

Inter-American Court of Human Rights

Case of Molina-Theissen v. Guatemala

Judgment of July 3, 2004
(Reparations and Costs)

In the *Case of Molina Theissen*,

the Inter-American Court of Human Rights, composed of the following judges:

Sergio García Ramírez, President;
Alirio Abreu Burelli, Vice-President;
Oliver Jackman, Judge;
Antônio A. Cançado Trindade, Judge;
Cecilia Medina Quiroga, Judge;
Manuel E. Ventura Robles, Judge; and
Diego García-Sayán, Judge;

also present,

Pablo Saavedra Alessandri, Secretary; and
Emilia Segares Rodríguez, Deputy Secretary,

pursuant to Articles 29, 56, 57 and 58 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure") and to Article 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), issues the instant Judgment.

I

INTRODUCTION OF THE CASE

1. On July 4, 2003 the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed before the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") an application against the State of Guatemala (hereinafter "the State" or "Guatemala"), originating in petition No. 12.101, received by the Secretariat of the Commission on September 8, 1998.

2. The Commission filed the application based on Article 51 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), for the Court to decide whether the State breached Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to Fair Trial), 19 (Rights of the Child) and 25 (Right to Judicial Protection), all of them in combination with Article 1(1) (Obligation to Respect Rights), of the American Convention, and it failed to comply with the obligation set forth in Article I of the Inter-American Convention on Forced Disappearance of Persons (hereinafter "the Inter-American Convention on Forced Disappearance"). Said application pertains to "the forced disappearance of Marco Antonio Molina Theissen, a fourteen year old boy,

who was kidnapped from his father's home by members of the Guatemalan Army on October 6, 1981."

3. The Commission also asked the Court to order the State to make the monetary and non-monetary reparations demanded by the representatives of the victim and his next of kin. Finally, it asked the Inter-American Court to order the State to pay the costs due to processing of the case both under domestic venue and under international venue, before the bodies of the Inter-American system for the protection of human rights.

II COMPETENCE

4. Guatemala has been a State Party to the American Convention since May 25, 1978, and it accepted the adjudicatory jurisdiction of the Court on March 9, 1987. Therefore, the Court is competent to hear the instant case, in accordance with Article 62 of the Convention. Guatemala has also been a State Party to the Inter-American Convention on Forced Disappearance since February 25, 2000.

III PROCEEDING BEFORE THE COMMISSION

5. On September 8, 1998 the Center for Justice and International Law (hereinafter "CEJIL", "the representatives of the victim and his next of kin" or "the representatives") and the *Grupo de Apoyo Mutuo* (hereinafter "GAM") filed a petition before the Inter-American Commission based on the forced disappearance of Marco Antonio Molina Theissen (hereinafter "Marco Antonio Molina Theissen" or "Marco Antonio" or "the victim") carried out by the Guatemalan Army. On February 3, 1999 the Commission forwarded the pertinent parts of the petition to the State.

6. On March 4, 2003, after analyzing the positions of the parties and deeming that the friendly settlement stage had come to an end, the Commission adopted its Report on the Merits No. 35/03, in which it made a number of recommendations to the State.

7. On July 3, 2003, based on non-compliance by the State with its recommendations, the Inter-American Commission decided to bring the instant case before the Inter-American Court.

IV PROCEEDING BEFORE THE COURT

8. On July 4, 2003 the Inter-American Commission filed the application before the Court. The annexes to the application arrived on July 30, 2003. On August 7, 2003 the Secretariat of the Court (hereinafter "the Secretariat"), after a preliminary examination of the application by the President of the Court (hereinafter "the President"), forwarded it to the State together with its annexes and informed the State of the deadlines to respond to the application and to appoint its agent in the proceeding. On August 8, 2003, in accordance with Article 35(1)(e) of the Rules of Procedure, the Court forwarded the application to CEJIL and informed CEJIL that it had 30 days time to submit its brief containing pleadings, motions, and evidence.

9. On October 6, 2003, after an extension was granted, the representatives of the victim and his next of kin filed the brief containing pleadings, motions, and evidence, together with its annexes.

10. On November 6, 2003 the State filed its brief in response to the application and its annexes, in which it filed three preliminary objections.¹

11. On April 26 and 27, 2004 the Court held the public hearing, in two parts, and those appearing at this hearing were:

on behalf of the Inter-American Commission on Human Rights:

Susana Villarán, Delegate;
María Claudia Pulido, advisor; and
Lilly Ching, advisor;

on behalf of the representatives of the victim and his next of kin:

Viviana Krsticevic, representative;
Soraya Long Saborío, representative; and
Oswaldo Ruiz, representative;

on behalf of the State of Guatemala:

Herbert Estuardo Meneses Coronado, Agent;
Luis Ernesto Cáceres Rodríguez, Deputy Agent; and
Mayra Alarcón Alba, Executive Director of COPREDEH;

witnesses offered by the Inter-American Commission on Human Rights and by the representatives of the victim and his next of kin:

Emma Theissen Álvarez *Vda. de* Molina;
Ana Lucrecia Molina Theissen; and
Emma Guadalupe Molina Theissen;

witness offered by the representatives of the victim and his next of kin and summoned by the Inter-American Court of Human Rights:

María Eugenia Molina Theissen;

witness offered by the representatives of the victim and his next of kin:

Axel Mejía Paíz;

expert witness offered by the Inter-American Commission on Human Rights:

Carlos Martín Beristain; and

¹ The State filed the following preliminary objections: "*Ratione Temporis* lack of jurisdiction of the Court regarding facts that are prior to the Statement of Acceptance of the adjudicatory jurisdiction of the Court; Lack of Active Legal Standing, and Non-exhaustion of the regular domestic remedies."

expert witness offered by the representatives of the victim and his next of kin:

Alicia Neuburger.

12. In the course of the first part of the public hearing and in its April 26, 2004 brief, the State expressed that it withdrew the preliminary objections filed and it acknowledged its international responsibility in the instant case.

13. On that same day, April 26, 2004 the Inter-American Commission and the representatives of the victim and his next of kin, respectively, stated during the first public hearing that they accepted the acknowledgment of responsibility made by the State.

14. That same day, April 26, 2004, the Court issued an Order in which it ruled that it deemed all the preliminary objections filed by the State to have been withdrawn; it accepted the acknowledgment of international responsibility made by the State, and it decided to continue the public hearing summoned by the March 1, 2004 Order of the President, as well as to limit its subject-matter to reparations and costs. It proceeded with the second part of the public hearing, during which it heard the statements of the witnesses and expert witnesses summoned and the final oral pleadings of the Inter-American Commission, of the representatives of the victim and his next of kin, and of the State.

15. On May 4, 2004 the Court issued its judgment on the merits, in which it decided, unanimously,

1. To uphold its April 26, 2004 Order, in which it deemed that all the preliminary objections filed by the State had been withdrawn and it accepted the State's acknowledgment of international responsibility.

2. To find that the facts that gave rise to the instant case are no longer in dispute.

3. To find, in accordance with the acknowledgment of international responsibility made by the State and the facts established, that the State abridged the rights set forth in Articles 4(1) (Right to Life), 5(1) and 5(2) (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to Fair Trial), 17 (Rights of the Family), 19 (Rights of the Child) and 25 (Right to Judicial Protection) of the American Convention on Human Rights, and that it failed to comply with the obligations set forth in Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of that same Convention, to the detriment of Marco Antonio Molina Theissen; the State also failed to comply with the obligation set forth in Articles I and II of the Inter-American Convention on Forced Disappearance of Persons to the detriment of Marco Antonio Molina Theissen, pursuant to paragraph 43 of the [...] Judgment.

4. To find, in accordance [...] with the facts that were established, that [the State] abridged the rights set forth in Articles, 5(1) and 5(2) (Right to Humane Treatment); 8 (Right to Fair Trial); 17 (Rights of the Family), and 25 (Right to Judicial Protection) of the American Convention on Human Rights, and that it failed to comply with the obligations set forth in Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of that same Convention, to the detriment of the next of kin of Marco Antonio Molina Theissen: Emma Theissen Álvarez *Vda. de* Molina (the mother), Carlos Augusto Molina Palma (the deceased father), Emma Guadalupe, Ana Lucrecia and María Eugenia Molina Theissen (siblings), pursuant to paragraph 44 of the [...] Judgment.

5. To continue hearing the instant case in the reparations and legal costs stage.

16. The State filed its final written pleadings on May 24, 2004.

17. On May 27 and 28, 2004, respectively, the representatives of the victim and his next of kin and the Inter-American Commission filed their final written pleadings.

18. On June 11, 2004 the Secretariat, under instructions by the President, asked the Commission, the representatives of the victim and his next of kin, and the State, pursuant to Article 45(1) of the Rules of Procedure, for evidence to facilitate adjudication of the case regarding the birth certificates of the parents and siblings of the victim, the death certificate of the victim's father, the exchange rate of Guatemalan currency with respect to the United States dollar, the life expectancy chart for Guatemala, and the rate at which the consumer price indexes in force changed from 1981 to date.

19. On June 22, 2004 the representatives of the victim and his next of kin filed the evidence requested to facilitate adjudication of the case. The Commission and the State did not file any of the evidence requested to facilitate adjudication of the case.

V THE EVIDENCE

20. Before examining the evidence tendered, the Court will, in light of the provisions of Articles 44 and 45 of the Rules of Procedure, refer to certain considerations applicable to the specific case, most of which have been developed in the jurisprudence of this Court.

21. The principle of adversarial proceedings applies to evidentiary matters. This principle respects the right of the parties to defend themselves, and it is part of the basis for Article 44 of the Rules of Procedure regarding the appropriate time to offer evidence, for there to be equality among the parties.²

22. In accordance with the usual practice of the Court, at the start of each procedural stage the parties must state, at the first time granted for them to do so in writing, the evidence they offer. Furthermore, exercising its discretionary authority as set forth in Article 45 of its Rules of Procedure, the Court may ask the parties to submit additional evidentiary items as evidence to facilitate adjudication of the case, without this constituting a new opportunity to expand or complement the pleadings or to offer new evidence, unless the Court so allows.³

23. The Court has also stated previously, regarding receipt and evidence assessment, that the procedural system is a means to attain justice, and that the latter must not be sacrificed for the sake of mere formalities,⁴ while the Court must

² See *Case of Maritza Urrutia*. November 27, 2003 Judgment. Series C No. 103, para. 46; *Case of Myrna Mack Chang*. November 25, 2003 Judgment. Series C No. 101, para. 118; and *Case of Bulacio*. September 18, 2003 Judgment. Series C No. 100, para. 40.

³ See *Case of Maritza Urrutia*, *supra* note 2, para. 47; *Case of Myrna Mack Chang*, *supra* note 2, para. 119; and *Case of Bulacio*, *supra* note 2, para. 41.

⁴ See *Case of Juan Humberto Sánchez*. Interpretation of the Judgment on Preliminary Objections, Merits and Reparations (Art. 67 American Convention on Human Rights). November 26, 2003 Judgment. Series C No. 102, para. 42; *Case of Ivcher Bronstein*. February 6, 2001 Judgment. Series C No. 74, para. 67; and *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.)*. February 5, 2001 Judgment. Series C No. 73, para. 51.

also ensure legal certainty and procedural balance among the parties.⁵ These proceedings, as they are before an International Court and because they deal with human rights violations, are more flexible and informal than those before domestic venue in the countries.⁶ Furthermore, the Court has taken into account that international jurisprudence, deeming that international courts have the authority to appraise and assess the evidence in accordance with the rules of competent analysis, has avoided rigidly establishing the *quantum* of evidence required to substantiate a judgment.⁷

24. Based on the above, the Court will now examine and assess the set of items that constitute the body of evidence in this case, in accordance with the principles of competent analysis within the applicable treaty framework.

A) DOCUMENTARY EVIDENCE

25. Together with the application brief, the Inter-American Commission submitted documentary evidence, for which purpose it included several annexes (*supra* para. 8).⁸

26. Together with their brief containing pleadings, motions, and evidence, the representatives of the victim and his next of kin submitted several annexes as documentary evidence (*supra* para. 9).⁹

27. The State sent the brief filing its preliminary objections and its response to the application, and it attached several annexes as documentary evidence (*supra* para. 10).¹⁰

28. On March 11, 2004 the Commission submitted the statements of Oscar Ernesto Reyes and Mario Alcides Polanco Pérez, both rendered before a notary public (*affidavits*). The Court will now summarize the pertinent parts of said statements.

⁵ See *Case of Maritza Urrutia*, *supra* note 2, para. 48; *Case of Myrna Mack Chang*, *supra* note 2, para. 120; and *Case of Bulacio*, *supra* note 2, para. 42.

⁶ See *Case of Maritza Urrutia*, *supra* note 2, para. 48; *Case of Myrna Mack Chang*, *supra* note 2, para. 120; and *Case of Bulacio*, *supra* note 2, para. 42.

⁷ See *Case of Maritza Urrutia*, *supra* note 2, para. 48; *Case of Myrna Mack Chang*, *supra* note 2, para. 120; and *Case of Bulacio*, *supra* note 2, para. 42.

⁸ See Annexes 1 to 26 of the application brief by the Inter-American Commission filed on July 30, 2003 (leaves 557 to 776 of the file with annexes to the application).

⁹ See Annexes 1 to 10 of the brief containing pleadings, motions, and evidence of the representatives of the victim and his next of kin filed on October 6, 2003 (leaves 778 to 876 of the file with annexes to the brief containing pleadings, motions, and evidence of the representatives of the victim and his next of kin).

¹⁰ See Annexes 1 to 4 of the State's brief filing preliminary objections and responding to the application, filed on November 6, 2003 (leaves 330 to 336 of the file with preliminary objections, possible merits and reparations, Volume II).

- a) **Statement by Oscar Ernesto Reyes**, Coordinator of the "*Proyecto de Niñez Desaparecida por el Conflicto Armado Interno en Guatemala.*"

He has been working on human rights issues for six years, and for four years on the search for missing children due to the domestic armed conflict in Guatemala.

He has noted that some cases of missing children meet all criteria for the crime of forced disappearance. The report "*Hasta Encontrarte: Niñez Desaparecida por el conflicto armado interno en Guatemala*" by the Human Rights Office of the Archbishopric of Guatemala points out that 86% of the cases reported are forced disappearances. The remaining 14% of the disappearances are due to circumstances of the domestic armed conflict. In most of the cases that he is aware of, the direct perpetrator and mastermind of the facts was the Guatemalan Army, acting directly or with cooperation from the paramilitary forces that existed at the time. The report "*Hasta Encontrarte*" also states that the army was responsible for 92% of the cases of missing children, 3% were due to joint action of the army and the *Patrullas de Autodefensa Civil*, and 2% were due to the guerilla forces. In the remaining 3% of the cases, it is unknown who is responsible.

With respect to the mode of operation, the report also mentions that 69% of the minors, after being separated from their parents, were taken to a military unit belonging to the Army, and they were then given out as servants to members of the army and of the paramilitary forces.

