the people benefitting from the measures were present, the threat to Alvarado Favela was described as was the displacement of the other relatives given the fear that they suffered.²⁴⁰

188. On March 16, 2011, the CNDH requested precautionary measures in favor of the next of kin of the alleged victims from SEDENA's Human Rights Director since the CNDH had learned in February 2011 that the victims' relatives had received death threats, which they attributed to SEDENA staff.²⁴¹ SEDENA granted those precautionary measures on March 19, 2011.²⁴²

189. On May 3, 2011, Mrs. Obdulia Espinoza Beltrán, a beneficiary of the provisional measures and José Ángel Alvarado Herrera's wife, received a summons from the Public Ministry through the Office of the Municipal President. That summons indicated that, if she did not appear for the appointment, public force would be used to coerce her appearance.²⁴³

190. Subsequently, on August 3, 2011, at a follow-up meeting for the provisional measures granted by the Inter-American Court, María de Jesús Alvarado said that after she had taken part in the public hearing before the Inter-American Court on June 28, 2011, she was the target of harassment "in that two federal police officers in civilian attire had gone to Nitza Paola Alvarado Espinoza's home in a gold-colored Focus automobile, attempting to get information about that person from María Alvarado."²⁴⁴

191. At the same meeting, Jaime Alvarado, José Ángel Alvarado Herrera's brother, said that he "decided to rent José Ángel Alvarado Herrera's house; however, the renters were threatened by men with long weapons and, as a result, they left that residence. Later on, when Jaime Alvarado went to José Ángel Alvarado Herrera's home, he was hit by a grey pick-up truck."²⁴⁵

192. On August 28, 2011, at approximately 4:30, some of Jaime Alvarado's neighbors heard noise coming from the house located at 7510 4-d Hacienda de Cornelia Street, Colonia las Almeras, in Ciudad Juárez,

²³⁷ Annex XX. Petitioners' brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., March 30, 2011.

²³⁸ Annex XX. Petitioners' brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., March 30, 2011.

²³⁹ Annex XX. Petitioners' brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., March 30, 2011.

²⁴⁰ Annex XX. State's brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., March 25, 2011.

²⁴¹ Annex I. Case file. Volume XV. Request to the Director of Human Rights of SEDENA for an extension of the precautionary measures, March 16, 2011, page 419 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

²⁴² Annex I. Case file. Volume XV. Official Letter on the request for an extension of the precautionary measures, March 18, 2011, page 421 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

²⁴³ Annex XX. Petitioners' brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., May 5, 2011.

²⁴⁴ Annex XX. State's brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., August 5, 2011. Annex. Working minutes of the meeting of August 3, 2011.

²⁴⁵ Annex XX. State's brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., August 5, 2011. Annex. Working minutes of the meeting of August 3, 2011.

Chihuahua, México.²⁴⁶ In view of the situation described, the neighbors called the police but no one came. They also notified Sandra Luz Rueda Quezada, Jaime Alvarado's wife, of what had happened.²⁴⁷

193. Sandra Rueda, Jaime Alvarado's wife, went to the house and noticed that part of the entrance gate was off its hinges and that the house had been broken into. The house was a mess since there was

clothing thrown on the floor, talcum powder emptied out onto the clothing, a torn unused condom in the living room, broken electrical outlets and light switches, furniture that had been moved out of place, and electrical cords that had been pulled out, and a message that said: "*because we wanted to kill you and couldn't we have you running scared and we'll do you in along with your miserable family. Sincerely, You know who.*"²⁴⁸

194. As a result of these events, on the afternoon of August 28, 2011, Sandra Rueda had a nervous breakdown which made her faint, and she had to be taken to a private clinic for medical treatment.²⁴⁹ Given the acts described above, the CNDH asked the General Prosecution Service of the State of Chihuahua to adopt precautionary measures to ensure the safety of Jaime Alvarado Herrera and his relatives.²⁵⁰ However, the Director General for Human Rights of the Secretariat of Public Security said that it was not possible to meet the request because it "prejudges the existence of acts of harassment by personnel of the Secretariat of Public Security without providing any evidence or indications of such actions."²⁵¹

195. In the framework of the FEVIMTRA proceeding, one of the attorneys for the victims said that they had once been threatened by being told that there were basements under the FEVIMTRA offices.²⁵²

196. The State reported in a communication dated September 20, 2011, that the Chihuahua Delegation of the PGR had opened preliminary inquiry No. AP/PRG/CHIU/JUA/2758/2011 because of the threats described in paragraphs 188 and 189; likewise it reported that the preliminary inquiry was being constituted.²⁵³

197. The Commission has sparse information about the opening of investigations and about their content with regard to the threats and incidents of harassment.

198. In this connection, on January 18, 2014, the State reported that the threats against Jaime Alvarado, on March 5, 2013, were the reason why investigation 2216/3760/2013 was opened in the Specialized Unit for the Investigation of Crimes against Physical Integrity and Damages of the Chihuahua FGE, an investigation that was previously being handled by the PGR.²⁵⁴ According to the State, that file included an investigation plan that attached special relevance to the context in which the events took place.²⁵⁵ However, the State noted that the investigation file in question did not contain "any information that made it possible to

²⁴⁶ Annex XX. Petitioners' brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., August 29, 2011.

²⁴⁷ Annex XX. Petitioners' brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., August 29, 2011.

²⁴⁸ Annex XX. Petitioners' brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., August 29, 2011.

²⁴⁹ Annex XX. Petitioners' brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., August 29, 2011.

²⁵⁰ Annex I. Case file. Volume I. Request to the General Prosecution Service of the State of Chihuahua for precautionary measures, September 5, 2011, page 162 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

²⁵¹ Annex I. Case file. Volume I. Reply from the Secretary for Public Security to Official Letter V2/56239, September 3, 2011, page 157 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

²⁵² Annex I. Case file. Volume XVIII. Official Letter from FEVIMTRA to the PGR, January 10, 2011, page 448 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

²⁵³ Annex XX. State's brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., October 7, 2011. Annex. Official Letter No. SJAI/CAIA/DGCI/4190/2011.

²⁵⁴ Annex XX. State's brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., January 18, 2014, para. 10.

²⁵⁵ Annex XX. State's brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., January 15, 2015, para. 9.

establish a direct link between those facts and the disappearance of Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, and José Ángel Alvarado Herrera.”²⁵⁶

199. The Commission does not have any additional information on investigations into the threats and harassment reported by the family.

200. As for the impact on the family, the petitioners reported that after the threat of January 29, 2011, described above, José Ángel Alvarado Herrera’s family and 21 additional members of the Alvarado family decided to flee that very day out of fear that the death threats against them might be carried out.²⁵⁷ Of these individuals, 12 family members fled to Benito Juárez: José Ángel Alvarado Favela, Concepción Herrera, Obdulia Espinoza Beltrán, J.A.E, J.A.A.E, and A.E.B, Jaime Alvarado Herrera, Sandra Luz Rueda Quezada, and J.O.A.R, R.G.A.R, C.N.A.R, and J.E.A.R. In addition, 10 family members fled to Ciudad Juárez: Rosa Olivia Alvarado Herrera, Felix García García, Karina Paola Alvarado Espinoza, F.A.H, J.G.A, and A.G.A, Manuel Melquíades Alvarado Herrera, Mayra Daniela Salaís Rodríguez, and D.J.A.S and X.A.S.²⁵⁸

201. In a note dated December 24, 2013, the petitioners stated that:

acts of harassment against the beneficiaries [of PM] led 11 members of the Alvarado family to seek political asylum in the United States of America in order to protect their lives and safety. The people in that country, whose asylum requests are being processed, are: Ascención Alvarado Fabela and María de Jesús Espinoza Peinado, Nitza’s father and mother; María de Jesús Alvarado Herrera, Nitza’s sister, as well as her husband Rigoberto Ambriz Marrufo and their four minor children: R.A.A., I.A.A.A., J.E.A.A., and A.Y.A.A; in addition to Nitza Paola Alvarado Espinoza’s three daughters (...).²⁵⁹

202. With regard to these people, the petitioners expressed their concern about the lack of implementation of the provisional measures in their favor, given that, as long as their asylum requests have not been approved, they run the risk of being deported.²⁶⁰

203. In turn, six of Rocío Irene Alvarado Reyes’s family members moved to Benito Juárez.²⁶¹

204. Lastly, in the context of the provisional measures, the State has been reporting on a set of proposals and measures to help some members of the Alvarado family, including humanitarian support and various forms of social assistance in the areas of health, education, productive projects, etc. The Commission takes note of this information and considers that it can be appropriately assessed at the time of evaluating the measures adopted on possible components of compensation in the instant case, once it has been decided if the State bears international responsibility.

²⁵⁶ Annex XX. State’s brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., January 18, 2014, para. 12.

²⁵⁷ Annex XX. Petitioners’ brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., March 30, 2011.

²⁵⁸ Annex XX. Petitioners’ brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., March 30, 2011.

²⁵⁹ Annex XX. Petitioners’ brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., December 24, 2013.

²⁶⁰ Annex XX. Petitioners’ brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., March 5, 2015.

²⁶¹ Her mother, Patricia Reyes Rueda; her daughter, A.M.U.A; her siblings, A.A.R and R.A.A.R; and her grandparents, Manuel Reyes Lira and María de Jesús Rueda Villanueva.

V. ANALYSIS OF LAW

A. Right to juridical personality, to personal liberty, to humane treatment, and to life (Articles 3, 7, 5, and 4 of the American Convention) in connection with the obligation to respect and guarantee the rights (Article 1.1 of the same instrument); and Inter-American Convention on Forced Disappearance of Persons (Article I.a)

205. The articles of the American Convention referred to in the above heading read as follows:

Article 3. Right to Juridical Personality

Every person has the right to recognition as a person before the law.

Article 7. Right to Personal Liberty

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
[...]

Article 5. Right to Humane Treatment

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

Article 4. Right to Life

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

Article 1.1 of the Convention establishes the following:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

206. In turn, Article I.a of the Inter-American Convention on Forced Disappearance of Persons reads as follows:

Article I

The States Parties to this Convention undertake:

- a. Not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees.

207. The constant case law of the inter-American system on cases of forced disappearance of persons has indicated that this an unlawful act that gives rise to a multiple and continuing violation of several rights protected by the American Convention and places the victim in a state of complete defenselessness, giving rise to other related crimes. It is in sum, a crime against humanity that entails a crass abandonment of the essential principles upon which the inter-American system is based.²⁶²

208. Thus the States are duty-bound not to practice or tolerate forced disappearance of persons in any circumstances. Similarly, they must take reasonable steps to prevent the commission of this crime, seriously investigate what occurred in order to identify those responsible and impose appropriate punishment, and ensure the victims adequate compensation.²⁶³ These obligations are expressly recognized in Articles I.a and I.b of the Inter-American Convention on Forced Disappearance of Persons.

209. According to its case law taken as a whole, the Commission considers forced disappearance to be a complex violation of human rights that continues in time until as long as the whereabouts of the victim or his remains is unknown. A disappearance as such ceases only when the victim appears or his remains are found²⁶⁴.

210. As concerns violated rights, forced disappearance violates the right to personal liberty and places victims seriously at risk of suffering irreparable damage to their right to humane treatment and to life. The Court has indicated that forced disappearance violates the right to humane treatment since “the mere subjection of an individual to prolonged isolation and deprivation of communication is in itself cruel and inhuman treatment.”²⁶⁵ Similarly, the Court has held that bringing detainees before agents of the State or individuals acting with the State’s acquiescence or tolerance who engage in torture and murder with impunity constitutes, in itself, an infringement of the duty to prevent violations of the rights to humane treatment and life, even if the acts of torture or deprivation of life of the victim of disappearance in a specific case cannot be proven.²⁶⁶

²⁶² IACHR, Report 101/01. Case 10.247 et al., Extrajudicial Executions and Forced Disappearances of Persons. Peru. October 11, 2001, para. 178; IACHR. Application to the Inter-American Court, Case No. 11.324, Narciso González *et al.*, Dominican Republic, May 2, 2010, para. 103; Application to the Inter-American Court, Case No. 12.517, Gregoria Herminia Contreras *et al.*, El Salvador, June 28, 2010, para. 131; I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs. Judgment of September 22, 2006. Series C, No. 153, para. 82; I/A Court H.R., *Case of Gómez Palomino.* Judgment of November 22, 2005. Series C, No. 136, para. 92; I/A Court H.R., *Case of the Serrano Cruz Sisters.* Preliminary Objections. Judgment of November 23, 2004. Series C, No. 118, paras. 100 to 106; I/A Court H.R., *Case of Molina Theissen.* Reparations (art. 63.1 of the American Convention on Human Rights). Judgment of July 3, 2004. Series C., No. 108, para. 41.

²⁶³ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras.* Merits. Judgment of July 29, 1988. Series C No. 4, para. 174; *Case of Anzualdo Castro v. Peru.* Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 62; and *Case of Radilla Pacheco v. Mexico.* Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 142.

²⁶⁴ IACHR. Application to the Inter-American Court, Case No. 12.529, Rainer Ibsen Cárdenas y José Luis Ibsen Peña., Bolivia, May 12, 2009, para. 106.

²⁶⁵ I/A Court H.R., *Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador.* Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 171; and *Case of Anzualdo Castro v. Peru.* Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 85.

²⁶⁶ I/A Court H.R., *Case of Ticóna Estrada v. Bolivia.* Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 59; *Case of Anzualdo Castro v. Peru.* Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009.

[continues ...]

211. Furthermore, the Court has considered that in cases of forced disappearance, given the multiple and complex nature of this grave violation of human rights, its execution leads to specific infringement of the right to juridical personality.²⁶⁷ This is because, in addition to the fact that the disappeared person can no longer enjoy and exercise the rights to which he or she is entitled, forced disappearance is “not only one of the most serious forms of placing the person outside the protection of the law but it also entails to deny that person's existence and to place him or her in a kind of limbo or uncertain legal situation before the society [and] the State.”²⁶⁸

212. As far as its characteristics are concerned, forced disappearance is made up of the following cumulative and concurring elements: (i) deprivation of liberty; (ii) direct involvement or acquiescence of State agents; and (iii) refusal to disclose the fate and whereabouts of the person concerned.²⁶⁹ Within the inter-American system, this characterization derives from the Inter-American Convention on Forced Disappearance of Persons (hereinafter “IACFDP”), to which the State of Mexico has been party since April 9, 2002.²⁷⁰ In addition, several international instruments as well as the jurisprudence of international bodies and national courts are consistent with the aforementioned definition.²⁷¹

213. The Commission will then determine whether what happened to Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera, and Rocío Irene Alvarado Reyes constituted forced disappearance in light of each of the elements described, taking available evidence into account, including circumstantial evidence, which, as mentioned above, is especially relevant in cases of forced disappearance because of the very nature of the violation.

1. Deprivation of liberty

214. With regard to the **deprivation of liberty**, the Commission observes that there are eye witnesses who, as a whole, indicate that José Ángel Alvarado Herrera, Nitza Paola Alvarado Espinoza, and Rocío Irene Alvarado Reyes were deprived of liberty during the night of December 29, 2009, in Ejido Benito

[... continuation]

Series C No. 202, para. 85; and *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 154.

²⁶⁷ I/A Court H.R., *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, paras. 91-92; *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 157.

²⁶⁸ I/A Court H.R., *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 90.

²⁶⁹ I/A Court H.R., *Case of Gómez Palomino v. Peru*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, para. 97; *Case of Ticona Estrada v. Bolivia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 55; and *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 60.

²⁷⁰ In this regard, it bears mentioning that the Court has held that the characteristics of forced disappearance derive from the very definition of Article III of the Inter-American Convention on Forced Disappearance of Persons, the *travaux préparatoires* for said Convention, and its preamble and regulations. See: I/A Court H.R., *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 140, citing: the Annual Report of the Inter-American Commission on Human Rights 1987-1988, Chapter V.II. This crime “is permanent when it is no [sic] consummated in an instantaneous manner but permanently and it is prolonged throughout the time in which the person continues to be missing” (OEA/CP-CAJP, Report of the Chairman to Review the Draft IACFDP, document OEA/Ser.G/CP/CAJP-925/93 rev. 1, of January 25, 1994, p. 10).