Recommendation 24 of the Report "*Guatemala, Memoria del Silencio*" by the *Comisión para el Esclarecimiento Histórico* in 1999 also concluded that the State must establish the *Comisión Nacional de Búsqueda de la Niñez Desaparecida*. This Committee to Search for Missing Children was set up in 2001, thanks to civil society organizations and with no participation by the State. The main obstacle faced by that Committee while carrying out its investigations has been the refusal by State institutions to open the files that contain information on the whereabouts of the missing minors taken to their facilities, all this despite the fact that the Guatemalan Constitution provides that any person may obtain information from State files, record cards or any other State records.

- b) **Statement by Mario Alcides Polanco Pérez**, Director of the *Grupo de Apoyo Mutuo*.

He learned of the forced disappearance of Marco Antonio Molina Theissen when he became a member of the *Grupo de Apoyo Mutuo* and, in 1989, when he met Emma Guadalupe Molina Theissen, the victim's sister, he became even more interested.

Upon his own initiative, he decided to reopen the case in 1998 by filing a habeas corpus remedy and initiating actions for the Supreme Court of Justice to grant a special inquiry mandate. The family became aware of the proceeding when this mandate was about to be issued.

In 1998 he asked the Criminal Chamber of the Supreme Court of Justice of Guatemala to activate the Special Inquiry Procedure. In May 1999 the

Supreme Court of Justice granted the special inquiry mandate to the *Procuraduría de los Derechos Humanos* [Office of the Attorney for Human Rights] for a 60-day period. The Public Prosecutor's Office was also forced to continue the investigations into the instant case.

The investigation carried out by the Attorney for Human Rights was secret most of the time. He is only aware of those proceedings given to him by the Attorney for Human Rights and that are in the file. He never was able to learn the content of the investigation or its results, as he was only given a summary of the investigation. It has always been his opinion that there were anomalies in the investigation. He is certain that the Attorney for Human Rights did not conduct a scientific investigation but rather focused on analyzing the files and documents submitted to him by the *Grupo de Apoyo Mutuo*.

29. On June 22, 2004 the representatives of the victim and his next of kin filed the evidence to facilitate adjudication of the case that had been requested, i.e.: macroeconomic variables table for Guatemala; demographic growth indicators table for Guatemala; average annual exchange rate table for Guatemala; copy of the identity card of Emma Theissen Álvarez; copy of the birth certificate and Guatemalan passport of Carlos Augusto Molina Palma; copy of the Guatemalan passports of Ana Lucrecia Molina Theissen and of María Eugenia Molina Theissen; copy of the identity card of Emma Guadalupe Molina Theissen; copy of the death certificate of Carlos Augusto Molina Palma, and birth certificate of Marco Antonio Molina Theissen (*supra* para. 18).¹¹

B) TESTIMONIAL AND EXPERT EVIDENCE

30. On April 26, 2004 the Court heard the testimony of the witnesses and the expert opinions of the expert witnesses offered by the Inter-American Commission and the representatives of the victim and his next of kin (*supra* para. 11). The Court will now summarize the pertinent parts of said statements.

a) **Testimony of Emma Theissen Álvarez Vda. de Molina**, the victim's mother.

She lives in Costa Rica and currently is a housewife. In Guatemala she worked for 23 years as a grade school teacher, but stopped working as such in June 1982. Her husband Carlos Augusto Molina was a private accountant and, like all the family after the disappearance of their son Marco Antonio, he was unable to continue with his activities. She has three daughters: Ana Lucrecia, María Eugenia, Emma, and she had a son: Marco Antonio, who was born on November 30, 1966.

Her son was a pleasant, good boy, an excellent student, optimistic, happy, looking forward to continuing his life, to being useful to his Fatherland. Marco Antonio was in third year. When they burst into their house and kidnapped him to make him disappear, he was about to complete that school year. He liked drawing and building things very much, and his greatest wish was to

¹¹ See leaves 764 to 781 of the file with preliminary objections, possible merits and reparations, Volume III.

enter the School of Engineering. Marco Antonio said that he was going to make her a house once he was an engineer, but it was all cut short.

On October 6, 1981 she was at home together with Marco Antonio when three armed men arrived, only two of whom was she able to see, and these were the ones who entered the house with guns in their hands. Then, they shackled her son to an armchair, and they placed masking tape over his mouth so that he could not yell. One of the men grabbed her, pulled her around the house and emptied everything he could search. While one of the men tried to lock her up, pushing and hitting her, the other man took her son out of the house. When one of the men let go of the door, she was able to go outside and realized that her son, whose head they had covered with a sack, was being taken in the back of a pick up truck, with official license plate No. 17675. Afterwards her family found out that that license plate belonged to the G2, that is, the Intelligence service of the Guatemalan Army.

Since her son was kidnapped, she and her husband took many steps to find him. Immediately after the facts they filed habeas corpus remedies, four or five, none of which were fruitful. They searched by other means, talked to the police director at the time, and to other commanders of military bases, to no avail. One of the persons whom they contacted to find out about their son even charged them money. Afterwards they found out that he worked for the Intelligence service of the Guatemalan Army. When Efraín Ríos Montt came to power they tried to communicate with him, but he would not receive them. For years she has wondered why they kidnapped her son Marco Antonio.

Before what happened to Marco Antonio, her daughter Emma Guadalupe was kidnapped, kept in solitary confinement, raped and tortured at the military base in Quetzaltenango, from where she was able to escape after being kidnapped for nine days. She is certain that it was the military who took Marco Antonio away. When she heard about the kidnapping of Emma Guadalupe and that she managed to escape, it was logical to think that what happened to her son was revenge by the military, as Marco Antonio was not politically militant in any way.

Since her son Marco Antonio disappeared, she feels completely defenseless. Due to the facts, she felt that she was no longer a regular human being but rather "worth nothing"; she became an outcast within her own country, and this continued because there was more ill-treatment, surveillance and persecution. Guatemala was ruled with impunity. Marco Antonio's disappearance affected the family because it was a tragedy for each member in their relationship. No government institution or agency helped them, there was no justice at the time, and each one, each family group, sought refuge however they could. They felt that they were clandestine, because there was no other way due to the fear itself, the grief that they felt repressed them.

In 1984, they moved from one place to another, eating whenever they could, sleeping wherever they could. Then the family suffered another blow, they killed her daughter María Eugenia's husband in the "most vile and brutal" manner. They were under surveillance by what at the time was called the "white van," in which people were taken away and made to disappear. She had no other option but to seek a way to leave and to free her remaining children, and that was how they arrived at the Ecuadorian Embassy, where

they sought asylum. What led them to leave mostly was the death of her son-in-law, the father of two small girls, and it was urgent to free her family. She had never thought to leave Guatemala, and being unable to live there grieves her very much.

After what happened, she spent ten years with her husband without mentioning their son, to avoid causing greater damage. The loss of the only son was a tragedy for her husband. He spoke only when necessary, and his grief was so deep that when he lost all hope, he died.

The State will never be able to repair the damage it caused, but certain measures may help alleviate her grief, such as: to know the truth about what they did to their son, to do justice, to investigate and find the masterminds and direct perpetrators of the facts, and to establish teaching of human rights at all levels, as well as a specialized human rights university chair.

She asked that the *Comisión Nacional de Búsqueda de la Niñez Desaparecida* be given material and political support to function, and that a genetic data bank be established. She would like her genetic information to be in that bank, so that if her son's remains are found, they can be identified. This genetic data bank will help those who are searching for their missing children and all persons, but especially those children who have been unprotected, with no support from the Guatemalan authorities. She asked that the search for her son continue until he is found and his remains are delivered to her.

Disappearance of Marco Antonio had an economic impact on her family. The search for their son forced all of them to leave their jobs, and therefore they had no income. The financial situation worsened and their savings ran out.

Her greatest wish is for things to change in Guatemala, for people to be treated as persons, and that these violations of dignity, of life, and especially of the children should never more take place.

b) Testimony of Ana Lucrecia Molina Theissen, the victim's sister.

She was 26 years old when Marco Antonio disappeared. She was a school teacher at a village in San Juan Sacatepéquez, where she worked with "kakchiquel" children. She was also a student at the University of San Carlos, where she was in her third year of the history program, and she was beginning to work as a teaching assistant in the School of Economics and the Philosophy Chair. She had also been a leader of the teachers' union until 1980, and she was active in the political opposition to the regime. Her plans included obtaining a professors' degree in History and Social Studies, and working toward a licentiate degree in History. She dreamed of being able to do graduate studies outside Guatemala, and to continue teaching.

Since the day of the facts, she lost the will to go on living. Her brother's disappearance is not something that happened at a given time and place, but rather something that continues to happen inside her every time she comes close to that grief. For ten years she dreamt of her brother's return, and clung to the idea that he was alive, but at the same time she imagined that he was suffering, and had the conflicting wish that he should no longer be alive. When a person dies naturally or due to an accident, there is a body

and a social rite that helps to accept that this person is no longer there. On the tenth anniversary of her brother's disappearance, her father said "I do not think that your brother will return," and then she felt that she had permission to leave that illusion behind, something that she had to do to be able to continue living. The witness stated that "it is very cruel, very unjust, perverse, that it is oneself, one who loves the missing person, and who awaits him, who has to kill him."

Impunity continues in this case and in thousands of cases in Guatemala; this is very frustrating, as it means that the grief does not cease. She believes that there must be a change, a punishment, to help bear the grief more easily. Impunity in Guatemala has allowed the criminals to sit in Congress and in the State. She believes that it is an "upside down world" where the victims are guilty and the criminals walk around unmolested. In her country there is no sense of justice. She believes it necessary for society to develop justice.

She and her family constantly feel in danger. In August 1982 she stopped studying and working because she no longer felt safe. After the murder of her sister María Eugenia's husband and after suffering very strong persecution, on March 26, 1984 she left Guatemala and went to Mexico, where she attained refugee status. The family tried to reunify but was unable to do so. The Office of the United Nations High Commissioner for Refugees gave her 80 dollars for her upkeep and that of their 11 month old baby. She could not get a job, so she decided to make and sell tamales.

In Mexico she suffered a very painful process of uprooting. She had never thought to leave Guatemala, and even now every day outside Guatemala is a burden. The witness stated that when she was in Mexico there were some refugee camps along the border between Mexico and Guatemala, and that the Guatemalan Army would enter Mexican territory. This entailed danger both for the refugees and for the Mexican towns, and it gave rise to a hostile atmosphere and to detention of many Guatemalans by the Mexican authorities. On June 3, 1984 she and her sister Emma Guadalupe were detained because the Mexican authorities arrested a friend who had a list that included their particulars. They took their identity documents, forcing them to remain in that country as "illegals," although they were "refugees," because Mexico had not ratified the Convention on refugees.

She came to Costa Rica in 1985 by her own means. The only income she received during those first years was from the sale of the Guatemalan food that she cooked. Her second son was born, and in 1987 she got a job, despite the fact that her status was "illegal." In 1991 there was an amnesty for all "illegals" and refugees in Costa Rica, and since her younger son was born in this country, she was able to obtain permanent residence. She was unemployed from 1981 to 1987. She worked "illegally" in Costa Rica from 1987 to 1991, and since 1991 she has had stable employment.

The decision of the Inter-American Court is the family's only possibility of obtaining justice. It is an opportunity for Marco Antonio's case to transcend toward the overall issue of missing children in Guatemala, and also to transcend with respect to the situation of children who are living in situations

where there is a conflict, and who must receive special protection from the State.

Identification, trial and punishment of the direct perpetrators and masterminds would in part bring relief to the family, but it will not allow them to recover her brother. Adequate reparation would involve knowing the truth of what happened to Marco Antonio and to recover his remains. She also believes it essential to find out who committed those acts, to try and to convict them. She and her family do not want what happened to be forgotten, they want to ensure that it does not occur again, that preventive and protective action is taken, that respect for human rights is truly ensured, that new generations of police officers understand that their duty is to protect people's rights, as well as that the military receive human rights education, so that they understand that their main role is to ensure people's right to humane treatment. History must be taught the way it actually happened. There must be actions in remembrance of the victims, such as establishing a hall at the *Museo Nacional de la Cultura* in remembrance of the missing "boys and girls." The *Comisión Nacional de Búsqueda de la Niñez Desaparecida* must exist legally, it must have State support, and the State must be in the forefront of efforts to find out what happened and where the missing children are, and to recover their remains or facilitate family reunification.

She supported her parents in the search for Marco Antonio. She and María Eugenia published two ads in the daily newspaper *El Gráfico*. After the 1983 coup, when General Efraín Ríos Montt became Head of State, they issued two public letters addressed to Marco Antonio, seeking to move the Head of State, but they obtained no response. In 1987 or early 1988 they submitted a letter to representatives of the Guatemalan Attorney for Human Rights, who were visiting Costa Rica; in that letter, they filed a petition about what had happened and the reply they received was that this case was one more among the various cases that they were in charge of. In 1997 she went to Guatemala to submit the case before the *Proyecto Interdiocesano de Recuperación de la Memoria Histórica* headed by Monsignor Gerardi, and the case was mentioned in the *Informe de Guatemala "Nunca Más"* (hereinafter "REMHI" Report). She also brought the case before the *Comisión para el Esclarecimiento Histórico*. At that time, a special inquiry procedure requested by the attorney for the *Grupo de Apoyo Mutuo de Familiares de Desaparecidos* of the Supreme Court of Justice was reactivated. Her two sisters, her mother, and she herself were involved in that procedure. This is how the case was reactivated and brought to the Inter-American system in 1998 with support from CEJIL.

Her family suffered a breakdown after her brother's disappearance. They did not want to see each other or talk to each other out of fear that the enormous grief they felt might be impossible to control. Each member of the family blamed him or herself for what happened, and they also blamed each other. It was extremely difficult for them to recover as a family. She has become a distant woman, almost incapable of tenderness, of expressing warmth, and it has been very difficult for her to recover those aspects of life. She also underwent psychological treatment for 8 years, from 1991 to 1999.

c) **Testimony of María Eugenia Molina Theissen**, the victim's sister.

Marco Antonio was born when the witness was 9 years old, so for her, he was the first baby in the family. In 1967, her mother worked at a night school, and during that time she was in charge of Marco Antonio. She developed such a strong bond that the family said she was Marco Antonio's second mother. Her brother was a happy boy, who liked very much to ride his bicycle and skateboard. He was an outstanding student, to the point that in 1981 he was the standard-bearer for the *Instituto Guatemalteco Israelí*, that is, the highest grade-point average of the school where he studied.

Her husband, like her sister Emma Guadalupe, was a member of the *Partido Guatemalteco del Trabajo*. Members of that party told her that her sister had been detained and that they had seen her in an army vehicle. On the night of October 4th or 5th, 1981, she told her parents and Marco Antonio about what had happened to her sister, and therefore they decided to leave their home. On October 6, 1981 her mother and Marco Antonio went back to the house. Then Ana Lucrecia arrived at the house for a few minutes to tell them that Emma Guadalupe has escaped, and she left. Afterwards, some individuals came there and kidnapped Marco Antonio and took with them photographs of Emma. She believes that they took Marco Antonio as a reprisal for her sister Emma Guadalupe's escape.

After Marco Antonio disappeared, she felt great grief, anguish, anger, powerlessness, and hatred against his captors. She felt that her life had ended at that moment. Her life changed completely. She began to live in a semi-clandestine manner with her family in Guatemala. They could not rent an apartment for long, and they distanced themselves as a family. She also stopped working, for security reasons, as she worked at the University of San Carlos, which was an army target where it would have been easy for them to locate her if she had a work routine.