²⁷¹ In the inter-American system, see: I/A Court H.R., *Case of Gómez Palomino v. Peru*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, para. 97; *Case of Ticona Estrada v. Bolivia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 55; and *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 60. In the European system, see: ECHR *Case of Kurt v. Turkey*. Application No. 15/1997/799/1002. Judgment of May 25, 1998, paras. 124-128; *Case of Çakici v. Turkey*, Application No. 23657/94. Judgment of July 8, 1999, paras. 104-106. In the national courts, see: *Case of Marco Antonio Monasterios Pérez*, Supreme Court of Justice of the Bolivarian Republic of Venezuela, Judgment of August 10, 2007; *Case of Revocation of Pinochet's Immunity*, Plenum of the Supreme Court of Chile, Judgment of August 8, 2000; *Case of Castillo Páez*, Constitutional Court of Peru, Judgment of March 18, 2004, among other cases.

Juárez, by a group of between 8 and 10 people carrying long weapons and wearing uniforms identified as military.

215. Specifically concerning the deprivation of liberty of José Ángel Alvarado Herrera and Nitza Paola Alvarado Espinoza, there is the eye witness account of Obdulia Espinoza Beltrán, José Ángel Alvarado Herrera's wife, who watched the deprivation of liberty from a window of her house. Moreover, María de Jesús Alvarado, who went to that spot after the detention, noted that the vehicle from which, according to Mrs. Espinoza Beltrán, José Ángel Alvarado Herrera and Nitza Paola Alvarado Espinoza had been removed was effectively there, without keys or stereo and with blood on the floor. Therefore, María de Jesús Alvarado's testimony confirms various parts of Obdulia Espinoza Beltrán's eye witness account.

216. For its part, as concerns Rocío Irene Alvarado Reyes deprivation of liberty, which took place after that of her two relatives, the Commission notes the existence of three eye witness accounts: those of Patricia Reyes and of R.A.A.R and A.A.R, Rocío Irene Alvarado Reyes's mother and siblings, respectively. The three agreed that several armed men dressed in military uniforms forcibly broke into the house and went off with Rocío Irene Alvarado Reyes.

217. The Commission observes that, between December 30, 2009, and January 1, 2010, the family filed reports and requests for information from various State entities, maintaining consistency in their descriptions regarding the circumstances surrounding the deprivation of liberty of their family members.

218. The Commission considers that these statements and their consistency at the time the respective reports were filed, together with the absence of information about the fate or the whereabouts of the three missing persons as of today and the absence of a hypothesis other than that of deprivation of liberty on December 29, 2009, are factors that, as a whole, make it possible to conclude that the first requirement has been met.

219. It bears mentioning that the Mexican State did not challenge the information on the deprivation of liberty per se but rather primarily put forward other possible hypotheses on who was responsible, a matter pertaining to the analysis that follows in connection with the second element.

2. Direct involvement or acquiescence of State agents

220. Regarding the **direct involvement or acquiescence of State agents**, the Commission observes that the victims were removed from their homes by army personnel. Similarly, according to the case file, two hypotheses were considered regarding who bore responsibility for the deprivation of liberty: (a) that the forced disappearance was committed by army personnel; and (b) that the victims' detention and disappearance was the work of organized crime members.

221. The Commission notes that various pieces of available evidence point to the direct involvement of State agents.

222. First of all, regarding the context in which José Ángel Alvarado Herrera, Nitza Paola Alvarado Espinoza, and Rocío Irene Alvarado Reyes disappeared; the Commission observes that there was a strong presence of army personnel in the geographic area where the events occurred, because of the Joint Chihuahua Operation. Also, as described in the section on context, information exists on reports of serious human rights violations, including forced disappearances, committed in the context of said operation. The Commission underscores that the case file includes a series of complaints against the 35th Battalion for its involvement in various crimes such as arbitrary detentions, torture, and extrajudicial executions.²⁷² More specifically, there is a witness statement by one of the victims' relatives indicating that a few days before the events he saw

²⁷² Annex I. Case file. Volume XXI. Witness statement given by Joel Sotelo Vázquez to the Federal Public Ministry on June 14, 2013, page 617 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

army personnel patrolling the area in the same vehicle in which the victims were put after their unlawful detention.²⁷³

223. Second, the eye witnesses are consistent in their statements that the detentions were carried out by persons who for various reasons: dress, weapons, and language, they identified as being army personnel. One of the statements even indicates that an army member told him that the detention was part of the Joint Chihuahua Operation.

224. Third, the Commission notes that several family members stated, at the time they filed their reports and undertook initial searches that some State authorities had told them that José Ángel Alvarado Herrera, Nitza Paola Alvarado Espinoza, and Rocío Irene Alvarado Reyes were in the 35th Infantry Battalion. María de Jesús Alvarado indicated that a staff member of the Public Ministry of Buenaventura and PGR staff had given her that information. Likewise, Jaime Alvarado Reyes said that personnel of the Ministerial Police of Nuevo Casas Grandes told him that his relatives were in that battalion.

225. Fourth, the Commission also has statements from various public officials indicating that they knew or had received information that the alleged victims were being held in the 35th Infantry Battalion, or the “military garrison,” or that they would be turned over to State entities by army personnel.

226. Specifically, Sergeant-Driver Alberto Hernández stated that he was aware that “a disabled woman and a man” had been taken away in the “village” of Benito Juárez, a detail that coincides with the fact that Nitza Paola Alvarado Espinoza was disabled on her left side. That same person said that when he was driving Colonel Elfego Luján Ruiz, the senior commander of the 35th Battalion, approximately 15 days before the disappearance, he heard the Colonel say that he had received a telephone call in which he was asked whether he had thrown out “the garbage” he had been ordered to throw out.

227. In addition, a Deputy Delegate for Criminal Proceedings stated on two occasions that she had received a phone call from an officer of the Federal Public Ministry in Nuevo Casas Grandes telling her that, for his part, he had received a call from an attorney asking about the three detainees and indicating that they were going to be “made available” and that once that occurred they should be turned over to a federal policeman, “Commander Meza,” who was investigating the disappearance of federal police officers. This situation was corroborated by the statement of the Public Ministry officer himself, who added that “Commander Meza” had gone to see him on December 30, 2009, at night and had expressly inquired about José Ángel Alvarado Herrera, Nitza Paola Alvarado Espinoza, and Rocío Irene Alvarado Reyes. The Public Ministry officer told him that no one was being held.

228. Fifth, the General Prosecution Service of the State of Chihuahua, the Federal Public Ministry, and FEVIMTRA considered that there was sufficient evidence that the disappearances were carried out by army personnel. For its part, the CNDH, in its recommendations on the facts of the instant case, considered that, given the body of evidence, it was possible to attribute the arbitrary detention and forced disappearance of the victims to personnel of the Secretariat of National Defense and the Federal Police. In turn, the report of the team of international experts, which reviewed the case records and made recommendations, stated that as a result of its investigation it was able to establish the participation of members of the 35th Infantry Battalion in the victims’ disappearance. This team also indicated that there was evidence that made it possible to establish a link between this case and the investigations under way regarding the missing federal police officers, which is consistent with the telephone calls regarding the request made by “Commander Meza,” the very person investigating what happened to those police officers, for access to the three detainees.

229. In view of the foregoing, the Commission considers that there is sufficient evidence which, taken as a whole and added to the absence of any other duly grounded hypothesis, to conclude that Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera, and Rocío Irene Alvarado Reyes were deprived of

²⁷³ Annex I. Case file. Volume XV. Witness statement given by Marisa Reyes Rueda to the CNDH on February 21, 2010, page 315 of the pdf. (Annex to the petitioners’ observations on the merits received on November 3, 2014).

liberty by State agents, remaining in State custody. In this connection, the Commission considers that the second element of forced disappearance has been met in the instant case.