Marco Antonio's disappearance caused them great harm. At first they blamed each other, because they felt that they had not protected him as they should have.

Her husband Héctor Hugo Alvarado Chuga was murdered on February 27, 1984. He was planning to leave for Mexico with Nadia, their daughter, but was unable to. At her husband's funeral, strangers took pictures of the family. Afterwards, more or less on March 15, 1984, a "white van" was parked about 40 meters from her in-laws' house. That same night the parents, the two daughters, the in-laws, a brother in law, and she herself decided to leave Guatemala.

At the time of the facts, she had a house that had been allocated to her in the housing cooperative of the University of San Carlos, but when she left she lost the house, the money, her job, everything.

When she arrived in Costa Rica she sought psychological aid and was in treatment roughly from 1992 to 1997 or 1998. The psychotherapy sessions were sometimes once a week, and then quarterly.

Her family resorted to the Court hoping to find Marco Antonio, to establish what happened to him, where he is, and for his remains to be returned to them. She asked the Court to order an investigation into the direct perpetrators and masterminds, for them to be tried and punished; she requested support for the *Comisión Nacional de Búsqueda de la Niñez Desaparecida*; and that the Court follow up on their case.

d) **Testimony of Emma Guadalupe Molina Theissen**, Marco Antonio Molina Theissen´s sister.

She was born in Guatemala. She currently lives in Costa Rica and is a Costa Rican citizen. She is a systems engineer and works as Director of Information Systems at the *Sociedad de Seguros de Vida del Magisterio Nacional*.

On September 27, 1981, about 8 a.m., she was traveling from Guatemala City to Quetzaltenango on a bus that was stopped in the Department of Sololá by an army roadblock. Members of the army ordered the passengers to get off the bus and searched them. She had internal documents and propaganda of the *Partido Guatemalteco del Trabajo* with her. When the soldiers searched her they realized that she had those documents and detained her. The soldiers took her to a vacant house in Santa Lucía Utatlán, and she was interrogated there all day, into the afternoon. Then they took her in a vehicle, blindfolded and handcuffed, to a place that she later identified as the Manuel Lisandro Barillas military base in Quetzaltenango.

During the time that she was detained at the military base, from September 27 to October 5, 1981, she was never taken before a judge. When she was transferred to the base, they took her to a sort of "barracks" where non-uniformed army personnel slept, for which reason she concluded that they were intelligence staff. Her detention within the military base was clandestine.

During the first two days of her detention she was interrogated during the day by two men who sought to establish who she was, what she knew, and what she did within the organization. During those two days there was no physical violence, but the evening of the second day, when she refused to give the men the information they were demanding and that she did not know, they got very angry and took her blindfolded and handcuffed to a part of the building of the military base. There they took her to a room, made her lie down and handcuffed her to the bedrails. Later that night, in the early hours of dawn, and repeatedly afterwards, every day after that night, several men came into the room, tortured her, and at one time several soldiers came into the room and raped her.

On the fifth day after she was captured, two individuals talked to her and asked her if she was willing to make public statements and urge youths and parents to not allow their children to belong to the guerrilla forces. The witness told them she would. They told her that, in exchange for that, she must say absolutely everything she knew, houses, print shops, persons, and so forth. On the seventh day they took her out of the room and asked her to bathe; she put on the clothes that they gave her and they made her get onto an army vehicle with four or five men in civilian clothing but armed. They drove around the city of Quetzaltenango for her to identify anyone she knew

or take them to see a house, etc. While they were driving around, she saw two persons who at the time were party militants.

When they returned that night, the men said that they would send her to Guatemala City for them to make her talk, and she was afraid that they would kill her. The men did not come on the nights of the seventh and eighth day. By then, she was in a very bad state psychologically, she felt very weak, and all that time she had not eaten or drunk water, and her stomach hurt. She began to call the soldiers, because she wanted to know what they intended to do to her. In the midst of her desperation, she was able to free herself from the shackles, realized that the window was open, jumped into the hallway, walked down it, arrived at an auditorium where there were some individuals who said nothing to her, and then she realized that they did not know what was going on, so she kept on walking and when she arrived at the courtyard she went toward the guard post. The guard asked her what she was doing inside and whom she was with; she answered that she was with the "cancha pelón" who was inside there. She believes that the guard thought she was a prostitute. When she was outside she took a cab and went to the house of one of her militant friends, to hide and for protection. Then she went to the southern coast of Guatemala. On January 16, 1982 she was able to leave the country toward Mexico with support from members of the party.

In early May 1982, when she was already in Mexico, she heard that Marco Antonio had been kidnapped. The news was like a "finishing shot." At that moment she was in a very grave state of psychological deterioration, with a very high level of irrationality, she was completely terrified, for which reason the disappearance of her brother caused her an indescribable grief, an enormous feeling of guilt mixed in with the terror.

The impact of her brother's disappearance gave her very destructive feelings of guilt for many years. When she arrived in Mexico she sought help. In late 1983 and early 1984, a psychologist saw her almost daily and did not charge her. When she arrived in Costa Rica she made some attempts to obtain psychological support; at this time her emotional deterioration –the terror and the guilt- led her into self-destructive behaviors. In the midst of this situation, she went to the office of María de los Ángeles Coto, her psychologist, and for 9 years she has undergone therapy to restructure herself in all regards, to recompose, to have an identity and the will to live. At first she went to therapy sessions two or three times a week, then once a week, and in recent years once every ten days.

She realizes that no reparation is complete and true because when they took her brother's life they took her family's life, but she believes that to attenuate what happened, somewhat, it is necessary for the State to reveal to the family what happened, where her brother is, and in this way to attain closure in the grieving process, and at least to feel that her brother's remains will rest in peace. She also demands that justice be done, for those responsible to be punished, for society to honor the victims of so much suffering through symbolic measures that ensure remembrance of them, such as the creation of a missing children's hall, of a monument to life, not to death or to her brother's disappearance, and to establish the possibility of knowing about human rights in Guatemala.

e) **Witness Axel Mejía Paíz**, a sociologist.

He lives in Guatemala. He has worked for *Asociación Casa Alianza* for fifteen years; at *Casa Alianza*, he is the Coordinator of the Missing Children Program, and he is therefore associated with the *Comisión Nacional de Búsqueda de la Niñez Desaparecida* (CNBND), set up on June 21, 2001.

The *Comisión Nacional de Búsqueda de la Niñez Desaparecida* carries out actions to document, seek and find children missing from the time of the armed conflict. It does this by means of five main work areas: investigation, psychosocial support, legal affairs, advocacy, and social communication.

He believes that the next of kin are the main protagonists in these processes. At various meetings, he has urged the State to provide access to information from all files on children who were placed in orphanages or institutions that functioned during the armed conflict, as well as any files the army may have on children who were captured and taken to military institutions. However, he has received no positive response. Since 90% of the disappearances of children were conducted by the army, 90% of the documented cases cannot yet be solved. The *Comisión Nacional de Búsqueda de la Niñez Desaparecida* has managed to document close to 1000 cases of missing children throughout the country, including 10 different ethnic groups, and 90% of these cases involve Mayan indigenous population. About 120 of those 1000 cases have been solved, and families were reunited in 80 of them. This means that children who were separated from their family 20 or 22 years ago have managed to see their parents again. The Report of the Historical Elucidation Committee [*Comisión para el Esclarecimiento Histórico*] states that there were 600 massacres in which children were captured and taken to military centers, orphanages or State Institutions that fostered adoptions. The number of adoptions grew in Guatemala from 1979 to 1984. Estimates are that roughly 4,500 to 5,000 children disappeared during the armed conflict in Guatemala.

The REMHI Report recorded the case of Marco Antonio Molina Theissen and the *Comisión Nacional de Búsqueda de la Niñez Desaparecida* also documented it and undertook investigative actions by preparing a search map that defined three sources for basic information. The first was the orphanages, where the investigation has already been carried out but was fruitless. It has not been feasible to exhaust the other two sources of information, because the State has not provided access to the information that might exist in the Quetzaltenango military zone and it has not been possible to analyze whatever information the *Estado Mayor Presidencial* [Military Intelligence Unit] might have. Based on information obtained documenting Marco Antonio Molina Theissen's case, they reached the conclusion that it was a military intelligence practice directed against leaders but also against members of families linked to social activities or who expressed their disagreement with the policies of the State, with the aim of paralyzing, harming and affecting the family. Marco Antonio Molina Theissen was the most vulnerable member of the family because he was the youngest, because he was a child, and because he was the only boy. The *Comisión Nacional de Búsqueda de la Niñez Desaparecida* has documented this practice with respect to five families. These families were harmed by the kidnapping

and disappearance of their youngest sons. Marco Antonio's case was part of this practice, and cannot be deemed an isolated case.

There is no legal framework to enable searching for and documenting cases of missing children in the country, and therefore, as the *Comisión para el Esclarecimiento Histórico* has done, he recommends that the State enact laws to allow access to the files of all institutions where children were placed and that fostered adoptions, as well as to the files of the various military centers, to enable establishment of the whereabouts of hundreds of children. He also believes it necessary for the State to enact laws that acknowledge the juridical status of absence due to forced disappearance, and to implement laws to enable review of all adoptions of children who were "war" victims, without the knowledge and consent of the parents. The State must support the actions of the *Comisión Nacional de Búsqueda de la Niñez Desaparecida* not only financially, but also technically. This involves the establishment of a genetic data bank that will make it possible to solve pending cases with greater certainty and in a more agile manner.

The *Fundación Antropológica Forense de Guatemala* (FAFG) would be the appropriate institution to implement the genetic data bank project, given its experience with exhumations, and in general terms because its work has contributed to solve many cases of individuals, including children, who were executed and buried in clandestine cemeteries. The State must provide the technology and all the equipment required to establish the genetic data bank.

The *Procuraduría de los Derechos Humanos* [Office of the Attorney for Human Rights] was the only State institution that participated in establishment of the *Comisión Nacional de Búsqueda de la Niñez Desaparecida*. This Committee attained legal status through the *Procuraduría*, based on a decision issued by its Secretary in March 2003. However, no State authority has allocated resources for actions to document, search for and reunite missing children. The State should strengthen the budget of the Office of the Attorney for Human Rights so that the *Comisión Nacional de Búsqueda de la Niñez Desaparecida* can further its work through that Office. He insists that this entails not only financial support, but also support through the Defense Ministry and the Executive branch of government, to allow access to information in the files of orphanages and military centers.

The damage caused to the families by forced disappearance cannot be undone, but there are certain actions that might, at some time, attenuate their suffering, such as an acknowledgment of the facts of forced disappearance by the President of Guatemala to society, to the communities and to the survivors of the domestic armed conflict, for the President to ask the forgiveness of all Guatemala, and at the same time to accept the responsibility for the violations against them.

Another action that could honor the memory of the victims is the building of monuments or the establishment of a museum hall to commemorate the missing children, and to decree a national children's day. The State must foster an awareness campaign through the media and in all the languages of Guatemala to make the facts regarding forced disappearance publicly known.

f) **Expert opinion of Carlos Martín Beristain, a physician.**

Guatemala is a country that since 1954 has been subject to a series of military dictatorships, an increasingly acute domestic armed conflict, and use of intelligence services for counterinsurgency tasks and clandestine operations. In this context, as the REMHI Report states, there has been "ostentatious impunity," in which many of the clandestine operations were carried out publicly and openly, with no legal safeguards, no system for protection vis-à-vis the victims' situation.

From a psychosocial standpoint, impunity has several effects. First of all, educational effects, that is, a change of values in a society in which the ability to lodge petitions is paralyzed or the act of lodging a petition becomes a new source of danger or possible re-traumatization due to the threats suffered by the complainants. This generates "learned powerlessness," as it is called; in other words, people learn that nothing can be done to effect change and that what they need to do is to go back to the more primitive forms of adaptation, trying to protect themselves. Another effect of impunity, within the framework of this change of values, is that it stimulates a rise in private revenge. When the judiciary does not publicly restore a certain balance after a violation or traumatic act, social violence rises. Impunity also entails a risk of repetition of the atrocities that occurred in the past, inasmuch as those responsible remain in control of the subsequent political process, and any attempt to generate a new system of justice is controlled. A context of impunity, in turn, often discredits democracy, because the value of justice is not taken up in a new social process, and this leads to situations in which human right violations are considered part of the way to struggle against a context of impunity. Finally, justice corroborates that certain facts took place, in other words, when justice is lacking, the truth is easily "wounded."

With respect to the effects of impunity on the next of kin of the victims, it makes remembrance of the victims a private one that can only be discussed with members of the family or persons one trusts, so it does not become part of a collective remembrance. Human rights violations suffered by the victims and their next of kin have a social and political cause, but there is no social and political framework for them to fit into. One thing that can help the next of kin to deal with the impact of violence better is to have social support, but impunity is an impediment to this.

Impunity also generates new traumatic experiences for the victims, as the fact of filing a petition or a habeas corpus remedy becomes a frustrating experience or one of failure, and sometimes also involves the risk of suffering threats, intimidation, etc. Fear, associated with not expressing traumatic experiences, makes it more difficult for the next of kin to deal with the traumatic event.

The individual effects mentioned more frequently by the victims and reflected in the REMHI Report are the feeling of injustice and a feeling of powerlessness. From a psychological standpoint, lack of control over life is much greater in cases where traumatic events are associated with impunity.

Traumatic acts of violence can also cause feelings of fury. The search for justice plays the social role of channeling this fury, of doing something constructive with it.

Another aspect has to do with “confronting” the traumatic events, as it is called. Impunity blocks the more adaptive ways of confronting them. In terms of the grieving process, impunity accentuates the traumatic event.

Impunity is also a process; it is not a single traumatic event, but rather many experiences in addition to the impact of the traumatic event itself. And even though people develop many forms of resistance, traumatic experiences are cumulative in their effects.

To complete grieving processes for the forced disappearance of a next of kin, one must address a number of factors or tasks, such as accepting that the loss is definitive, which has to do with obtaining information on what happened and finding the remains; public acknowledgment of the facts as a social expression that what happened was unfair; the possibility of expressing oneself regarding the loss; receiving redress; and developing forms of positive remembrance of the victim.

The REMHI Report reached the conclusion that what happened in the case of Molina Theissen sought to harm the family and it took place in a context of harassment, as a permanent torture technique, associated with punishment due to the prior capture and detention of Emma Guadalupe, Marco Antonio's sister.

The Molina Theissen family's life aspirations were affected in several ways. Since disappearance is, in terms of grieving, an experience that freezes one in the past, one that is an impediment to obtaining information and to moving forward in time, there is an aspect of family dynamics that remains there, in what happened, and this restricts the family's development opportunities. In cases of forced disappearance and traumatic acts of violence, the family's various shared expectations change, as do the dreams of family life, their resources, the role played by the missing person, and this alters the family's life aspirations. Furthermore, the family's ability to support each other diminishes, as in most cases it is difficult to talk about the traumatic event and each family member's ways of handling the situation and the rate of their grieving processes are different. All these aspects show how impunity affects them, personally blocking or disrupting the family's life aspirations or those of the persons affected.

g) **Expert opinion of Alicia Neuburger**, a psychologist.

She interviewed Emma Theissen *Vda. de* Molina, her three daughters, the grandchildren, and the husband of Ana Lucrecia Molina Theissen. The methodology she used was based on open or semi-structured individual, family and group interviews.

Learning the truth is crucial for this family's health and recovery. With respect to guarantees of non-recidivism, it would be important to establish the Missing Children's Hall in Guatemala, as well as a memorial monument, not only for the Molina Theissen family but also for the hundreds of

Guatemalan families who have had and continue to have missing children. Establishment of a genetic data bank is also essential, as this would allow Marco Antonio's mother to feel that even though she left Guatemala she did not abandon him. These would be "non-abandonment" measures, and the other one would be the legacy of remembrance.

While submitting her expert report, she referred to the psychological profiles she developed of Emma Theissen *Vda. de* Molina, Ana Lucrecia Molina Theissen, María Eugenia Molina Theissen, and Emma Guadalupe Molina Theissen. She believes that Emma Guadalupe will need psychotherapy the rest of her life. She pointed out that María Eugenia, Ana Lucrecia and all their children also need psychological support.

C) EVIDENCE ASSESSMENT

31. In this case, as in others,¹² the Court accepts the evidentiary value of the documents submitted by the parties at the appropriate procedural moment that were not disputed or challenged, and whose authenticity was not questioned. On the other hand, pursuant to Article 45 of the Rules of Procedure, the Court admits the evidence to facilitate adjudication of the case tendered by the representatives, as it deems it useful for adjudication of the instant case (*supra* para. 29).

32. With respect to the statements rendered by Emma Theissen Álvarez *Vda. de* Molina, Ana Lucrecia Molina Theissen, María Eugenia Molina Theissen, and Emma Guadalupe Molina Theissen (*supra* paras. 30.a, 30.b, 30.c and 30.d)), the Court admits them insofar as they are in accordance with the object of the examination of the witness, and in view of the acknowledgment of international responsibility made by the State. In this connection, the Court notes that, in general, statements by the next of kin of the alleged victims are especially useful regarding both the merits and reparations insofar as they can provide pertinent information on the harmful consequences of the alleged violations.¹³

33. With respect to the testimony of Axel Mejía Paíz (*supra* para. 30(e)), this Court deems that, since it was not disputed and it is corroborated by other items of evidence, it is admissible insofar as it is in accordance with the object of the proposed examination, and as such, the Court assesses it within the context of the body of evidence as a whole.

34. As regards the expert opinions of expert witnesses Carlos Martín Beristain and Alicia Neuburger (*supra* paras. 30(f) and 30(g)), which were neither disputed nor challenged, the Court admits them and attaches evidentiary value to them.

35. Regarding the statements rendered before a notary public by expert witness Oscar Ernesto Reyes (*supra* para. 28(a)) and witness Mario Alcides Polanco Pérez (*supra* para. 28(b)), which were not disputed, this Court also admits them insofar as they are in accordance with the object of the examination proposed, and it assesses them in the context of the body of evidence.

¹² See *Case of Maritza Urrutia*, *supra* note 2, para. 52; *Case of Myrna Mack Chang*, *supra* note 2, para. 128; and *Case of Bulacio*, *supra* note 2, para. 57.

¹³ See *Case of Maritza Urrutia*, *supra* note 2, para. 53; *Case of Myrna Mack Chang*, *supra* note 2, para. 132; and *Case of Bulacio*, *supra* note 2, para. 66.

36. For the aforementioned reasons, the Court will assess the evidentiary value of the documents, statements or expert opinions submitted in writing or rendered before the Court. The evidence submitted during the proceeding has been included in a single body of evidence, which is considered a whole.¹⁴

VI PROVEN FACTS

37. In the instant Judgment, the Court deems proven the facts established in the judgment on the merits issued by the Court on May 4, 2004. The Court also deems the following facts proven:

With respect to Marco Antonio Molina Theissen

37(1) Marco Antonio Molina Theissen was born on November 30, 1966 and he was 14 years, 10 months old at the time of the facts.¹⁵ He lived with his family in Guatemala City. He was in his third year of secondary school at the *Colegio Guatemalteco-Israelí*, and he hoped to go to college.¹⁶

37(2) The whereabouts of Marco Antonio Molina Theissen's remains are unknown to date.¹⁷

With respect to Marco Antonio Molina Theissen's family

37(3) His mother is Emma Theissen Álvarez *Vda. de* Molina.¹⁸ After the facts, in June 1982 she resigned from her job as a schoolteacher, where she had worked for 23 years. She currently works at home doing household chores.¹⁹

37(4) Her father was Carlos Augusto Molina Palma, who died on September 23, 1994.²⁰ He worked as a private accountant. After the facts in connection

¹⁴ See *Case of Maritza Urrutia*, *supra* note 2, para. 57; *Case of Bulacio*, *supra* note 2, para. 68; and *Case of Juan Humberto Sánchez*. June 7, 2003 Judgment. Series C No. 99, para. 60.

¹⁵ See birth certificate of Marco Antonio Molina Theissen (file with preliminary objections, possible merits and reparations, Volume III, folio 780).

¹⁶ See *Case of Molina Theissen*. May 4, 2004 Judgment. Series C No. 106, para. 40(7)

¹⁷ See *Case of Molina Theissen*. May 4, 2004 Judgment. Series C No. 106, para. 40(19); testimony of Emma Theissen Álvarez *Vda. de* Molina rendered before the Court on April 26, 2004; testimony of Ana Lucrecia Molina Theissen rendered before the Court on April 26, 2004; testimony of María Eugenia Molina Theissen rendered before the Court on April 26, 2004; and testimony of Emma Guadalupe Molina Theissen rendered before the Court on April 26, 2004.

¹⁸ See *Case of Molina Theissen*. May 4, 2004 Judgment. Series C No. 106, para. 40(8).

¹⁹ See testimony of Emma Theissen Álvarez *Vda. de* Molina rendered before the Court on April 26, 2004.

²⁰ See *Case of Molina Theissen*. May 4, 2004 Judgment. Series C No. 106, para. 40(8); and death certificate of Carlos Augusto Molina Palma (file with preliminary objections, possible merits and reparations, Volume III, leaf 781).

with his son's disappearance, he stopped working, from 1981 to September 1994, when he died.²¹

37(5) Her sister Ana Lucrecia Molina Theissen was a teacher and a college student. At the time of the facts she worked as a teacher at the *Escuela Nacional Rural Mixta* of the village of Lo de Carranza in San Juan Sacatepéquez. She quit her job in August 1982. She also dropped out of her college program in History and resigned her post as an assistant to the Philosophy Chair at University of San Carlos. After the facts, she carried out various jobs, and since 1991 she has had a job that is in accordance with her academic training.²²

37(6) Her sister María Eugenia Molina Theissen was an employee of *University of San Carlos* at the time of the facts, and she also left her position.²³

37(7) Her sister Emma Guadalupe Molina Theissen is a systems engineer and works as Director of Information Systems at the *Sociedad de Seguros de Vida del Magisterio Nacional in Costa Rica*.²⁴

37(8) Marco Antonio Molina Theissen's family was forced to leave Guatemala.

37(8)(i) Emma Guadalupe Molina Theissen left Guatemala on January 16, 1982 and went into exile in Mexico;²⁵

37(8)(ii) On March 23, 1984 María Eugenia Molina Theissen requested asylum at the Ecuadorian Embassy for herself, her two daughters and her parents, Carlos Augusto Molina Palma and Emma Theissen Álvarez. On March 31, 1984 they traveled to Ecuador as refugees;²⁶

37(8)(iii) Ana Lucrecia Molina Theissen, together with her 11-month old son, left Guatemala on March 26, 1984, toward Mexico;²⁷ and

²¹ See testimony of Emma Theissen Álvarez *Vda. de* Molina rendered before the Court on April 26, 2004; and certificate of Carlos Augusto Molina Palma's earnings issued by expert accountant Celeste Fuentes González on September 30, 2003 (file with annexes to the brief containing pleadings, motions, and evidence of the representatives of the victim and his next of kin, Annex 8, leaf 854).

²² See *Case of Molina Theissen*. May 4, 2004 Judgment. Series C No. 106, paras. 40(8) and 40(9)(ii); and testimony of Ana Lucrecia Molina Theissen rendered before the Court on April 26, 2004.

²³ See *Case of Molina Theissen*. May 4, 2004 Judgment. Series C No. 106, paras. 40(8) and 40(9)(iii); and testimony of María Eugenia Molina Theissen rendered before the Court on April 26, 2004.

²⁴ See *Case of Molina Theissen*. May 4, 2004 Judgment. Series C No. 106, paras. 40(8); and testimony of Emma Guadalupe Molina Theissen rendered before the Court on April 26, 2004.

²⁵ See *Case of Molina Theissen*. May 4, 2004 Judgment. Series C No. 106, para. 40(13)(i).

²⁶ See *Case of Molina Theissen*. May 4, 2004 Judgment. Series C No. 106, para. 40(13)(ii).

²⁷ See *Case of Molina Theissen*. May 4, 2004 Judgment. Series C No. 106, para. 40(13)(iii); and testimony of Ana Lucrecia Molina Theissen rendered before the Court on April 26, 2004.

37(8)(iv) Emma Guadalupe Molina Theissen and her daughter, born in Mexico, went to Costa Rica in July 1985. Ana Lucrecia Molina Theissen and her son arrived there afterwards. Carlos Augusto Molina Palma and Emma Theissen Álvarez were reunited with two of their daughters in this country in November 1986. María Eugenia Molina Theissen and her two daughters arrived in Costa Rica in November 1990.²⁸

With respect to the pecuniary and non-pecuniary damages to Marco Antonio Molina Theissen's family

37(9) Marco Antonio Molina Theissen's next of kin suffered detriment to their job-related and economic relations, as they left behind their jobs, houses and belongings, and this caused them pecuniary damage.²⁹

37(10) Marco Antonio Molina Theissen's forced disappearance has caused suffering and fear among the members of the family who, in turn, were harassed and persecuted; this forced them into exile and broke their family ties. Furthermore, their search for Marco Antonio has been fruitless, and this has caused them anguish and grief.³⁰

37(11) The victim's next of kin continue to suffer due to the impunity that still prevails in the instant case.³¹

37(12) The victim's sisters, Ana Lucrecia Molina Theissen, María Eugenia Molina Theissen and Emma Guadalupe Molina Theissen, have received psychological treatment for several years.³²

²⁸ See *Case of Molina Theissen*. May 4, 2004 Judgment. Series C No. 106, para. 40(13)(iv).

²⁹ See testimony of Emma Theissen Álvarez *Vda. de* Molina rendered before the Court on April 26, 2004; testimony of Ana Lucrecia Molina Theissen rendered before the Court on April 26, 2004; testimony of María Eugenia Molina Theissen rendered before the Court on April 26, 2004 and certificate of earnings of Carlos Augusto Molina Palma issued by expert accountant Celeste Fuentes González on September 30, 2003 (file with annexes to the brief containing pleadings, motions, and evidence of the representatives of the victim and his next of kin, Annex 8, leaf 854).

³⁰ See testimony of Emma Theissen Álvarez *Vda. de* Molina rendered before the Court on April 26, 2004; testimony of Ana Lucrecia Molina Theissen rendered before the Court on April 26, 2004; testimony of Emma Guadalupe Molina Theissen rendered before the Court on April 26, 2004; testimony of María Eugenia Molina Theissen rendered before the Court on April 26, 2004; expert opinion of Carlos Martín Beristain rendered before the Court on April 26, 2004; and expert opinion of Alicia Neuburger rendered before the Court on April 26, 2004.

³¹ See testimony of Emma Theissen Álvarez *Vda. de* Molina rendered before the Court on April 26, 2004; testimony of Ana Lucrecia Molina Theissen rendered before the Court on April 26, 2004; testimony of Emma Guadalupe Molina Theissen rendered before the Court on April 26, 2004; and testimony of María Eugenia Molina Theissen rendered before the Court on April 26, 2004.

³² See testimony of Ana Lucrecia Molina Theissen rendered before the Court on April 26, 2004; testimony of María Eugenia Molina Theissen rendered before the Court on April 26, 2004; testimony of Emma Guadalupe Molina Theissen rendered before the Court on April 26, 2004; certification of professional fees of psychologist María de los Angeles Coto Campos dated October 6, 2003 (file with annexes to the brief containing pleadings, motions, and evidence of the representatives of the victim and his next of kin, Annex 9, leaf 856); expert opinion of Alicia Neuburger rendered before the Court on April 26, 2004; and sworn statement of psychologists Alfonso González Ortega and María de los Angeles Coto Campos, clinical psychologists in charge of Emma Guadalupe Molina Theissen's therapy, rendered in San Jose, Costa Rica, on April 21, 1999 (file with annexes to the application by the Inter-American Commission on Human Rights, Annex 15, leaves 736 to 737).

With respect to the expenses incurred by Marco Antonio Molina Theissen's next of kin processing the case under domestic venue

37(13) The victim's next of kin incurred a number of expenses in connection with the various steps they took, as a consequence of the facts, before numerous domestic institutions, such as prisons, military bases, hospitals, non-governmental organizations, government institutions in general, as well as publishing ads in the press, seeking Marco Antonio Molina Theissen. The next of kin also incurred expenses in connection with judicial proceedings.³³

With respect to representation of Marco Antonio Molina Theissen and his next of kin before the Inter-American system for protection of human rights and the expenses in connection with their representation

37(14) The victim and his next of kin have been represented by the Center for Justice and International Law in steps taken before the Commission and before the Court, and that Center has incurred a number of expenses in connection with said steps.³⁴

VII REPARATIONS (APPLICATION OF ARTICLE 63(1) OF THE CONVENTION)

38. In accordance with the judgment on the merits issued by the Court on May 4, 2004, the rights set forth in Articles 4(1), 5(1) and 5(2), 7, 8, 17, 19 and 25 of the American Convention were breached to the detriment of Marco Antonio Molina Theissen, and the rights set forth in Articles 5(1) and 5(2), 8, 17 and 25 of the American Convention were abridged to the detriment of his next of kin. The Court also found that the State failed to comply with the obligations set forth in Articles 1(1) and 2 of the Convention and in Articles I and II of the Inter-American Convention on Forced Disappearance of Persons.

³³ See *Case of Molina Theissen*. May 4, 2004 Judgment. Series C No. 106, paras. 40(14) to 40(19); open letter to Marco Antonio Molina Theissen published by his next of kin in a Costa Rican daily on October 6, 1987 (file with annexes to the application by the Inter-American Commission on Human Rights, Annex 7, leaf 615); *habeas corpus* remedy filed in favor of Marco Antonio Molina Theissen by Mario Alcides Polanco before the Supreme Court of Justice on July 9, 1997 (file with annexes to the application by the Inter-American Commission on Human Rights, Annex 5, leaves 608 to 609); *habeas corpus* remedy filed in favor of Marco Antonio Molina Theissen by Emma Theissen Álvarez *Vda. de* Molina, Ana Lucrecia Molina Theissen, Emma Guadalupe Molina Theissen, María Eugenia Molina Theissen and Mario Alcides Polanco on August 11, 1997 before the Supreme Court of Justice (file with annexes to the application by the Inter-American Commission on Human Rights, Annex 5, leaves 610 to 611); special inquiry procedure filed in favor of Marco Antonio Molina Theissen by Mario Alcides Polanco before the Supreme Court of Justice on January 20, 1998 (file with annexes to the application by the Inter-American Commission on Human Rights, Annex 11, leaves 619 to 620); request for correction of mistake regarding the date of the *habeas corpus* remedy filed on March 16, 1998 (file with annexes to the application by the Inter-American Commission on Human Rights, Annex 12, leaves 621 to 622); steps taken during the special inquiry proceeding begun before the Criminal Chamber of the Supreme Court of Justice (file with annexes to the application by the Inter-American Commission on Human Rights, Annex 14, leaves 625 to 735); and testimony of Emma Theissen Álvarez *Vda. de* Molina rendered before the Court on April 26, 2004.