3. Denial of the detention and cover-up

230. With regard to the **denial of the detention and cover-up**, the Commission notes that, when the victim's next of kin approached different officials to report what had happened and request information about their relatives, everyone, with the exception of two authorities who told them that their relatives were being held by the army, replied that they were unaware of the victims' detention or their whereabouts. Specifically, the 35th Infantry Battalion and the Federal Investigation Agency in Nuevo Casas Grandes told them on December 30, 2009, that they did not have any information. Days later, on January 9, 2010, family members and a family attorney went to the 5th military zone installations where a 35th Infantry Battalion Colonel once again denied that the three victims had been detained.

231. In addition to these denials, the Commission observes that in the instant case additional cover-up mechanisms were introduced. On the one hand, the case was placed in the hands of military criminal justice for a considerable length of time, even though that jurisdiction does not provide the necessary guarantees of independence and impartiality, as will be analyzed later in this report. The Commission notes that even when the case continued to be considered by the ordinary courts, military criminal justice officials continued to obstruct efforts to clarify what occurred. As described in the proven facts, military criminal justice refrained from authorizing FEVIMTRA to conduct investigations in military installations, in particular in the 35th Infantry Battalion. The Commission notes that FEVIMTRA mentioned the apathy of the military authorities in collaborating with the investigation.

232. The denials and obstructions resulting from the active participation and omissions of military justice were compounded by the threats and harassment reported by the family on various occasions.

233. In this respect, according to a witness statement by one of the victims' relatives, he had received a death threat for "talking too much." Another relative said that her home was broken into, with a death threat left for her and her family. Other family members have said that army personnel and federal police patrolled the vicinity of their homes in order to intimidate them. For all these reasons, the members of the Alvarado family felt obliged to move away from their homes. Another factor that is instrumental in proving concealment concerns the retraction issued by the Sergeant-Driver, who had testified against the senior commander of the 35th Infantry Battalion, Colonel Luján. It bears mentioning that the reasons for this retraction—likely the fear of reprisals—were not investigated.

234. Finally, and of particular relevance to the matter of concealment, the Commission underscores that the report of the team of international experts points out that staff of the District Attorney's Office of the State of Chihuahua in the municipality of Buenaventura, Federal Police of the PGR, and some senior army officers intervened subsequently to ensure the removal and concealment of the victims and to continue to refuse to provide information on their whereabouts to their relatives and attorneys.

235. In light of the foregoing considerations, the Commission is of the view that sufficient evidence is available to qualify what occurred as forced disappearance of persons. Accordingly, the Commission concludes that the Mexican State violated the right to juridical personality, to life, to humane treatment, and to personal liberty established in Articles 3, 4, 5, and 7 of the American Convention in connection with the obligations established in Article 1.1 of that instrument, to the detriment of Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera, and Rocío Irene Alvarado Reyes. Likewise, the Commission concludes that the State violated Article 1.a of the IACFDP, to the detriment of the same individuals.

B. Right to a fair trial and to judicial protection (Article 8.1 and 25.1 of the American Convention on Human Rights) in connection with the obligation to respect human rights and the duty to adopt provisions under domestic law (Articles 1.1 and 2 of the aforementioned instrument) and Articles I.b and IX of the Inter-American Convention on Forced Disappearance of Persons

236. The articles of the American Convention mentioned in the heading of this section establish the following:

Article 8. Right to a Fair Trial

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

Article 25. Right to Judicial Protection

2. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

Article 1 of the Convention establishes:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

Article 2. Domestic Legal Effects

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

237. Article I.b of the Inter-American Convention on Forced Disappearance of Persons establishes that the States Parties to said Convention undertake to “punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories.”

238. Similarly, Article IX of the IACFDP provides that:

Persons alleged to be responsible for the acts constituting the offense of forced disappearance of persons may be tried only in the competent jurisdictions of ordinary law in each state, to the exclusion of all other special jurisdictions, particularly military jurisdictions.

The acts constituting forced disappearance shall not be deemed to have been committed in the course of military duties.

Privileges, immunities, or special dispensations shall not be admitted in such trials, without prejudice to the provisions set forth in the Vienna Convention on Diplomatic Relations.

239. It is clear from inter-American case law that, where a complaint about the disappearance of a person is concerned, there is an inextricable link between the State response and protection of the life and integrity of the person reported to have disappeared. The immediate, exhaustive nature of the State response is independent of whether the possible disappearance was carried out by individuals or by State agents. The Commission reiterates that “whenever there is a good reason to suspect that an individual has been subjected to a disappearance, it is crucial that prompt and immediate action be taken by prosecutorial and judicial authorities to order timely and necessary measures aimed at determining the whereabouts of the victim or the place where the victim might be found deprived of liberty.”²⁷⁴

240. The Court has held that the States have an obligation to provide effective judicial remedies to victims of human rights violations (Article 25), remedies that must be substantiated in accordance with the rules of due process of law (Article 8.1), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Article 1.1).²⁷⁵

241. Thus the Court has pointed out that the obligation to investigate means that, once the State authorities become aware of the incident, they must open *ex officio* and without delay a serious, impartial, and effective investigation, through all legal means available and aimed at determining the truth and at prosecuting, apprehending, trying, and, if applicable, punishing all the perpetrators,²⁷⁶ especially when State agents are or may be involved.²⁷⁷ This obligation is an obligation of means and not of results, which must be assumed by the State as an inherent legal obligation and not as a simple formality preordained to be ineffective, or as a mere step taken by private interests that depends on the procedural initiative of the victims or their family members or on their offer of probative elements.²⁷⁸ The State’s obligation to investigate must be fulfilled diligently in order to avoid impunity and a repetition of this type of act.²⁷⁹

242. In addition, with regard to due diligence throughout the investigation, the Inter-American Court has established that “[e]ach act of the State that forms part of the investigative process, as well as the investigation as a whole, should have a specific purpose: the determination of the truth, and the investigation, pursuit, capture, prosecution and, if applicable, punishment of those responsible for the facts.”²⁸⁰.

²⁷⁴ I/A Court H.R. *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 134; *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparation and Costs. Judgment of November 23, 2009. Series C No. 209, para. 221; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*. Merits, Reparations and Costs. Judgment of September 1, 2010. Series C No. 217, para. 167. See also *Matter of Natera Balboa*. Provisional Measure regarding Venezuela. Order of the Court of February 1, 2010, Considering 13; and *Matter of Guerrero Larez*. Provisional Measures regarding Venezuela. Order of the Court of August 29, 2013. Considering # 6.

²⁷⁵ I/A Court H.R. *Case of Velásquez Rodríguez v. Honduras*. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 91; *Case of Gutiérrez and Family v. Argentina*. Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 271, para. 97; and *Case of the Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 215.

²⁷⁶ I/A Court H.R. *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 1, para. 177; and *Case of Veliz Franco et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, para. 183.

²⁷⁷ I/A Court H.R. *Case of Myrna Mack Chan v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 156; and *Case of the Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2013. Series C No. 270, para. 371.

²⁷⁸ I/A Court H.R. *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 1, para. 177; and *Case of Veliz Franco et al. v. Guatemala*. Preliminary Objections. Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, para. 183.

²⁷⁹ I/A Court H.R. *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C. No. 148, para. 319; *Case of Veliz Franco et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, para. 183; and *Case of the Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27. Series C No. 281, para. 216.

²⁸⁰ I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 131.