³⁴ See documentation regarding the expenses incurred by CEJIL (file with annexes to the brief containing pleadings, motions, and evidence of the representatives of the victim and his next of kin, Annex 10, leaves 857 to 876).

39. This Court has established, in its case law,³⁵ that it is a principle of International Law that any violation of an international obligation that has caused damage generates a new obligation: that of providing adequate reparation for the damage caused. To this end, the Court has based its position on Article 63(1) of the American Convention, according to which,

[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

40. Article 63(1) of the American Convention contains a rule of customary law that is one of the main principles of contemporary International Law regarding responsibility of the States. When there is an unlawful act attributable to a State, this gives rise to the latter's international responsibility for abridgment of the international provision, with the entailing duty to make the consequences of the violation cease and to provide reparation for damage caused.³⁶

41. In the instant case, the State's responsibility for breaching the aforementioned Articles (*supra* paras. 15 and 38)), is compounded because what happened to the child Marco Antonio Molina Theissen was part of a practice of forced disappearance of persons, carried out by the State during the domestic armed conflict and carried out primarily by agents of its security forces, and children were also victims of this practice, as a means of torturing and frightening their families.

42. Reparation of the damage caused by infringement of an international obligation requires *restitutio in integrum*, whenever possible, which consists of reestablishing the prior situation. If this is not possible, as in the instant case, this international Court must order that measures be adopted so that, in addition to ensuring respect for the rights that were abridged, the consequences of the violations are remedied and compensation is paid for damage caused.³⁷ It is also necessary to add the positive measures that the State must adopt to ensure that injurious acts such as those of the instant case do not happen again.³⁸ The State that is under this obligation cannot invoke domestic legal provisions to modify or avoid complying with its obligations to make reparations, which are regulated in all aspects (scope, nature, modes, and establishment of the beneficiaries) by international law.³⁹

³⁵ See *Case of Maritza Urrutia*, *supra* note 2, para. 141; *Case of Myrna Mack Chang*, *supra* note 2, para. 234; and *Case of Bulacio*, *supra* note 2, para. 70.

³⁶ See *Case of Maritza Urrutia*, *supra* note 2, para. 143; *Case of Myrna Mack Chang*, *supra* note 2, para. 236; and *Case of Bulacio*, *supra* note 2, para. 71.

³⁷ See *Case of Maritza Urrutia*, *supra* note 2, para. 142; *Case of Myrna Mack Chang*, *supra* note 2, para. 235; and *Case of Bulacio*, *supra* note 2, para. 72.

³⁸ See *Case of Maritza Urrutia*, *supra* note 2, para. 144; *Case of Juan Humberto Sánchez*, *supra* note 14, para. 150; and *Case of Bulacio*, *supra* note 2, para. 73.

³⁹ See *Case of Maritza Urrutia*, *supra* note 2, para. 143; *Case of Myrna Mack Chang*, *supra* note 2, para. 236; and *Case of Bulacio*, *supra* note 2, para. 73.

A) *BENEFICIARIES*

43. The Court will now address the pleadings of the Inter-American Commission and of the representatives of the victim and his next of kin regarding the persons who must be considered beneficiaries of the reparations ordered by the Court. The State did not refer to this matter.

Arguments of the Commission

44. The Commission submitted that the beneficiaries of the reparations are: Emma Theissen Álvarez *Vda. de* Molina, the victim's mother; Ana Lucrecia Molina Theissen, María Eugenia Molina Theissen and Emma Guadalupe Molina Theissen, the victim's sisters.

Arguments of the representatives of the victim and his next of kin

45. The representatives of the victim and his next of kin argued that:

a) those entitled to reparation in the instant case are: Marco Antonio Molina Theissen, victim; Emma Theissen Álvarez *Vda. de* Molina, the victim's mother; Carlos Augusto Molina Palma, the victim's deceased father; and Emma Guadalupe Molina Theissen, Ana Lucrecia Molina Theissen and María Eugenia Molina Theissen, the victim's sisters. Marco Antonio Molina Theissen's next of kin are entitled to reparations in two capacities: as successors and as victims *per se* of the abridgments of the Convention acknowledged by the State and found by the Inter-American Court, for which reason they are "entitled to reparation in their own right;" and

b) Marco Antonio Molina Theissen was an adolescent, he had no descendants and no wife, for which reason the compensation that he is entitled to as a victim must be given to his parents. Since the victim's father died, the compensation that he would have received must be distributed in equal parts among the other next of kin.

Pleadings of the State

46. The State did not refer to those entitled to reparations in the instant case.

Considerations of the Court

47. The Court will now determine the person or persons who are the injured party in the instant case, in accordance with the provisions of Article 63(1) of the American Convention. In view of the fact that the violations of the American Convention established by the Court in the judgment on the merits issued on May 4, 2004 (*supra* paras. 15 and 38) were committed to the detriment of Marco Antonio Molina Theissen, the missing child; Emma Theissen Álvarez *Vda. de* Molina, his mother; Carlos Augusto Molina Palma, his father; Ana Lucrecia Molina Theissen, María Eugenia Molina Theissen and Emma Guadalupe Molina Theissen, his sisters; all of them as victims must be included in said category and must be entitled to the reparations ordered by the Court, both regarding pecuniary damages and, when appropriate, with respect to non-pecuniary damages.

48. It is convenient that we highlight the provision set forth in Article 2(15) of the Rules of Procedure⁴⁰ that the term “next of kin of the victim” must be broadly understood. Said concept encompasses all persons tied by close kinship, including the parents, children and siblings who might have a right to compensation, insofar as they fulfill the requirements established by the case law of this Court. In this regard, the Court must assume that disappearance or death of a person as a consequence of disappearance causes non-pecuniary damage to the closest members of the family, especially to those who were in close emotional contact with the victim.

49. To distribute the reparations that the Court may order in favor of Marco Antonio Molina Theissen and Carlos Augusto Molina Palma, the Court has taken into account the close emotional ties and affection among the members of the Molina Theissen family, as requested by the representatives of the victim and his next of kin.

50. Marco Antonio Molina Theissen was a 14 year old boy, who had no common-law spouse or descendants, for which reason the compensation due to him, pursuant to the terms of the instant Judgment, must be given in equal parts to the parents of the victim, Emma Theissen Álvarez *Vda. de* Molina and Carlos Augusto Molina Palma.

51. Since the victim’s father died, the compensation due to him must be distributed in equal parts among his surviving next of kin, that is: his spouse Emma Theissen Álvarez *Vda. de* Molina and his daughters Ana Lucrecia Molina Theissen, María Eugenia Molina Theissen and Emma Guadalupe Molina Theissen, in accordance with their requests (*supra* para. 45(b)).

B) PECUNIARY DAMAGES

Arguments of the Commission

52. With respect to pecuniary damages, the Commission stated that:

a) with respect to “lost earnings,” it is necessary to take into account the income that Marco Antonio Molina Theissen’s family could have obtained if he had not been deprived of his life. At the time of his disappearance, the victim was a 14 year old youth, in a country where life expectancy is 56, and he was in third year of secondary school; in two years he would have graduated from high school and would have begun a career in engineering;

b) with respect to “consequential damages,” it is necessary to take into account the expenses incurred by the victim’s next of kin as a direct consequence of the facts. Said expenses were in connection with the steps taken to establish the whereabouts of Marco Antonio Molina Theissen, including going to police stations, courts, detention centers, publishing ads in local newspapers, stationery, and photocopies. The State must also compensate the victim’s next of kin for the expenses incurred to receive psychological treatment, to leave the country, and to establish themselves in exile; and

⁴⁰ Pursuant to Article 2(15) of the Rules of Procedure, the term “next of kin” means “the immediate family, that is, the direct ascendants and descendants, siblings, spouses or permanent companions, or those determined by the Court, if applicable.”

c) with respect to property damage, the direct family's economic situation was stable and, as a consequence of the forced disappearance of Marco Antonio Molina Theissen, their lives changed radically. This change significantly affected the family's material wealth, and this must be compensated in fairness.

Arguments of the representatives of the victim and his next of kin

53. The representatives of the victim and his next of kin endorsed the position of the Commission with respect to reparation for damages to Marco Antonio Molina Theissen and his family, and they pointed out, with respect to pecuniary damages, that:

a) the State has the duty to provide reparations to Marco Antonio Molina Theissen, by means of his legal heirs, for the economic detriment suffered as a consequence of his forced disappearance, and for the grave effects and suffering caused by the facts. The following points must be taken into account with respect to lost earnings:

a(i) at the time of the facts Marco Antonio Molina Theissen was only two years away from graduating from highschool. Once he got his highschool diploma, like his parents and sisters he would study a university career (civil engineering), and therefore he would perform tasks that paid more than minimum wage. It would be contrary to the principle of comprehensive reparation not to estimate, in the calculations, the income that the victim would have earned in the natural and normal course of events, if it were not for his disappearance. What is sought is not reparation of a mere possibility of damage, but rather the foreseeable course of improved income of the victim as he became older;

b(ii) once he obtained his professional degree in civil engineering that Marco Antonio Molina Theissen would have aspired to, and working full time, the victim would receive an income of Q8,000.00 (eight thousand *quetzales*) monthly, which is the average income of a university professional, equivalent to US \$1,000.00 (one thousand United States dollars). 75% of this amount must be multiplied by 13 yearly salaries (12 monthly salaries, plus a bonus) and then by 34 years, starting at age 22, when Marco Antonio Molina Theissen would have graduated from the university, until age 56, which is the average life expectancy in Guatemala. We therefore estimate that the "lost earnings" amount to US \$331,500.00 (three hundred and thirty-one thousand five hundred United States dollars), and the Court should consider this figure as a parameter when setting the amount in fairness;

b) with respect to the "consequential damages", the representatives asked the Court to estimate the costs in fairness:

b(i) in connection with the steps taken to establish the whereabouts of the victim, that is: a) travel to courts, police stations and detention centers, expenses amounting to US \$100.00 (one hundred United States dollars); b) publication of ads in newspapers, amounting to US

\$300.00 (three hundred United States dollars); c) trips to Guatemala to document and investigate the case, made by Ana Lucrecia Molina Theissen and Emma Guadalupe Molina Theissen, expenses amounting to US \$2,100.00 (two thousand one hundred United States dollars); and d) phone calls and faxes, adding up to US \$200.00 (two hundred United States dollars);

b(ii) those caused by the disappearance of Marco Antonio Molina Theissen, that is: a) constant and regular psychological treatment of Emma Guadalupe Molina Theissen since 1984, amounting to US \$20,000.00 (twenty thousand United States dollars); b) psychological treatment of Ana Lucrecia Molina Theissen since 1991, amounting to US \$6,000.00 (six thousand United States dollars); and c) psychological treatment of María Eugenia Molina Theissen and her daughter, Nadia Alvarado Molina, from 1992 to 1996, amounting to US \$8,000.00 (eight thousand United States dollars), US \$4,000.00 (four thousand United States dollars) each. All the above adds up to US \$34,000.00 (thirty-four thousand United States dollars);

b(iii) with respect to property damages: lost earnings and forced exile of the family group, originating in Marco Antonio Molina Theissen's disappearance. In October 1981 the victim's family had a stable financial situation. After what happened, the Molina Theissen couple concentrated exclusively on searching for Marco Antonio. Carlos Augusto Molina Palma, the victim's father, stopped working as a private accountant, a job where he earned Q1,500.00 (one thousand five hundred *quetzales*) monthly, and he lost his office, equipment, and furniture. This damage must be compensated taking into account his lost earnings from the time that Marco Antonio Molina Theissen disappeared in October 1981 until September 1994 when he died, which amount to US \$80,437.50 (eighty thousand four hundred and thirty-seven United States dollars and fifty cents). Emma Theissen Álvarez *Vda. de* Molina, the victim's mother, worked full time as a teacher at the Germán Alcántara school and her monthly income was US \$450.00 (four hundred and fifty United States dollars). She stopped working the year after the facts took place, when she had been a teacher for 23 years. According to Guatemalan legislation, after 35 years working as a teacher she was entitled to retirement, so she had twelve years of work ahead at the time. She requested advanced retirement, which was approved, but with a lower monthly pension than she would have received if she had completed her 35 years work as a teacher. To compensate for this damage, the State must pay Emma Theissen Álvarez *Vda. de* Molina Q561,600.00 (five hundred and sixty-one thousand six hundred *quetzales*), equivalent to US \$70,200.00 (seventy thousand two hundred United States dollars), for salaries and Q8,000.00 (eight thousand *quetzales*), more as a symbolic amount to supplement her pension.

María Eugenia Molina Theissen also had to leave her job as a secretary at *University of San Carlos*, Ana Lucrecia Molina Theissen lost her position as a teacher, and Emma Guadalupe Molina Theissen discontinued her career as a student of computer systems. Furthermore, Marco Antonio Molina Theissen's parents left their house

and María Eugenia Molina Theissen lost a US \$3,500.00 (three thousand five hundred United States dollars) down payment for construction of a house. Ana Lucrecia Molina Theissen, in turn, had to sell her vehicle at a price that was below its value. All this was pointed out by the mother and the victim's sisters during the public hearing held before the Court and they do not have receipts to certify those amounts, for which reason they asked the Court to assess the evidence regarding this item in a flexible manner and to establish "an overall amount for these financial damages, in the amount of US \$100,000.00" (one hundred thousand United States dollars); and

B(iv) in connection with departure of the members of the Molina Theissen family from the country, that is: a) airfare for Carlos Augusto Molina Palma and Emma Theissen Álvarez, amounting to US \$1,200.00 (one thousand two hundred United States dollars); b) airfare for María Eugenia Molina Theissen and her two daughters, Nadia and Dinorah Alvarado Molina, amounting to \$1,500.00 (one thousand five hundred United States dollars); c) airfare for Emma Guadalupe Molina Theissen and her daughter, Natalia Mérida Molina, amounting to US \$1,000.00 (one thousand United States dollars); and d) airfare for Ana Lucrecia Molina Theissen and her son, Julio César Ramírez Molina, amounting to US \$1,000.00 (one thousand United States dollars). All this adds up to US \$4,700.00 (four thousand seven hundred United States dollars); and

c) it is neither fair nor convenient for the victim's next of kin for the possible reparations ordered by the Court in its judgment to be subject to Guatemala's *Programa Nacional de Resarcimiento de Guatemala*, which has a number of limitations.