Accordingly, the State must show that it carried out an immediate, exhaustive, and impartial investigation,²⁸¹ which must be aimed at exploring all possible lines of inquiry.²⁸² The State can be held accountable for failing to “order, practice, or evaluate evidence” that could be fundamental to due clarification of the facts.²⁸³

243. The Commission observes, moreover, that the standard of the European Court of Human Rights in the *Case of Masneva v. Ukraine* for purposes of satisfying due diligence in the investigation when the facts would seem to indicate that a homicide was perpetrated by state agents is that an “investigation will not be effective unless all the evidence is properly analyzed and the conclusions are consistent and reasoned.”²⁸⁴

244. The Court has established the obligation of the State to investigate the facts while there is uncertainty about the fate of the person who has disappeared and the need to provide a simple and prompt recourse in the case, with due guarantees.²⁸⁵ The Commission recalls in this connection that the States must guarantee the right of the victims or their next of kin to the truth through the investigation and trial provided for in Articles 8 and 25 of the Convention.²⁸⁶

245. Lastly, the right to the truth has been recognized in various United Nations instruments and by the General Assembly of the Organization of American States (OAS).²⁸⁷ For its part, the Inter-American Court has determined what constitutes the right to the truth, in particular in cases of forced disappearance. In the *Case of Velásquez Rodríguez*, the Court affirmed the existence of the right of relatives to be informed “of the fate of the victims and, if they have been killed, the location of their remains.”²⁸⁸ In this type of case, it is understood that the next of kin of the disappeared person are victims of the constituent elements of the forced disappearance, being a true form of torture for the victims’ family and friends because of the uncertainty as to the fate of the victim and because they feel powerless to provide legal, moral and material assistance, which gives them the right to an investigation of the facts and to the prosecution and, if appropriate, the punishment of those responsible.²⁸⁹

246. Considering the arguments of the parties and the facts established in the instant case, the Commission will examine implementation of the rights to a fair trial and judicial protection and the obligation to investigate a supposed forced disappearance of persons, in the following order: 1. Consideration of the case by military criminal justice; 2. Diligence in the investigation; and 3. Reasonable time.

1. Consideration of the case by military criminal justice

247. The Commission recalls that special jurisdictions, such as military criminal justice, must be restrictive and exceptional in scope and must focus on protecting special legal interests, related to the entity itself. Consequently, the Inter-American Court has had the opportunity to analyze the structure and make-up of special courts, like military courts, in light of the United Nations Basic Principles on the Independence of

²⁸¹ IACHR, Report on the Merits, No. 55/97, Juan Carlos Abella *et al.* (Argentina), November 18, 1997, para. 412.

²⁸² IACHR, Report No. 25/09 Merits (Sebastião Camargo Filho) Brazil, March 19, 2009, para. 109. See also, IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc. 68, January 20, 2007, para. 41.

²⁸³ I/A Court H.R., *Case of the “Street Children” (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 230. See also, IACHR *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc. 68, January 20, 2007, para. 41.

²⁸⁴ ECHR, *Masneva v. Ukraine*, Application No. 5952/07, December 20, 2011, para. 49.

²⁸⁵ I/A Court H.R., *Case of Bámaca Velásquez v. Guatemala*. Merits. Judgment of November 25, 2000. Series C No. 70, para. 197.

²⁸⁶ IACHR. *The Right to Truth in the Americas*. OEA/Sr.L/V/II.152. Doc. 2. August 13, 2014. Par. 13.

²⁸⁷ Updated Set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1). Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher (E/CN.4/2005/102, of February 18, 2005). Study on the right to the truth - Report of the Office of the United Nations High Commissioner for Human Rights (E/CN.4/2006/91 of January 9, 2006). OAS General Assembly. Resolutions on the Right to Truth, AG/RES. 2175 (XXXVI-O/06), AG/RES. 2267 (XXXVII-O/07), and AG/RES. 2406 (XXXVIII-O/08).

²⁸⁸ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C. No. 4, para. 181.

²⁸⁹ IACHR, Annual Report of the Inter-American Commission on Human Rights 1977, OEA/Ser.L/V/II.43, Doc. 21 corr. 1, April 20, 1978, Part, II, Areas in which further steps are needed to give effect to the human rights set forth in the American Declaration of the Rights and Duties of Man; I/A Court H.R., *Case of Blake v. Guatemala*. Merits. Judgment of January 24, 1998. Series C No. 36, para. 97.

the Judiciary. Some relevant factors that justify the restrictive application of the military jurisdiction are that: (i) they are made up of active-duty military members who are hierarchically subordinate to higher-ranked officers through the chain of command; (ii) their designation does not depend on their professional skills and qualifications to exercise judicial functions; and (iii) they do not have sufficient guarantees that they will not be removed. This has led to the conclusion that said courts lack the necessary independence and impartiality to consider human rights violations.²⁹⁰

248. Taking the above criteria into account, both, the Commission and the Inter-American Court has referred to the incompatibility of the American Convention with the use of the military criminal justice system to judge possible human rights violations, indicating that the resulting problem for guaranteeing independence and impartiality is that it is the very armed forces are “charged with prosecuting their peers for executing civilians.”²⁹¹ Thus, the Inter-American Court has held that special jurisdictions like the military one should only be used to judge active military personnel “for the commission of crimes or offenses that based on their own nature threaten the juridical rights of the military order itself.”²⁹²

249. In this case, the proceedings under military criminal jurisdiction were held pursuant to Article 13 of the Political Constitution of the United Mexican States and the then applicable Article 57 of the Code of Military Justice, which read:

Article 13.- Crimes and offenses against military discipline shall come under the military jurisdiction.

Article 57.- Crimes against military discipline: [...] II. Those of a common or federal nature committed in any of the following circumstances:

a).- They are committed by military personnel during active service or owing to acts related to that service; [...] When, in cases under subsection II, military personnel and civilians are involved, the former shall be tried by military justice.

250. Specifically in the instant case the military jurisdiction was exercised pursuant to this provision of the Code of Military Justice,²⁹³ which extended that jurisdiction to crimes unrelated to military discipline or to legal acts that fall within the military realm.²⁹⁴ In this regard, the Commission notes that on January 13, 2010, the Seventh Agency of the Federal Public Ministry declined jurisdiction in favor of the Attorney General's Office for Military Justice as it considered that the records and the measures taken in connection with the preliminary inquiry, “point to the possible commission of the crime of abuse of authority in which it appears that personnel of the Secretariat of National Defense participated; therefore, pursuant to Article 57.II.a, competence lies with the Attorney General's Office for Military Justice.”²⁹⁵

251. The investigation remained in the hands of military justice until December 29, 2011, or, in other words, for a period of one year and 10 months. In addition, the Commission points out that the reason the case was turned over to the ordinary courts was not related to the nature of the crime but rather to the

²⁹⁰ *Cfr.* I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 135, paras. 155 and 156.

²⁹¹ I/A Court H.R., *Case of Las Palmeras v. Colombia*. Merits. Judgment of December 6, 2001. Series C No. 90, para. 53.

²⁹² I/A Court H.R., *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 272.

²⁹³ Annex I. Case file. Volume I. Authorization to consult on lack of competence for jurisdictional reasons of the PGR, February 10, 2010, pages 19-20 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014); Annex I. Case file. Volume V. Order to file for preliminary inquiry PGJM/AMPME/CDJUAREZ/196-II-IV/2010, page 3 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

²⁹⁴ I/A Court H.R., *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 274, para. 312.

²⁹⁵ Annex I. Case file. Volume I. Agreement in which the Seventh Agency of the Federal Public Ministry declines jurisdiction for preliminary inquiry AP/PGR/CHIH/JUAREZ/27/2010-VII of January 13, 2009, page 19 of the pdf. (Annex to the petitioners' observations on the merits received on November 3, 2014).

fact that the military jurisdiction determined that there was no evidence of the participation of army members in the acts surrounding the disappearance.

252. In the instant case, since the forced disappearance of persons has been assumed, it is obvious that the protected interests have nothing to do with military justice. The Commission therefore considers that the use of the military courts in this specific case violated the right to access to a competent, independent, and impartial authority for the pursuit of justice.