Pleadings of the State

54. The State expressed its willingness to provide reparations for the damage caused to the Molina Theissen family; in this regard in asked that:

a) the compensation process should take place during 2005, due to Guatemala's fiscal deficit, and the Court should also take into account the scope of the needs and rights that the State must ensure to all its inhabitants. The State also asked the Court to issue a judgment on reparations that is in accordance with Guatemala's economic, political, and social reality;

b) the Court should duly weigh the significance of the act of justice and dignity expressed by the State of Guatemala based on its acknowledgment of international responsibility in the framework of the adjudicatory process in the instant case; and

c) the economic reparations ordered should be implemented within Guatemala's *Programa Nacional de Resarcimiento* in accordance with the regulations set forth in Guatemalan domestic law.

Considerations of the Court

55. The Court will now establish the pecuniary damage, which involve loss of or detriment to the victim's income and expenses incurred by his next of kin due to the facts,⁴¹ for which it will order a compensation that seeks to redress the detriment to personal assets due to the violations found in the judgment on the merits issued by this Court on May 4, 2004 (*supra* para. 15). For this, it will take into account the evidence gathered in this case, the Court's own case law, and the pleadings of the Commission, of the representatives of the victim and his next of kin and of the State.

a) *Lost earnings*

56. The Commission and the representatives of the victim and his next of kin requested compensation for Marco Antonio Molina Theissen's lost earnings. In this regard, the Commission and the representatives pointed out that Marco Antonio was in third year of secondary school, was two years away from obtaining his high school diploma, and planned to study civil engineering. Given the above, the representatives asked the Court to set the amount of lost earnings of the victim based on the average salary of a "university professional."

57. The Court deems that it is reasonable to presume that Marco Antonio would have completed his secondary school studies and went on to study at the university, but there is no definite fact that enables it to determine the activity or profession that he would practice in the future, which "must be calculated on the basis of a definite injury that is sufficiently substantiated to find that the injury likely occurred."⁴² Therefore, with respect to Marco Antonio Molina Theissen's lost earnings, this Court sets the amount for this item, in fairness, at US \$100,000.00 (one hundred thousand United States dollars). Said amount must be distributed among the victim's next of kin, pursuant to the terms of paragraphs 50 and 51 of the instant Judgment.

b) *Consequential damages*

58. Taking into account the parties' claims, the body of evidence, the proven facts in the instant case, as well as its jurisprudence, the Court finds that compensation for pecuniary damage must also include the following:

58(1) it should be pointed out that Marco Antonio Molina Theissen's next of kin took many steps with the aim of finding him; they went to courthouses, police stations and detention centers, they incurred expenses for photocopies, phone calls, sending faxes, and stationery, and they also published ads in the press and traveled to Guatemala to document the instant case. Therefore, the Court deems it pertinent to set the amount of compensation for this item, in fairness, at US \$1,400.00 (one thousand four hundred United States dollars). Said amount must be distributed in equal parts among the parents and the victim's sisters. The victim's father's amount must be distributed pursuant to paragraph 51 of the instant Judgment; and

⁴¹ See *Case of Maritza Urrutia*, *supra* note 2, para. 155; *Case of Myrna Mack Chang*, *supra* note 2, para. 250; and *Case of Juan Humberto Sánchez*, *supra* note 14, para. 162.

⁴² See *Case of Bulacio*, *supra* note 2, para. 84; and *Case of Castillo Páez*, *Reparations* (Art. 63(1) American Convention on Human Rights). November 27, 1998 Judgment. Series C No. 43, para. 74.

58(2) since the victim's sisters have incurred documented expenses for psychological treatment for several years since the forced disappearance of their brother, this Court deems it appropriate to set the amount for this item at US \$34,000.00 (thirty-four thousand United States dollars), which must be distributed, in accordance with the request by the representatives, as follows: for Ana Lucrecia Molina Theissen, US \$6,000.00 (six thousand United States dollars), for María Eugenia Molina Theissen, US \$8,000.00 (eight thousand United States dollars), and for Emma Guadalupe Molina Theissen, US \$20,000.00 (twenty thousand United States dollars).

c) *Damage to family assets*

59. The parents of the victim, Emma Theissen Álvarez *Vda. de* Molina and Carlos Augusto Molina Palma, now deceased, undertook to find their son and took various steps for those responsible for the facts to be investigated, identified, and punished. As was proven, the victim's parents gave up their jobs, the mother as a teacher and the father as a private accountant, and this caused them a number of material losses (*supra* paras. 37(3), 37(4) and 37(9)). Likewise, the victim's sisters, Ana Lucrecia Molina Theissen and María Eugenia Molina Theissen, had to give up their jobs, respectively at a school and at the university (*supra* paras. 37(5), 37(6) and 37(9)). Furthermore, the forced disappearance of Marco Antonio Molina Theissen and the murder of Héctor Alvarado Chuga, María Eugenia Molina Theissen's husband, caused great fear and anguish among the remaining members of the family regarding their safety, for which reason they were forced to leave Guatemala into exile, some of them in Mexico and others in Ecuador, until finally, after several years, they were able to reunite in Costa Rica (*supra* para. 37(8)). Exile caused a series of material losses for the members of the Molina Theissen family (*supra* paras. 37(8) and 37(9)), such as the purchase of airplane tickets and the costs of establishing themselves once again. Going into exile also made it difficult for the members of the Molina Theissen family to get jobs and receive sufficient income to cover their living expenses.

60. Base on the above, the Court deems that the members of the Molina Theissen family lost their customary incomes as a consequence of the facts and, bearing in mind the specific circumstances of the *sub judice* case, it sets the compensation, in fairness, at US \$80,000.00 (eighty thousand United States dollars). This amount must be given, in equal parts, to Emma Theissen Álvarez *Vda. de* Molina and Carlos Augusto Molina Palma, deceased, pursuant to the terms of paragraphs 50 and 51 of the instant Judgment. Regarding this item the Court also orders payment, in fairness, of US \$60,000.00 (sixty thousand United States dollars), which must be distributed in equal parts among Ana Lucrecia Molina Theissen, María Eugenia Molina Theissen and Emma Guadalupe Molina Theissen.

61. Based on all the above, the Court sets the following amounts of compensation to be paid for pecuniary damages due to the violations found:

REPARATIONS FOR PECUNIARY DAMAGES					
	Lost earnings	Consequential damages	Expenses for psychological treatment	Detriment to assets	Total
Marco Antonio Molina Theissen (victim)	US\$100,000.00				US\$100,000.00
Emma Theissen Álvarez Vda. de Molina (mother)		US\$280.00		US\$40,000.00	US\$40,280.00
Carlos Augusto Molina Palma (deceased father)		US\$280.00		US\$40,000.00	US\$40,280.00
Ana Lucrecia Molina Theissen (sister)		US\$280.00	US \$6,000.00	US\$20,000.00	US\$26,280.00
María Eugenia Molina Theissen (sister)		US\$280.00	US \$8,000.00	US\$20,000.00	US\$28,280.00
Emma Guadalupe Molina Theissen (sister)		US\$280.00	US\$20,000.00	US\$20,000.00	US\$40,280.00
TOTAL	US\$ 275,400.00				

C) NON-PECUNIARY DAMAGES

Arguments of the Commission

62. The Commission pointed out that:

a) the award for “moral damages” caused must be substantial, to take into account the suffering, anguish and grief suffered by the parents and the sisters of the victim due to their irreparable loss, from when the facts took place in 1981 to date. Impunity still prevails regarding Marco Antonio’s forced disappearance. Furthermore, the Molina Theissen family had to emigrate to another country, out of fear that another member of the family might suffer what happened to Marco Antonio Molina Theissen, for which reason they had to leave behind their “jobs, their roots, their culture, their people, their home, their belongings, their other relatives [and] friends.” All this has caused the Molina Theissen family great psychological damage. Therefore, the Commission asked the Court to determine the “moral damages;” and

b) as a consequence of the violations against Marco Antonio Molina Theissen, his life plan was destroyed; therefore, the Commission asked the Court to acknowledge that said life plan was cut short and to set, in fairness, an amount that the State must pay to the Molina Theissen family. The Commission also pointed out that the Court must take into count the detriment to the life plan of each of the members of said family.

Arguments of the representatives of the victim and his next of kin

63. The representatives of the victim and his next of kin requested, with respect to "moral damages":

- a) that a symbolic amount be given to each of the member of the Molina Theissen family as "victims" of the double infringement: because of the facts that occurred to Marco Antonio Molina Theissen and because of their own suffering;
- b) that the "moral damages" regarding Emma Guadalupe Molina Theissen be especially considered due to the grave facts that she was subjected to as a victim;
- c) that the Court order payment of an amount, in fairness, to enable continuation of psychological support and treatment for the mother, the sisters and the closest relatives of the victim;
- d) that it order the State to financially compensate, in fairness, damage to the Molina Theissen family's life plan, for having deprived Marco Antonio Molina Theissen and his family of the opportunity to develop their "life plan," denying them the possibility of attaining the personal, professional, and family goals that each of them had planned together with Marco Antonio; and
- e) that it is neither fair nor convenient for the victim's next of kin to subject possible reparations ordered by the Court in its judgment to Guatemala's *Programa Nacional de Resarcimiento*, which has a number of limitations.

Pleadings of the State

64. The State referred to its acknowledgment of international responsibility, which entails the obligation to repair the consequences of the abridgment of the rights or liberties breached, and to pay fair compensation. On the other hand, with respect "to the measures of moral reparation," Guatemala requested that their implementation be channeled through the *Programa Nacional de Resarcimiento*, in accordance with its domestic law, with support and participation by all the bodies of the State that must implement the respective measures.

Considerations of the Court

65. Non-pecuniary damages can include both the suffering and distress caused to the direct victims and their next of kin, and detriment to individuals' very significant values, such as non-pecuniary alterations in the victim's or his family's conditions of existence. Since it is not possible to assign a precise monetary equivalent to non-pecuniary damages, it can only be compensated for in two ways, for purposes of comprehensive reparation to the victims. First, through payment of an amount of money or providing goods and services that can be appraised in monetary terms,

established by the Court through reasonable judicial discretion and in fairness.⁴³ Secondly, through acts or works that are public in terms of their scope or repercussion, such as transmitting a message of official condemnation of the human rights violations involved and of commitment with efforts to ensure that they never happen again, that have the effect of honoring the memory of the victims, recognizing their dignity and providing consolation to their next of kin. We will analyze the first aspect of non-pecuniary damages in this section, and the latter one in section D) of this chapter.

66. International jurisprudence has repeatedly established that the judgment is *per se* a form of reparation.⁴⁴ However, taking into account the grave circumstances of the instant case, the intensity of suffering caused by the respective facts to the victim and to his next of kin, how their conditions of existence were altered, and the other non-material or non-pecuniary consequences to the latter, the Court deems that it must order payment of compensation for non-pecuniary damages, in fairness.⁴⁵

67. In the *sub judice* case, in setting compensation for non-pecuniary damages, it is necessary to consider that with respect to children, the State has a special obligation of providing protection,⁴⁶ which it should have fulfilled with respect to the victim because he was a child. The Court deems that the child Marco Antonio Molina Theissen must have suffered deeply when he was detained and kidnapped by agents of the State on October 6, 1981 and subsequently made to disappear. Therefore, the Court deems that Marco Antonio Molina Theissen must receive compensation for non-pecuniary damages and it orders payment, in fairness, of US \$100,000.00 (one hundred thousand United States dollars) for this item. Said compensation must be delivered to his next of kin, pursuant to the terms of paragraphs 50 and 51 of the instant Judgment.

68. In the case of the next of kin of the victim it is reasonable to reach the conclusion that the distress suffered by the victim extend to the closest members of the family, especially to those who were in close emotional contact with him. No evidence is required to reach this conclusion.⁴⁷ Marco Antonio Molina Theissen's parents and sisters are also the victims of violations of various articles of the American Convention (*supra* para. 15). In the instant case we must underline that, with respect to violation of Article 5 of the Convention, in the context of the special gravity of forced disappearance of persons, the Court has pointed out that the latter causes "suffering and anguish, in addition to a sense of insecurity, frustration and

⁴³ See *Case of Maritza Urrutia*, *supra* note 2, para. 161; *Case of Myrna Mack Chang*, *supra* note 2, para. 255; and *Case of Bulacio*, *supra* note 2, para. 90.

⁴⁴ See *Case of Maritza Urrutia*, *supra* note 2, para. 166; *Case of Myrna Mack Chang*, *supra* note 2, para. 260; and *Case of Bulacio*, *supra* note 2, para. 96.

⁴⁵ See *Case of Maritza Urrutia*, *supra* note 2, para. 166; *Case of Myrna Mack Chang*, *supra* note 2, para. 260; and *Case of Bulacio*, *supra* note 2, para. 96.

⁴⁶ See *Case of Bulacio*, *supra* note 2, paras. 98, 133 and 134; "*Street Children*" Case (*Villagrán Morales et al.*). *Reparations* (Art. 63(1) American Convention on Human Rights). May 26, 2001 Judgment. Series C No. 77, para. 91(b); and *Legal Status and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paras. 56 and 57.

⁴⁷ See *Case of Maritza Urrutia*, *supra* note 2, para. 169; *Case of Myrna Mack Chang*, *supra* note 2, para. 264; and *Case of Bulacio*, *supra* note 2, para. 98.

impotence in the face of the public authorities' failure to investigate."⁴⁸ The victims' next of kin will be considered in this dual condition for purposes of setting the compensation regarding this item.

69. The forced disappearance of the child Marco Antonio Molina Theissen caused his mother, Emma Theissen Álvarez *Vda. de* Molina, his father Carlos Augusto Molina Palma and his sisters Ana Lucrecia Molina Theissen, María Eugenia Molina Theissen and Emma Guadalupe Molina Theissen, deep grief, suffering, and feelings of guilt (*supra* paras. 37(10), 30(a), 30(b), 30(c) and 30(d)). The facts in the instant case and the subsequent exile of the Molina Theissen family also altered the conditions of its members' lives; his parents stopped working to focus exclusively on finding their son; his sisters also gave up their jobs and their studies; the family felt constant danger due to the persecution it suffered. The victim's parents and sisters were forced to leave Guatemala toward different countries, which for them meant abandoning the search for Marco Antonio, their next of kin, friends and colleagues at work, roots and belongings, and reestablishing themselves in a different society (*supra* paras. 37(8) and 37(9)). Furthermore, as was demonstrated at the public hearing (*supra* paras. 11 and 30(a), 30(b), 30(c) and 30(d)), the Molina Theissen family was deeply united and there was a strong relationship and affection between the parents and the sisters and among the latter. Their separation, together with the guilt they felt for Marco Antonio's disappearance, broke up the household. Finally, prevailing impunity in this case has been and continues to be a source of suffering for the next of kin (*supra* paras. 37(10), 37(11), 30(a), 30(b), 30(c) and 30(d)). The circumstances described caused the members of the Molina Theissen family to suffer psychological problems, for which reason some of them have undergone treatment (*supra* para. 37(12)).

70. Based on all the above, this Court finds that the non-pecuniary damage suffered by Marco Antonio Molina Theissen's next of kin has been fully proven. Therefore, this Court deems that they must receive compensation for it, and for this it sets the amount, in fairness, at US \$275,000.00 (two hundred and seventy-five thousand United States dollars), which must be distributed in equal parts among Emma Theissen Álvarez *Vda. de* Molina, Carlos Augusto Molina Palma, deceased, Ana Lucrecia Molina Theissen, María Eugenia Molina Theissen and Emma Guadalupe Molina Theissen. The amount set for the victim's father must be given to his next of kin, pursuant to paragraph 51 of the instant judgment.