253. The IACHR deems it unnecessary to conduct a detailed examination of the omissions and irregularities committed in the framework of the investigation conducted by the Attorney General's Office for Military Justice. This is because the hearing of crimes involving human rights violations by military justice is per se incompatible with the right of victims or their next of kin to be heard by a competent, independent, and impartial court.²⁹⁶

254. The Commission also observes that recourse to military justice in this specific case was due to the normative framework in effect at the time the events occurred, specifically Article 13 of the Constitution and Article 57 of the Code of Military Justice. The organs of the inter-American system have already referred to the incompatibility between use of the military jurisdiction provided in that provision of the Code of Military Justice and the obligations set out in the American Convention. In particular, in the *Case of Radilla Pacheco v. Mexico*, the Inter-American Court said that:

Article 57, fraction II, subparagraph a) of the Code of Military Justice is an ample and imprecise provision that prevents the determination of the strict connection of the crime of the ordinary jurisdiction with the military jurisdiction objectively assessed. The possibility that the military courts prosecute any soldier who is accused of an ordinary crime, for the mere fact of being in service, implies that the jurisdiction is granted due to the mere circumstance of being a soldier. In that sense, even when the crime is committed by soldiers while they are still in service or based on acts of the same, this is not enough for their knowledge to correspond to the military criminal justice.²⁹⁷

255. Accordingly, the Court ordered the State to “adopt, within a reasonable period of time, the appropriate legislative reforms in order to make the mentioned provision [Article 57] compatible with the international standards of the field and of the Convention.”²⁹⁸ That order was reiterated in three subsequent cases related to Mexico in which it was determined that military criminal jurisdiction had been used in a manner inconsistent with the Convention, based on Article 57.II.a of the Code of Military Justice.²⁹⁹ In compliance with that order, the Official Journal of June 13, 2014, published the reforms to that Code, which establishes that human rights violations committed against civilians may not be heard by military justice.

256. Inasmuch as the reforms had not yet been made at the time military justice considered the case, the Commission considers that the State failed to comply with its obligation to adopt domestic legal provisions in keeping with Article 2 of the Convention.

²⁹⁶ I/A Court H.R., *Case of Osorio Rivera v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2013. Series C No. 274, para. 188; IACHR, Application to the Inter-American Court of Human Rights in the case of Valentina Rosendo Cantú *et al.* against the United Mexican States, August 2, 2009, para. 126, available at www.cidh.oas.org/demandas/demandasENG2009.htm. IACHR, Report No. 53/01, Case 11.565, Merits, Ana, Beatriz and Celia González Pérez, Mexico, April 4, 2001, para. 81, available at <http://cidh.org/annualrep/2000eng/ChapterIII/Merits/Mexico11.565.htm>.

²⁹⁷ I/A Court H.R. *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 286.

²⁹⁸ I/A Court H.R. *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, operative paragraph 10 and paras. 337-342.

²⁹⁹ I/A Court H.R. *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215, paras. 178 and 179; and *Case of Rosendo Cantú et al. v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216, paras. 162 and 163. *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, operative paragraph 15 and para. 234.

257. In light of the foregoing considerations, the Commission concludes that, by maintaining a legal framework that made it possible to apply military justice to the instant case, the State of Mexico violated the rights to a fair trial and judicial protection, specifically the right to have recourse to competent, independent, and impartial authorities, pursuant to Articles 8.1 and 25.1 of the American Convention in connection with Articles 1.1 and 2 of the same instrument, to the detriment of José Ángel Alvarado Herrera, Nitza Paola Alvarado Espinoza, and Rocío Irene Alvarado Reyes, as well as their next of kin as set out in paragraphs 59 to 61 of this report. In addition, the Commission considers that the State failed to comply with its obligations under Article IX of the IACFDP.

2. Diligence in the investigation

258. Firstly, the Commission notes that the remedy of *amparo* presented by José Angel Alvarado Favela on January 6, 2010, did not activated an immediate search of the three persons dissapeared given that, according to its regulation by that moment, such remedy was rejected due to the lack of ratification on the part of the same beneficiaries, that is, the disappeared persons. Therefore, that remedy did not constitute an effective mechanism to respond to a denunciation of a posible nforced disappearance.

259. The Commission observes first of all that several simultaneous investigations were opened in connection with the facts. Thus, the facts of the instant case were heard during a period of almost six years by at least five state entities charged with carrying out criminal investigations: the PGR, Chihuahua Delegation; the Attorney General's Office for Military Justice; the District Attorney's Office of the State of Chihuahua; the PGR, FEVIMTRA; and lastly the PGR for the aggregate case since 2013.

260. The foregoing shows that the State took more than three years to determine which entity, in accordance with the nature of the case, was competent to conduct the criminal investigation. This not only reveals a lack of coordination among the different entities but also suggests that a large part of the action taken by State authorities, at the most crucial stages of the investigation, had to do with decisions to decline jurisdiction, the joinder of cases, and other procedural matters rather than the search for the missing victims with all the immediacy and thoroughness that a case like this one warrants.

261. The Commission observes that the State has described in numerical terms the number of witness statements, documentary pieces of evidence, inspections, and expert reports, among other things, that have been compiled throughout the investigations. However, the Commission has not been able to understand from a comprehensive review thereof which specific lines of investigation have been followed, how the State authorities have determined those lines, or how those lines have been pursued with necessary diligence and have led to strategies genuinely linked to indications of the participation of State agents that appeared from the very outset of the investigations.

262. Thus, for example, although some concrete measures were taken in connection with the search, the Commission does not find they were linked to any serious lines of investigation or that they were consistent with indications of army participation in the act. In fact, according to the study of the available documentation, the Commission has not been able to identify which evidence led the State authorities to determine inspection sites, such as the one known as "Tiro de Mina," or its possible relationship to the instant case.

263. On the contrary, when attempts were made to take measures directly related to the possible presence of the missing victims in the 35th Infantry Battalion, the military authorities have not collaborated in the collection of that evidence. FEVIMTRA itself makes reference to that situation. The Commission underscores that the line of investigation involving the 35th Infantry Battalion has been taken up recently in the framework of the aggregate investigation within the PGR, even though circumstantial evidence in that regard appeared early on in the investigation. Furthermore, as pointed out by the group of international experts, no line of investigation was effectively designed and implemented concerning a possible link between the facts and the investigations into what happened to a group of federal police officers. The

Commission emphasizes that the statements of State officials that mentioned such a link were given from the very outset of the military criminal justice investigation.

264. What is more, the Commission observes that when information arose that required an immediate response, such as the phone call that Nitza Paola Alvarado Espinoza presumably made on February 3, 2010, the authorities responsible for the investigation unjustifiably delayed the gathering of evidence and the analysis of its results—effectively thwarting the possibility of tracing the call—which occurred months after it was reported and which simply concluded that it came from a phone line used for purposes of extortion. Nor was a determination made of the satellite position from which it was made, which, had it been done immediately, could have provided information on the possible whereabouts of at least one of the missing persons.

265. Another matter that was not investigated thoroughly and on which the State has not given a satisfactory answer has to do with the van from which José Ángel Alvarado Herrera and Nitza Paola Alvarado Espinoza were allegedly removed. This information is not in dispute since said van was in State custody on the very day of the disappearance and was returned to María de Jesús Alvarado Espinoza on February 15, 2015. However relevant the fact that the van linked to the disappearance was in State custody, a line of investigation was not pursued into how the van got to the area outside the Northern Chihuahua State Deputy Attorney General's Office.

266. In addition, the Commission observes that another factor that obstructed the diligent pursuit of the investigation has to do with the different ways in which the facts have been classified in the multiple investigations initiated. Thus, although the initial complaints clearly showed information that suggested the possible commission of forced disappearance, the acts were classified on various occasions and by different investigating bodies as “abuse of authority” or “unlawful deprivation of liberty,” and only recently, in May 2012, i.e., two and a half years after the disappearance took place, were the facts classified for the first time as possible forced disappearance, which resulted in a denial of jurisdiction by the federal court. However, the federal jurisdiction continued the investigation for other crimes, and only very recently has it once again qualified what happened as a possible forced disappearance.

267. On this point, while it is incumbent on domestic authorities to determine which crimes are applicable within their jurisdictions, it can happen that inadequate internal classifications become a factor of impunity either because these classifications do not reflect the seriousness of the conduct or because they impede a thorough investigation of all matters constituting serious human rights violations. That is why various international instruments on serious human rights violations like torture or forced disappearance oblige the States to adequately define the respective acts as crimes under their domestic laws. This means that, when the facts exist to consider what occurred as an act of forced disappearance, the respective investigations must be opened under that criminal classification since, otherwise, such essential elements of this serious human rights violation as concealment or refusal to provide information would not be investigated.

268. The Commission considers that the failure to identify and consistency, from the outset of the investigations, the reported acts as possible forced disappearance had an impact on the way in which the investigation was conducted and on the erroneous assignment of jurisdiction over years, which affected the diligence and immediacy required in these cases. The Commission notes that this matter is still a subject of debate in the internal investigations. Indeed, although on March 31, 2014, the Prosecution Service submitted a request for an arrest warrant against an army member, the judge considering the request denied it as it did not provide evidence of a third of the elements of the crime of forced disappearance established in Article 215-A. The Commission notes that the PGR drew attention to the fact that the head of the judicial body that denied the arrest warrant request examined a file of over 11,000 pages in less than 24 hours.

269. Finally, the Commission observes that neither was there a careful investigation of the threats received by the Alvarado family, which were reported in due time. At least two of them were serious death threats that, because of their nature, seemed to be connected to the participation of family members in the search for their loved ones and in the efforts to obtain justice. The Commission notes that the source of those

threats has not yet been clarified, nor have they been considered possible relevant elements in the investigations of the disappearance of José Ángel Alvarado Herrera, Nitza Paola Alvarado Espinoza, and Rocío Irene Alvarado Reyes.

270. All of the above matters taken as a whole make it possible to conclude that the State has not investigated the facts of the instant case with due diligence, in violation of the rights established in Articles 8.1 and 25.1 of the American Convention in connection with Articles 1.1 and 2 of the same instrument, to the detriment of José Ángel Alvarado Herrera, Nitza Paola Alvarado Espinoza, and Rocío Irene Alvarado Reyes, as well as their next of kin as set out in paragraphs 59 to 61 of this report.

3. Reasonable time

271. Article 8.1 of the American Convention establishes as one of the criteria for due process that the courts must decide on cases submitted to them within a reasonable According to the terms of Article 8.1 of the American Convention, the Commission shall take into consideration, in the light of the concrete circumstances of the case, those elements that bodies of the Inter-American System have taken into account, namely: i) the complexity of the case; ii) the procedural activity of the interested party; and iii) the conduct of judicial authorities; and iv) the impact arising from the legal situation of the person involved in the proceedings.³⁰⁰ The Inter-American Court has established that a long delay may per se constitute a violation of the right to a fair trial,³⁰¹ and that it is therefore incumbent on the State to explain and to prove that more than reasonable time has been required to render a final judgment in a specific case.³⁰²

272. A period of five years and 10 months has elapsed from the time the next of kin informed the State of the facts of the case on the day following the disappearance until the present time.

273. As concerns the first factor, the case may, in principle, be considered complex. The Commission recalls that even in cases that can be viewed as complex because of their very nature, the State in question must provide specific arguments on why the complexity has concretely affected the investigations. The Commission considers that this was not done in the instant case. It is clear from a review of the Commission's files that complexity was not the reason why only one possible perpetrator has been identified to date and this only very recently; nor have the facts been clarified or the corresponding punishments imposed. On the contrary, as described in the preceding section, the case has been considered by multiple authorities who for years have passed on responsibility for it, and much of the information that could have led to the design and implementation of lines of investigation that implicated State agents emerged from the outset without being given adequate follow-up.

274. As concerns the actions of the State authorities, the Commission reiterates the numerous failures described in the section on due diligence. Furthermore, the Commission observes that there were several periods of inactivity, which the State has not justified specifically. For example, in 2012, measures were taken between January 3 and February 9, and there is no information about whether any further activity took place during the rest of the year. The Commission also stresses on this point that, in the context of military criminal justice, the authorities obstructed the taking of evidence on the army's possible responsibility for the facts. For its part, even though in a case like this one, the State is ultimately responsible for the investigation, the Commission notes that the next of kin and witnesses were actively involved in giving statements in the judicial investigations. Likewise, their attorneys have followed up on the investigation and given it impetus.

³⁰⁰ IACHR, Report No. 111/10, Case 12.539, Merits, Sebastián Claus Furlan and Family, Argentina, October 21, 2010, para. 100. I/A Court H.R., *Case of the Santo Domingo Massacre v. Colombia*. Preliminary Objections, Merits, and Reparations. Judgment of November 30, 2012. Series C No. 259, para. 164.

³⁰¹ I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, para. 166; *Case of Gómez Palomino v. Peru*. Judgment of November 22, 2005. Series C No. 136, para. 85; *Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 124, para. 160.

³⁰² I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 142.

275. In view of the foregoing considerations, the Commission concludes that the State failed to meet the reasonable period guarantee in the investigation of the facts of the instant case, in violation of the rights established in Articles 8.1 and 25.1 of the American Convention in connection with Article 1.1 of the same instrument, to the detriment of José Ángel Alvarado Herrera, Nitza Paola Alvarado Espinoza, and Rocío Irene Alvarado Reyes, and their next of kin as set out in paragraphs 57 to 59 of the present report. Likewise, the Commission concludes that the State failed to meet its obligation to investigate under Article I.b of the IACFDP.

C. Rights to humane treatment, private and family life, freedom of movement and residence, and obligation to provide special protection to children (Articles 5, 11, 19, and 22 in connection with Article 1.1. of the American Convention)

276. The right to humane treatment, enshrined in Article 5.1 of the American Convention, establishes that “[e]very person has the right to have his physical, mental, and moral integrity respected.”

277. Articles 11.1 and 11.2 of the American Convention indicate: “1. Everyone has the right to have his honor respected and his dignity recognized. 2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.”

278. Article 19 of the American Convention provides that “[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.”

279. Article 22.1 of the American Convention establishes that “[e]very person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.”

280. The case law of the Inter-American Court has established that the victims’ next of kin may, in turn, be affected by the violation of their right to mental and moral integrity.³⁰³ Thus, the Inter-American Court has considered the right of the victims’ next of kin to mental and moral integrity violated because of the additional suffering they have undergone as a consequence of the specific circumstances of the violations committed against their loved ones³⁰⁴ and the acts or omissions by the State authorities in relation to the facts.³⁰⁵

281. The Commission notes that, in keeping with the Court’s case law, “in cases involving the forced disappearance of persons, it can be understood that the violation of the right to mental and moral integrity of the victims’ next of kin is a direct result, precisely, of this phenomenon, which causes them severe anguish owing to the act itself, which is increased, among other factors, by the constant refusal of the State authorities to provide information on the whereabouts of the victim or to open an effective investigation to clarify what occurred.”³⁰⁶

³⁰³ I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, para. 101; *Case of the Las Dos Erres Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, para. 206; and *Case of Heliodoro Portugal v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008. Series C No. 186, para. 163.

³⁰⁴ I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 335; *Case of Vargas Areco v. Paraguay*. Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 155, para. 96; and *Case of Goiburú et al. v. Paraguay*. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, para. 96.

³⁰⁵ I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits and Reparations. Judgment of May 26, 2010. Series C No. 213, para. 195.

³⁰⁶ I/A Court H.R., *Case of Blake v. Guatemala*. Merits. Judgment of January 24, 1998. Series C No. 36, para. 114; *Case of Ticóna Estrada v. Bolivia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 87; *Case of La Cantuta v. Peru*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, para. 123; and *Case of Anzualdo Castro v. Peru*. Judgment of September 22, 2009. Series C No. 202, para. 105.

282. Article 11.2 of the Convention protects an individual's private life and home from arbitrary or abusive interference. It recognizes that there is a personal sphere that must be protected from interference by outsiders and that personal and family honor and the home must be protected against such interference.³⁰⁷ In this regard, an individual's home and private life are intrinsically connected because the home is the space in which private life can evolve freely.³⁰⁸

283. By virtue of the principle of *iura novit curia*, the Inter-American Court has indicated that the implementation of Article 22.1 of the Convention is an essential condition for the free development of the individual. This article includes, *inter alia*, the right of the individual to enter, to remain in, and to leave the territory of the State without unlawful interference. Hence, the enjoyment of this right does not depend on any particular objective or motive of the individual who wishes to move or to remain in one place. Furthermore, the Court has considered that the right to freedom of circulation and residence can be violated by *de facto* restrictions if the State has not established the conditions or provided the means that allow it to be exercised. In this regard, the right to freedom of circulation and residence may be violated when an individual is a victim of threats or harassment and the State fails to provide the necessary guarantees to enable him or her to move about and reside freely in the territory in question.³⁰⁹

284. In the instant case, the Commission considers that the very fact that three of their relatives disappeared has caused a profound feeling of sadness, distress, and uncertainty, which has been worsening by the absence of an effective, diligent investigation conducted within a reasonable time period.