71. Taking into account the statements of the victim's next of kin (*supra* paras. 30(a), 30(b), 30(c) and 30(d)), and the expert opinions of Carlos Martín Berristain (*supra* para. 30(f)) and Alicia Neuburger (*supra* paras. 30(g)), there is evidence to establish that the psychological ailing of Marco Antonio Molina Theissen's next of kin, which originated both in what happened to him and in the situation of impunity that persists in the instant case, continues to date. Therefore, this Court, as it has done before,⁴⁹ deems that compensation for non-pecuniary damages must also include an amount for future psychological treatment expenses.

⁴⁸ *Case of Blake*, January 24, 1998 Judgment. Series C No. 36, para. 114; and See *Case of "Street Children" (Villagrán Morales et al.)*. November 19, 1999 Judgment. Series C No. 63, para. 173.

⁴⁹ See *Case of Myrna Mack Chang*, *supra* note 2, para. 266; and *Case of Bulacio*, *supra* note 2, para. 100.

72. The Court deems it pertinent to set the amount of compensation for the respective item, in fairness, at US \$40,000.00 (forty thousand United States dollars), to be distributed in equal parts among Emma Theissen Álvarez *Vda. de* Molina, Ana Lucrecia Molina Theissen, María Eugenia Molina Theissen and Emma Guadalupe Molina Theissen.

73. Bearing in mind the various aspects of the damages that have been discussed, insofar as it is pertinent and appropriate given the specificities of the case, the Court sets the value of compensations for non-pecuniary damages that must be paid to the victim's next of kin, in fairness, as shown in the following table:

REPARATIONS FOR NON-PECUNIARY DAMAGES			
Victim and next of kin	Non-pecuniary damages	Expenses for psychological treatment (future)	Total
Marco Antonio Molina Theissen (victim)	US\$100,000.00		US\$100,000.00
Emma Theissen Álvarez <i>Vda. de</i> Molina (mother)	US\$55,000.00	US\$10,000.00	US\$65,000.00
Carlos Augusto Molina Palma (deceased father)	US\$55,000.00		US\$55,000.00
Ana Lucrecia Molina Theissen (sister)	US\$55,000.00	US\$10,000.00	US\$65,000.00
María Eugenia Molina Theissen (sister)	US\$55,000.00	US\$10,000.00	US\$65,000.00
Emma Guadalupe Molina Theissen (sister)	US\$55,000.00	US\$10,000.00	US\$65,000.00
TOTAL		US\$415,000.00	

*D) OTHER FORMS OF REPARATION
(MEASURES OF SATISFACTION AND GUARANTEES OF NON-RECIDIVISM)*

Arguments of the Commission

74. The Commission appreciates the statement in which the State acknowledged its international responsibility for violation of Articles 1(1), 2, 4(1), 5(2), 5(2), 7, 8, 17, 19, and 25 of the Convention and for not complying with the international obligation set forth in Articles I and II of the Inter-American convention on Forced Disappearance (*supra* para. 13). With respect to measures of satisfaction for purposes of reparation, in turn, the Commission asked the Court to order the State to:

- a) conduct a serious and effective investigation on the victim's disappearance, as well as to identify and prosecute all those responsible, whether direct perpetrators or masterminds. The State must complete the criminal proceeding initiated by the *Procurador de los Derechos Humanos* on September 25, 1999 before the Fifth Criminal Trial Court and allow the family access to the information on the case that is in the hands of the *Procuraduría de los Derechos Humanos*, as well as any other, additional information. In said investigation, the State must abstain from resorting to amnesty, to the statute of limitations, or to measures designed to eliminate responsibility;

- b) make known to the public the outcome of the proceeding, so that Guatemalan society may know the truth;
- c) establish the whereabouts of the remains of the victim and deliver them to his family for a decent burial;
- d) designate a "Hall of the Rights of the Child: Marco Antonio Molina Theissen" with the aim of honoring the memory of the "boys and girls" who suffered violence during the armed conflict, and specifically that there should be a constant exhibit in remembrance of the victim;
- e) create a radio program on the Guatemala (*Radio TGW*) radio station, to discuss issues pertaining to the human rights of "boys and girls;"
- f) decree a national day of the missing children who were victims of the domestic armed conflict in Guatemala;
- g) establish scholarships for children's development and, specifically, to establish one named after Marco Antonio Molina Theissen to provide access to a career in engineering for low-income youths;
- h) publish the ruling of the Court in Guatemala's *Diario Oficial* and other national newspapers;
- i) provide sufficient human, scientific and logistic resources for the *Fiscalía de Derechos Humanos*, to which the investigation on the forced disappearance of Marco Antonio Molina Theissen should be transferred. Also, to ensure that the latter has a team of investigators who are duly trained in criminal investigation techniques regarding grave human rights violations;
- j) establish communication, coordination and inter-institutional collaboration mechanisms among the various bodies of administration of justice, especially among the Public Prosecutors' Office, the *Policía Nacional Civil* and the Judiciary;
- k) set up a forensic laboratory as well as a genetic data bank;
- l) provide the necessary material resources for the members of the Criminal Investigation Service of the *Policía Nacional Civil* to be able to perform their investigative tasks; and
- m) to enable access of justice system operators to the information that is in the hands of the State and is required for processing of the cases under their jurisdiction. Specifically, with the necessary legal safeguards, to provide access to files, contacts, and places where information may be obtained to help the next of kin leave behind the uncertainty with respect to their beloved ones who are missing.

Arguments of the representatives of the victim and his next of kin

75. The representatives of the victim and his next of kin asked the Court to order the State to:

- a) investigate the facts to identify, try, and punish those responsible for the violations, specifically those members of the armed forces who are identified, and they asked the Court to order the State, if results of the investigation are positive, not to apply the statute of limitations or any amnesty;
- b) strive to establish the whereabouts of the victim and if he is dead, to ensure decent burial in accordance with the family's customs and beliefs;
- c) publish the judgment on the merits issued by the Court on May 4, 2004, together with the instant Judgment, in the *Diario Oficial*, on the State's Internet site, in two national dailies, in the *Diario Oficial de las Fuerzas Armadas de Guatemala*, and on the national radio station (*Radio TGW*) three times and on a high audience schedule;
- d) create a "Missing Children Museum Hall" honoring the memory of the children who were victims of the armed conflict, and specifically that of Marco Antonio Molina Theissen;
- e) build or designate a public square in Guatemala City named in remembrance of the victim;
- f) conduct an official public ceremony attended by high government authorities, including representatives of the Guatemalan Army, acknowledging State responsibility for the facts and apologizing to the victim's family;
- g) decree a national day in remembrance of the missing children who were victims of the domestic armed conflict, a day that must be agreed upon previously with the victim's next of kin and their representatives;
- h) include human rights education courses and training materials in the syllabi of formal primary, secondary, and college education, on the causes, the development, and the consequences of the armed conflict, especially with respect to the missing children. The State must include them in the syllabi of training schools for Guatemalan public security (military and police) forces;
- i) issue a statement and carry out actions to ensure legal, political, and material support for the *Comisión Nacional de Búsqueda de la Niñez Desaparecida*;
- j) establish a genetic data bank to enable identification of the remains of missing persons; and
- k) draft and submit to Congress, through establishment of a consensus body with the *Comisión Nacional de Búsqueda de la Niñez Desaparecida* and other civil society groups, a comprehensive bill in accordance with Article 2 of the American Convention. For this, it is necessary to take into account:
 - k(i) the establishment of a legal mechanism to declare absence due to forced disappearance, for purposes of parentage and other related civil effects; and
 - k(ii) the law must provide the measures required to review adoption processes authorized since 1982, including the files of the Courts and

institutions in charge of protection of "boys and girls," as well as the intelligence files of the Armed Forces. If cases of adoption without the knowledge or against the will of the natural parents are found, the adopted individuals or their next of kin must be able to request review of said adoption.

Pleadings of the State

76. The State, in turn, pointed out that:

- a) it will continue its obligation to identify those responsible for the facts stated in the petition;
- b) the representatives of the insurgent groups at the time should be invited to jointly acknowledge the acts together with the State and to apologize to the victims and next of kin, including the family involved in the instant case;
- c) with respect to the commemorative hall, it suggests that a State building be designated as the "Hall to safeguard historical remembrance of the domestic armed conflict," and that in said hall there should be information on the victims of the armed conflict, with a special area for the minors who suffered violence or death during the 36 years of said domestic conflict in the country. This hall should be inaugurated with participation by representatives of the State, of insurgent organizations, and of civil society;
- d) the attitude of the delegation of the State during the public hearing should be taken into account, as the victim's next of kin were able to freely give their testimony at said public hearing, and this constitutes a form of moral redress;
- e) it apologized to the victim and to his next of kin, as a first demonstration of respect, reparation, and a guarantee of non-recidivism; and
- f) the Court should take into account, in its due dimension, the act of justice and dignity expressed by the State on the basis of its international acknowledgment in the framework of the adjudicatory proceeding in the instant case.

Considerations of the Court

77. In this section, the Court will decide on the measures of satisfaction that seek to redress the non-pecuniary damage, which are not pecuniary, and it will also order measures that are public in their scope or repercussions.

a) Obligation to investigate the facts that generated the violations and to identify, try, and punish those responsible

78. The Court has found, *inter alia*, that the State violated Articles 8 and 25 of the Convention in combination with Article 1(1) of that same Convention, to the

detriment of the victim and his next of kin, due to deficient conduct of the investigations and of the special inquiry procedure, which has impeded punishment of the direct perpetrators and masterminds of the forced disappearance of Marco Antonio Molina Theissen, and has generated feelings of insecurity, powerlessness and anguish among the victim's next of kin.

79. The Court recognizes that in the instant case, impunity prevails regarding the direct perpetrators and masterminds responsible for the facts. At the date of this Judgment, more than twenty-two years after the facts in the instant case, those responsible for the forced disappearance of Marco Antonio Molina Theissen have not been identified, tried, and punished. Therefore, there is a situation of impunity that constitutes a breach of the aforementioned duty of the State, that is injurious to the victim and to his next of kin, and that fosters chronic recidivism of the human rights violations involved.⁵⁰

80. This Court has repeatedly referred to the right of the next of kin of the victims to know what happened and who the agents of the State responsible for the respective facts were.⁵¹ As the Court has pointed out, “[w]hen there has been a human rights violation, the State has a duty to investigate the facts and punish those responsible, [...] and this obligation must be complied with seriously and not as a mere formality.”⁵² In cases of forced disappearance of the victim, such as the instant one, this Court has pointed out that it “often involves secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible.”⁵³

81. The Court deems that the victim of grave human rights violations and his next of kin, if applicable, have the right to know the truth.⁵⁴ Therefore, Marco Antonio Molina Theissen's next of kin have the right to know what happened to him and to know where his remains are. This right to the truth has been developed in International Human Rights Law⁵⁵ and its recognition may be an important means of

⁵⁰ See *Case of Maritza Urrutia*, *supra* note 2, para. 176; *Case of Myrna Mack Chang*, *supra* note 2, para. 272; and *Case of Bulacio*, *supra* note 2, para. 120.

⁵¹ See *Case of Myrna Mack Chang*, *supra* note 2, para. 273, *Case of Trujillo Oroza. Reparations* (Art. 63(1) American Convention on Human Rights). February 27, 2002 Judgment. Series C No. 92, para. 100; and *Case of Bámaca Velásquez. Reparations* (Art. 63(1) American Convention on Human Rights). February 22, 2002 Judgment. Series C No. 91, para. 74.

⁵² See *Case of Myrna Mack Chang*, *supra* note 2, para. 273; and *Case of Bámaca Velásquez. Reparations*, *supra* note 51, para. 74.

⁵³ See *Case of Bámaca Velásquez*. November 25, 2000 Judgment. Series C No. 70, para. 130; *Case of Godínez Cruz*. January 20, 1989 Judgment. Series C No. 5, para. 165; and *Velásquez Rodríguez Case*. July 29, 1988 Judgment. Series C No. 4, para. 157.

⁵⁴ See *Case of Myrna Mack Chang*, *supra* note 2, para. 274.

⁵⁵ See *Case of Myrna Mack Chang*, *supra* note 2, para. 274; *Case of Trujillo Oroza. Reparations*, *supra* note 51, para. 114; *Case of Bámaca Velásquez. Reparations*, *supra* note 51, para. 76.

reparation. Therefore, in this case, the right to the truth generates an expectation that the State must satisfy for the victim's next of kin.⁵⁶

82. In light of the above, to provide reparations for this aspect of the violations committed, the State must effectively investigate the facts in the instant case to identify, try, and punish the direct perpetrators and masterminds of the forced disappearance of Marco Antonio Molina Theissen. The result of the proceeding must be made known to the public, so that Guatemalan society may know the truth.

83. The Court notes that the State must ensure that the domestic proceeding to investigate, try, and punish those responsible for the facts in this case attains due effect. Furthermore, the State must abstain from resorting to mechanisms such as amnesty, the statute of limitations, or establishing measures to eliminate responsibility, as well as measures that seek to impede criminal prosecution or to suppress the effects of the conviction.

84. With respect to compliance with this obligation to investigate and punish, the Court has ruled that:

[...] all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law;⁵⁷

b) *Obligation to search for the remains of the victim and deliver them to his next of kin*

85. With respect to guarantees of non-recidivism of the facts of the instant case, the Commission and the representatives of the victim and his next of kin asked the Court to order the State to establish the whereabouts of the remains of the victim and to deliver them to his family. The Court deems that the State must find and deliver the mortal remains of Marco Antonio Molina Theissen to his next of kin, for them to bury those remains in accordance with their customs and beliefs. Furthermore, the State must provide the conditions required to transfer said remains to the place chosen by his next of kin, at no cost to them, and to satisfy the will of the family regarding the burial.

c) *Publication of the pertinent parts of the Judgments of the Court*

86. As it has ordered previously,⁵⁸ the Court also deems that, as a measure of satisfaction, within three months of the date of notification of the instant Judgment, the State must publish at least once, in the *Diario Oficial* and in another national daily, both the Section called Facts Established in Chapter V and operative paragraphs One to Five of the judgment on the merits issued by the Court on May 4,

⁵⁶ See *Case of Myrna Mack Chang*, *supra* note 2, para. 274; *Case of Trujillo Oroza. Reparations*, *supra* note 51, para. 114; and *Case of Bámaca Velásquez. Reparations*, *supra* note 51, para. 76.

⁵⁷ *Case of Barrios Altos*. March 14, 2001 Judgment. Series C No. 75, para. 41 and See *Case of Myrna Mack Chang*, *supra* note 2, para. 276; and *Case of Bulacio*, *supra* note 2, para. 116.

⁵⁸ See *Case of Myrna Mack Chang*, *supra* note 2, para. 280; *Case of Bulacio*, *supra* note 2, para. 145; and *Case of Juan Humberto Sánchez*, *supra* note 14, para. 188.