285. In addition to the mental and moral suffering inherent in all cases of forced disappearance, the Commission notes that in this case various family members have had to endure threats and harassment in their quest for justice, which has kept them exposed to a situation of fear and anxiety incompatible with their personal safety. The Commission underscores the serious threat reported by José Ángel Alvarado Herrera's father in connection with a telephone call on December 29, 2011, in which he was told: "We have your son and he's alive. We're going to kill you like a dog along with your children. You have 12 hours to leave your house and the city. If not, we'll kill all of you because you're talking too much." Likewise, on August 28, 2011, Jaime Alvarado's home was broken into in violation of the right established in Article 11 of the Convention, and his wife found a message saying "because we wanted to kill you and couldn't we have you running scared and we'll do you in along with your miserable family. Sincerely, You know who."³¹⁰ Both the threats and the break-in have a reasonable causal relationship with the facts of the instant case, and the participation of State agents in what occurred is corroborated by the conclusion of the present report on the qualification of what happened as forced disappearance.

286. This situation led to the forced displacement of most family group members. Specifically, José Ángel Alvarado Herrera Alvarado's father decided to flee together with 21 family members, with 12 of them settling in Benito Juárez³¹¹ and 10 in Ciudad Juárez.³¹² For their part, 11 of Nitza Paola Alvarado

³⁰⁷ I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, para. 193.

³⁰⁸ I/A Court H.R., *Case of Escué Zapata v. Colombia*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, para. 95; I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, paras. 193 and 194.

³⁰⁹ I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits and Reparations. Judgment of May 26, 2010. Series C No. 213, para. 197.

³¹⁰ Annex XX. Petitioners' brief submitted as part of the MP 10-10 proceedings before the I/A Court H.R., August 29, 2011.

³¹¹ His father, José Ángel Alvarado Favela, and his mother, Concepción Herrera; his spouse, Obdulia Espinoza Beltrán; his children, J.A.E, J.A.A.E, and A.E.B; his brother, Jaime Alvarado Herrera; his sister-in-law, Sandra Luz Rueda Quezada; and his nephews and nieces, J.O.A.R, R.G.A.R, C.N.A.R, and J.E.A.R.

³¹² His sister, Rosa Olivia Alvarado Herrera; his brother-in-law, Felix García García; his nephews and nieces, Karina Paola Alvarado Espinoza, F.A.H, J.G.A, and A.G.A; his brother Manuel Melquíades Alvarado Herrera; his sister-in-law, Mayra Daniela Salas Rodríguez; and his nephews [or nephew and niece] D.J.A.S and X.A.S.

Espinoza's relatives³¹³ fled to the United States, where they now live. In turn, six of Rocío Irene Alvarado Reyes family members moved to Benito Juárez.³¹⁴

287. As can be seen, the victims' next of kin have suffered serious damage as a result of the events that occurred beginning on December 30, 2009, because of ineffectiveness in the investigation of the facts and in the search for the victims, which led to a series of threats and incidents of harassment against them. All of this, in addition to affecting their physical, mental, and moral integrity, has had an impact on their social and labor relations and has altered their family dynamics.³¹⁵ In addition, a large group of family members have been forced to move to other cities and have even sought asylum in another country, which led to separation of their families and to social and cultural uprooting.

288. The Commission underscores that many of the family members who have had to endure these circumstances are children, toward whom the State has a special protection obligation, which it failed to fulfill as of the moment their loved ones disappeared—in Rocío Irene Alvarado Reyes case in the presence of her daughter and younger siblings—and later by its failure to respond to the threats received and the need for forced displacement.

289. In light of the foregoing considerations, the Commission concludes that the State is responsible for violating the right to mental and moral integrity established in Article 5.1 of the American Convention in connection with the obligations set out in Article 1.1 of the same instrument, to the detriment of all of the next of kin set out in paragraphs 59 to 61 of the present report. The Commission also concludes that the State is responsible for violating the right to private and family life established in Article 11 of the Convention in connection with Article 1.1 of the same instrument, to the detriment of Jaime Alvarado Herrera and his family group. Likewise, in keeping with the principle of *iura novit curia*, the Commission concludes that the State is responsible for violating the right to freedom of movement and residence established in Article 22 of the American Convention in connection with Article 1.1 of the same instrument, to the detriment of the 39 people subjected to forced displacement, as indicated in paragraph 195 to 197 of the present report. Lastly, the Commission concludes that the State failed to perform its duty of special protection toward the children making up part of the family groups of José Ángel Alvarado Herrera, Nitza Paola Alvarado Espinoza, and Rocío Irene Alvarado Reyes, as pointed out in paragraph 195 and following of the present report.

VI. CONCLUSIONS

290. The Commission concludes that the State of Mexico is responsible for the violation of the right to juridical personality, to life, to humane treatment, to personal liberty, to a fair trial, and to judicial protection enshrined in Articles 3, 4, 5, 7, 8, 11, 19, 22, and 25 in connection with Articles 1.1 and 2 of the same instrument, to the detriment of the persons indicated throughout this report. Likewise, the Commission concludes that the State is responsible for violating Article I.a and I.b and Article IX of the Inter-American Convention on Forced Disappearance of Persons.

291. In addition, the Commission concludes that it does not have enough elements to rule on the alleged violation of Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women.

³¹³ Her father, Alvarado Fabela; her mother, María de Jesús Espinoza Peinado; her daughters, N.S.A.E, M.P.A.E, and D.A.E; her sister, María de Jesús Alvarado Espinoza; her brother-in-law, Rigoberto Ambriz Marrufo; and her nephews and nieces, R.A.A, I.A.A.A, J.E.A.A, and A.Y.A.A.

³¹⁴ Her mother, Patricia Reyes Rueda; her daughter, A.M.U.A; her siblings, A.A.R and R.A.A.R; and her grandparents, Manuel Reyes Lira and María de Jesús Rueda Villanueva.

³¹⁵ I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 160.

VII. RECOMMENDATIONS

292. In light of the foregoing conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF MEXICO:

1. Conduct a thorough, impartial, and effective investigation into the whereabouts of Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera, and Rocío Irene Alvarado Reyes and, if appropriate, adopt the necessary measures to identify their mortal remains and turn them over to their next of kin according to their wishes.

2. Conduct internal proceedings on the human rights violations set forth in the present report and hold the corresponding trials for the crime of forced disappearance of Nitza Paola Alvarado Espinoza Alvarado Espinoza, José Ángel Alvarado Herrera Alvarado Herrera, and Rocío Irene Alvarado Reyes, in an impartial and effective manner and within a reasonable time, in order to clarify the facts completely, identify all those responsible, and impose the corresponding punishments.

3. Provide adequate compensation for the human rights violations set out in this report, in both material and non-material terms, including fair compensation, the establishment and dissemination of the historical truth concerning the events, a public act of acknowledgement of responsibility and the implementation of an adequate support program for the next of kin.

4. Order appropriate administrative, disciplinary, or criminal measures in response to the actions or omissions of State officials that contributed to the denial of justice and to the current impunity regarding the facts of the case, including any actions or omissions of officials that may have impeded the conduct of the investigation.

5. Adopt necessary measures to prevent the recurrence of similar acts in the future. Measures to avoid recurrence in the instant case should include legislative, administrative, and other types of measures to respond to the problem of forced disappearance in Mexico and its particular incidence in the State of Chihuahua. Likewise, legislative, administrative, and other types of measures should be taken to strengthen the capacity to investigate cases of forced disappearance of persons and to address structural factors that lead to impunity in these cases. Similarly, legislative, administrative, and other types of measures should be adopted to ensure that military criminal justice authorities refrain from obstructing investigations in cases of forced disappearance.