2004, as well as Chapter VI entitled Proven Facts, without the footnotes, and operative paragraphs One to Eight of the instant Judgment.

d) Public act of acknowledgment of international responsibility and amends to Marco Antonio Molina Theissen and his next of kin

87. This Court, in its May 4, 2004 judgment on the merits (*supra* para. 15), stated that the acknowledgment of responsibility made by the State is a positive contribution to the development of these proceedings and to effectiveness of the principles that underlie the American Convention. The Court also notes that, during the public hearing held on April 26, 2004, the State expressed its “deep regret for the facts that occurred to and were suffered by Marco Antonio Molina Theissen and his family since October 6, 1981” and apologized as “a first expression of respect, reparation, and guarantees of non-recidivism.” However, for said statement to attain full effect as reparation for the victims and to serve as a guarantee of non-recidivism, the Court deems that the State must carry out a public act of acknowledgment of its responsibility regarding the facts in this case, and of apology to Marco Antonio Molina Theissen and to his next of kin. High authorities of the State should attend said act.

e) Naming of a school

88. With respect to guarantees of non-recidivism of the facts of the instant case, the State must name an existing school in Guatemala City, giving it a name that refers to the children who disappeared during the domestic armed conflict, and must place a plaque in remembrance of Marco Antonio Molina Theissen at that school. This will contribute to enhance public awareness to avoid repetition of facts such as those that occurred in the instant case, and it will keep memory of the victim alive.⁵⁹

f) Adoption of legislative, administrative, and other measures

89. The Court, in its judgment on the merits in the instant case issued on May 4, 2004 (*supra* para. 15), found that the State had breached Article 2 of the American Convention to the detriment of Marco Antonio Molina Theissen and his next of kin. Pursuant to said provision, the States Parties are under the obligation to adopt legislative or other measures required to make the rights and liberties protected by said Convention effective.

90. This Court has also taken into account the pleadings of the Commission and of the representatives of the victim and his next of kin, the testimony of witnesses Emma Theissen Álvarez *Vda. de* Molina (*supra* para. 30(a)) and Axel Mejía Paíz (*supra* para. 30(e)) and of expert witness Alicia Neuburger (*supra* para. 30(g)), that in the case of forced disappearance of persons it is extremely important to have a genetic data bank to enable identification of the missing persons or their remains.

91. In light of the above, the Court deems that, pursuant to Article 2 of the Convention, the State must adopt the domestic legislative, administrative, and other provisions required to establish:

⁵⁹ See *Case of Myrna Mack Chang*, *supra* note 2, para. 286; *Case of Trujillo Oroza. Reparations*, *supra* note 51, para. 106; and *Case of “Street Children” (Villagrán Morales et al.)*. *Reparations*, *supra* note 46, para. 103.

- a) an expedite procedure to allow statement of absence and presumption of death due to forced disappearance, for purposes of parentage, inheritance and reparation as well as other related civil effects; and
- b) a genetic information system to enable establishment and clarification of parentage of missing children and their identification.

VIII COSTS AND EXPENSES

Arguments of the Commission

92. The Commission deemed that the State must pay the legal fees and costs for processing of the case both under domestic venue and under international jurisdiction.

Arguments of the representatives of the victim and his next of kin

93. The representatives requested payment of:

- a) professional fees for an attorney by the victim's next of kin, an expense amounting to US \$600.00 (six hundred United States dollars); and
- b) CEJIL's expenses before the Commission and the Court, including airfare, phone calls, per diem, transportation between airports and hotels, airport taxes, projected expenses for participation of witnesses and expert witnesses in the public hearing before the Court, which add up to US \$10,738.32 (ten thousand seven hundred and thirty-eight United States dollars and thirty-two cents).

Pleadings of the State

94. The State did not refer to costs and expenses.

Considerations of the Court

95. As the Court has stated previously,⁶⁰ costs and expenses must be considered part of the concept of reparation set forth in Article 63(1) of the American Convention, since the activity of the victim, his or her successors or their representatives to obtain international justice entail disbursements and financial commitments that require compensation. Regarding reimbursement, the Court must judiciously assess their scope, including the expenses incurred under domestic venue and during the proceeding before the Inter-American system, taking into account documentation of the expenses incurred, the circumstances of the specific case, and the nature of international jurisdiction for the protection of human rights. This estimate must be based on the principle of fairness and assess the expenses identified and proven by the parties, insofar as their *quantum* is reasonable.⁶¹

⁶⁰ See *Case of Maritza Urrutia*, *supra* note 2, para. 182; *Case of Myrna Mack Chang*, *supra* note 2, para. 290; and *Case of Bulacio*, *supra* note 2, para. 150.

⁶¹ See *Case of Maritza Urrutia*, *supra* note 2, para. 182; *Case of Myrna Mack Chang*, *supra* note 2, para. 290; and *Case of Bulacio*, *supra* note 2, para. 150.

96. This Court has stated before that the concept of costs should include both those regarding the stage of access to justice under domestic venue and those that pertain to justice at the international level, before the Commission and the Court.⁶²

97. For this, the Court deems it equitable to order payment of a total amount of US \$7,600.00 (seven thousand six hundred United States dollars) or their equivalent in Guatemalan currency, which must be given to Emma Theissen Álvarez *Vda. de* Molina, the victim's mother, for costs and expenses in the domestic proceedings and in the international proceeding before the Inter-American system for protection of human rights. Of this amount, in accordance with the statements made by the representatives of the victim and his next of kin, US \$600.00 (six hundred United States dollars) are for costs and expenses incurred by the next of kin in the domestic proceedings, and US \$7,000.00 (seven thousand United States dollars) are for those pertaining to the international proceeding before the bodies of the Inter-American human rights system.

IX METHOD OF COMPLIANCE

Considerations of the Court

98. To comply with the instant Judgment, the State must pay the compensations, reimburse the costs and expenses, and carry out the measures ordered (*supra* paras. 87, 88, 56 to 61, 67 to 73 and 97) within one year of the date of notification of this Judgment. In the case of other reparations ordered (*supra* paras. 78 to 84, 85, 89 to 91(a) and 91(b)), the State must carry out the measures within a reasonable time.

99. Payment of the compensations granted to the victims or to their next of kin, as appropriate, will be made directly to them. If any of them are deceased, the payment will be made to his or her heirs.

100. Payments to reimburse the costs and expenses originating in steps taken by the victim's next of kin and his representatives under domestic venue and in the international proceedings before the Inter-American system for protection of human rights, will be made to the next of kin (*supra* para. 97).

101. If due to causes attributable to the beneficiaries of the compensation it is not possible for them to receive them within one year, the State will deposit said amounts in their name in an account or certificate of deposit in a solid Guatemalan banking institution, in United States dollars or their equivalent in Guatemalan currency and under the most favorable conditions allowed by banking practices and legislation. If after ten years the compensation has not been claimed, the sum will be given to a Guatemalan charity institution.

102. The State must comply with its obligations through payment in United States dollars or an equivalent amount in Guatemalan currency, using for the respective calculation the exchange rate between both currencies in the New York exchange, on the day before the payment.

⁶² See *Case of Maritza Urrutia*, *supra* note 2, para. 183; *Case of Myrna Mack Chang*, *supra* note 2, para. 290; and *Case of Bulacio*, *supra* note 2, para. 150.

103. Payments ordered in the instant Judgment will be exempt from all currently existing taxes and from those that may be decreed in the future.

104. If the State were to be in arrears, it will pay interest on the amount owed, in accordance with the banking interest on arrearages in Guatemala.

105. In accordance with its usual practice, the Court reserves its inherent authority to monitor comprehensive and complete compliance with the instant judgment. The case will be closed once the State has faithfully complied with the provisions of the Judgment. Within a year from the date this Judgment is notified, the State must submit its first report to the Court on the steps taken to comply with this Judgment.

X
OPERATIVE PARAGRAPHS

106. Therefore,

THE COURT,

unanimously,

FINDS THAT:

1. this Judgment is *per se* a form of reparation, pursuant to paragraph 66 of the instant Judgment.

AND IT ORDERS THAT:

2 the State must find and deliver the mortal remains of Marco Antonio Molina Theissen to his next of kin, pursuant to the terms of paragraphs 85 and 98 of the instant Judgment;

3. the State must effectively investigate the facts of the instant case, with the aim of identifying, trying, and punishing the direct perpetrators and masterminds of the forced disappearance of Marco Antonio Molina Theissen, and the results of this process must be made known to the public, pursuant to the terms of paragraphs 78 to 84 and 98 of the instant Judgment;

4. the State must publish within three months from the date of notification of the instant Judgment, at least once, in the *Diario Oficial* and in another national-coverage daily, both the Section on Established Facts in Chapter V and operative paragraphs One to Five of the judgment on the merits issued by the Court on May 4, 2004, as well as Chapter VI, entitled Proven Facts, without the footnotes, and operative paragraphs One to Eight of the instant Judgment, pursuant to paragraph 86 of the instant Judgment;

5. the State must carry out, in the presence of its high authorities, a public act of acknowledgment of its international responsibility regarding the facts of this case, and of amends to Marco Antonio Molina Theissen and his next of kin, pursuant to the terms of paragraphs 87 and 98 of the instant Judgment;

6. the State must give an existing educational center in Guatemala City a name that refers to the children who disappeared during the domestic armed conflict, and it must place a plaque in remembrance of Marco Antonio Molina Theissen at that center, pursuant to the terms of paragraphs 88 and 98 of the instant Judgment;
7. the State must establish an expedite procedure to obtain declaration of absence and presumption of death due to forced disappearance, pursuant to the terms of paragraphs 91(a) and 98 of the instant Judgment;
8. the State must adopt such legislative, administrative, or other measures as may be necessary to establish a genetic information system, pursuant to the terms of paragraphs 91(b) and 98 of the instant Judgment;
9. the State must pay the total sum of US\$275,400.00 (two hundred and seventy-five thousand four hundred United States dollars), or its equivalent in Guatemalan currency, as compensation for pecuniary damages, pursuant to the terms of paragraphs 56 to 61 of the instant Judgment, distributed as follows:
 - a) to Emma Theissen Álvarez *Vda. de* Molina, as Marco Antonio Molina Theissen's mother as the surviving spouse and to Ana Lucrecia Molina Theissen, to María Eugenia Molina Theissen and to Emma Guadalupe Molina Theissen, as daughters of Carlos Augusto Molina Theissen, US \$100,000.00 (one hundred thousand United States dollars) or its equivalent in Guatemalan currency, pursuant to the terms of paragraphs 56, 57 and 61 of the instant Judgment;
 - b) to Emma Theissen Álvarez *Vda. de* Molina, US \$40,280.00 (forty thousand two hundred and eighty United States dollars) or its equivalent in Guatemalan currency, pursuant to the terms of paragraphs 58(1), 59, 60 and 61 of the instant Judgment;
 - c) to Emma Theissen Álvarez *Vda. de* Molina, as the surviving spouse and to Ana Lucrecia Molina Theissen, to María Eugenia Molina Theissen and to Emma Guadalupe Molina Theissen, as daughters of Carlos Augusto Molina Theissen, US \$40,280.00 (forty thousand two hundred and eighty United States dollars) or its equivalent in Guatemalan currency, pursuant to the terms of paragraphs 58(1), 59, 60 and 61 of the instant Judgment;
 - d) to Ana Lucrecia Molina Theissen, US \$26,280.00 (twenty-six thousand two hundred and eighty United States dollars) or its equivalent in Guatemalan currency, pursuant to the terms of paragraphs 58 to 61 of the instant Judgment;
 - e) to María Eugenia Molina Theissen, US \$28,280.00 (twenty-eight thousand two hundred and eighty United States dollars) or its equivalent in Guatemalan currency, pursuant to the terms of paragraphs 58 to 61 of the instant Judgment; and
 - f) to Emma Guadalupe Molina Theissen, US \$40,280.00 (forty thousand two hundred and eighty United States dollars) or its equivalent in Guatemalan currency, pursuant to the terms of paragraphs 58 to 61 of the instant Judgment;

10. the State must pay the total sum of US \$415,000.00 (four hundred and fifteen thousand United States dollars) or its equivalent in Guatemalan currency, as compensation for non-pecuniary damages, pursuant to the terms of paragraphs 67 to 73 of the instant Judgment, distributed as follows:

a) to Emma Theissen Álvarez *Vda. de* Molina, as Marco Antonio Molina Theissen's mother and as the surviving spouse, and to Ana Lucrecia Molina Theissen, María Eugenia Molina Theissen and Emma Guadalupe Molina Theissen, as daughters of Carlos Augusto Molina Theissen, US \$100,000.00 (one hundred thousand United States dollars) or its equivalent in Guatemalan currency, pursuant to the terms of paragraphs 67 and 73 of the instant Judgment;

b) to Emma Theissen Álvarez *Vda. de* Molina US \$65,000.00 (sixty-five thousand United States dollars) or their equivalent in Guatemalan currency, pursuant to the terms of paragraphs 68 to 73 of the instant Judgment;

c) to Emma Theissen Álvarez *Vda. de* Molina, as the surviving spouse, and to Ana Lucrecia Molina Theissen, María Eugenia Molina Theissen and Emma Guadalupe Molina Theissen, as daughters of Carlos Augusto Molina Theissen, US \$55,000.00 (fifty-five thousand United States dollars) or its equivalent in Guatemalan currency, pursuant to the terms of paragraphs 68, 69, 70 and 73 of the instant Judgment;

d) to Ana Lucrecia Molina Theissen, US \$65,000.00 (sixty-five thousand United States dollars) or its equivalent in Guatemalan currency, pursuant to the terms of paragraphs 68 to 73 of the instant Judgment;

e) to María Eugenia Molina Theissen, US \$65,000.00 (sixty-five thousand United States dollars) or its equivalent in Guatemalan currency, pursuant to the terms of paragraphs 68 to 73 of the instant Judgment; and

f) to Emma Guadalupe Molina Theissen, US \$65,000.00 (sixty-five thousand United States dollars) or its equivalent in Guatemalan currency, pursuant to the terms of paragraphs 68 to 73 of the instant Judgment;

11. the State must pay the total sum of US \$7,600.00 (seven thousand six hundred United States dollars) or its equivalent in Guatemalan currency, which must be given to Emma Theissen Álvarez *Vda. de* Molina, the victim's mother, for costs and expenses of the proceedings under domestic venue and the international proceedings before the Inter-American system for protection of human rights, pursuant to paragraph 97 of the instant Judgment;

12. the State must pay the total sum of the compensation ordered as pecuniary and non-pecuniary damages and as costs and expenses set forth in the instant Judgment, with none of its constituent items being subject to currently existing taxes, levies or charges, or any that may be decreed in the future;

13. the State must carry out the measures of reparation and the reimbursement of expenses ordered in operative paragraphs 5, 6, 9, 10 and 11 of the instant Judgment, within one year from when notice is served of this Judgment;

14. if the State were to be in arrears, it must pay interest on the amount owed, according to the banking interest rate for arrearages in Guatemala, pursuant to paragraph 104 of the instant Judgment;

15. the Court will oversee execution of this Judgment and will close this case once the State has fully complied with its provisions. Within one year from the date when notice is served of this Judgment, the State must submit a report to the Court on steps taken to comply with it, pursuant to paragraph 105 of the instant Judgment.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Oliver Jackman

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Diego García-Sayán

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary