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## **REPORT No. 13/15**

### **CASE 12.349**

REPORT ON ADMISSIBILITY AND MERITS

MAYRA ANGELINA GUTIÉRREZ HERNÁNDEZ AND FAMILY  
GUATEMALA

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**I. SUMMARY**

1. On October 30, 2000, the Inter-American Commission on Human Rights (hereinafter the “Commission,” the “Inter-American Commission,” or the “IACHR”) received a petition lodged by Nilda Gutiérrez Hernández, Ángela María del Carmen Argüello Gutiérrez, and Greta Mancilla Chavarría, which claimed that the Republic of Guatemala (hereinafter the “State,” the “Guatemalan State,” or Guatemala) bore international responsibility for the alleged forced disappearance of Mayra Angelina Gutiérrez Hernández on April 7, 2000, as well as the alleged lack of an investigation to determine her whereabouts and punish those responsible. Subsequently, *Grupo de Apoyo Mutuo* (GAM) became a petitioner.

2. According to the petitioners, Ms. Gutiérrez was forcibly disappeared on April 7, 2000. They claim that state agents committed the deed on the basis of: (i) Ms. Gutiérrez’s links to the San Carlos University in Guatemala; (ii) her work in the area of gender and illegal adoptions; (iii) her former membership of the Revolutionary Armed Forces (FAR); and (iv) the fact that two of her siblings were disappeared during the armed conflict in Guatemala. They also said that the crime has been allowed to remain in impunity given that no one has been punished for the deeds and Ms. Gutiérrez’s whereabouts are still not known. With respects to admissibility requirements, they invoked the unwarranted delay exception established in Article 46.2.c of the American Convention.

3. The State contended that the petition was inadmissible on the ground that the criminal proceedings connected with Mayra Angelina Gutiérrez’s disappearance remains ongoing. As to merits, it maintained that it has not been demonstrated that state agents had a hand in her disappearance. It said that despite multiple steps taken both in the criminal proceeding and through writs of habeas corpus, it had not been possible to establish her whereabouts. The State added that there was an outstanding warrant in the context of the criminal proceeding for the arrest of an alleged culprit in the deeds, namely Ms. Gutiérrez’s former domestic partner.

4. After analyzing the information available, the Commission determined that the admissibility requirements set forth in Articles 46 and 47 of the American Convention had been met, and concluded that the State was responsible for violation of the rights to life, humane treatment, a fair trial, equal protection, and judicial protection recognized at Articles 4, 5, 8, 24, and 25 of the American Convention taken in conjunction with the obligations enshrined in Article 1 (1) of that instrument, to the detriment of the persons named in each section of this report. The Commission also found that the State was responsible for violation of the duty to investigate recognized in article I(b) of the Inter-American Convention on Forced Disappearance of Persons.

**II. PROCESSING BY THE COMMISSION**

5. Nilda Gutiérrez Hernández, Ángela María del Carmen Argüello Gutiérrez, and Greta Mancilla Chavarría denounced the alleged facts in this case in a communication received by the Commission on October 30, 2000. On December 6, 2000, the IACHR advised the family and Grupo de Apoyo Mutuo (GAM) that processing of their petition had commenced and that the case had been assigned number 12.349. The State submitted its response on June 13, 2001. The petitioners subsequently submitted comments on August 27, 2001.

6. On October 30, 2006, the Commission informed the State of Guatemala and the petitioners that it had decided to invoke Article 37.3 of its Rules of Procedure then in force and defer its treatment of

admissibility until the debate and decision on the merits. Following that decision, the petitioners presented additional comments on December 18, 2006; on May 17 and August 27, 2007; and on January 25, 2008. For its part, the State submitted additional comments on March 23, July 16, and October 15, 2007, and on March 7, 2008.

7. On February 12 and 16, 2010, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter. On March 19, 2010, the State expressed its desire to initiate friendly settlement proceedings. On August 19, 2011, the petitioners advised that a proposed friendly settlement was being drafted with a view to its presentation to the State. The State forwarded additional comments on October 7, 2011.

8. On April 24, 2014, the IACHR asks the State and the petitioners to indicate if they considered that the friendly settlement process was a continuing proposition. On May 30, 2014, the State of Guatemala advised that it was "not in a position to reach a friendly settlement agreement." On September 22, 2014, the IACHR wrote to the parties requesting an updated copy of the record of the judicial proceedings. On November 23, 2014, the State presented the IACHR with a copy of the record of the judicial proceedings.

### III. POSITIONS OF THE PARTIES

#### A. The petitioners

9. The petitioners said that the State was responsible for the forced disappearance of Mayra Angelina Gutiérrez Hernández on April 7, 2000, after she accompanied her daughter to a bus stop. They said that when her daughter returned home, Ms. Gutiérrez was not there and that on Fridays she usually went to another city to give classes. They added that Ms. Gutiérrez was not seen in that city engaging in her usual activities. The details about the facts and domestic proceedings will be referred to in the Commission's factual analysis, based on information provided by both parties. This section summarizes the main arguments put forward by the petitioners on admissibility and merits.

10. As regards the admissibility of the case, the petitioners invoked the unwarranted delay exception recognized in Article 46.2.c of the American Convention, given that, although Ms. Gutiérrez's disappearance was reported, more than 14 years have passed so far with no news of her whereabouts and no punishment meted out to those responsible.

11. As to the merits of the petition, they argued that the State was responsible for the forced disappearance of Mayra Angelina Gutiérrez Hernández and that, consequently, it violated the rights to **life, humane treatment, and personal liberty** recognized in Articles 4, 5, and 7 of the American Convention, taken in conjunction with Article 1(1) of that instrument. They also claim that the State violated Article I of the Inter-American Convention on Forced Disappearance of Persons.

12. The petitioners said that the case of Ms. Gutiérrez was consistent with the definition of forced disappearance established in the Inter-American Convention on Forced Disappearance of Persons. In that regard, they alleged that Mayra Gutiérrez was deprived of her freedom by agents of the State. In that connection, they held that two of her siblings were forcibly disappeared during the armed conflict by state agents because of their political affiliations and occupation at the University of San Carlos in Guatemala. They said that Ms. Gutiérrez also lectured at that university and had been an active participant in commissions and projects on women's rights and the practice of irregular adoption in Guatemala, which were issues that caused a great media outcry due to the fact that high-ranking state authorities were implicated in those activities.

13. The petitioners also said that despite of visiting detention centers, hospitals, and morgues, there was a failure on the part of the State to provide information on the whereabouts of Ms. Gutiérrez. They said that the remedies invoked, such as habeas corpus petitions and a special inquiry (*procedimiento especial de averiguación*) have not proved effective means for determining her whereabouts.

14. With regard to the State's contention that this case does not constitute a forced disappearance because Ms. Gutiérrez was not a member of the "guerrillas," the petitioners said that that argument is "misleading." They argued that the State has disappeared many individuals who have been classed as civilians. Furthermore, they said that there was no evidence to support the State's argument on the theory of an abduction committed out of passion, but "only the testimony of a witness that justifies nothing."

15. The petitioners also argued that the State violated the rights of Ms. Gutiérrez and her family to a **fair trial and judicial protection**, as envisaged in Articles 8 and 25 of the American Convention, taken in conjunction with Article 1(1) thereof. They said that the habeas corpus petitions were not effective owing to the long time taken to dispose of them and the fact that Ms. Gutiérrez's whereabouts were not identified.

16. They also said that the criminal investigation has been neither meaningful, nor impartial, nor effective, either for that purpose or for punishing the culprits. On the contrary, they said that the proceeding remains at the preliminary investigation stage, in violation of the reasonable-time rule. They added that they have not had access to "prompt and true justice." They said that, despite the efforts of the family and their representatives, the State has not done much in the way of collecting evidence and what little it has done has centered on Mrs. Gutiérrez supposed love affair and travel abroad.

17. Finally, they said that Ms. Gutiérrez's family have suffered greatly from this situation in that they have been left in the dark about what actually happened and her whereabouts. They said that her family live in a state of anxiety, anguish and fear because they believe that what befell Mrs. Gutiérrez could also happen to them.

## **B. The State**

18. As to the admissibility of the petition, the State argued that domestic remedies had not been exhausted since the criminal proceeding opened into the disappearance of Mayra Angelina Gutiérrez was still ongoing. As regards the merits of this case, the State argued that in the course of the investigation various steps had been taken in an attempt to discover her whereabouts, including: (i) interviews with friends and family members; (ii) sweeps and search warrants; and (iii) exhumations and requests for information from the Real Estate Registry (*Catastro y Registro de la Propiedad*) and the Guatemalan Department of Social Security (*Instituto Guatemalteco de Seguridad Social*). It said that, in spite of that, it had not been possible to establish Ms. Gutiérrez's whereabouts.

19. In briefs submitted in 2007 and 2008, the State said that the Public Prosecution Service (*Ministerio Público*) did not provide information on the results of new steps purportedly taken owing to the "confidentiality of the case."

20. It also said that two petitions for habeas corpus were presented on behalf of Mayra Angelina Gutiérrez, in which the courts ordered searches for her at mental health facilities, hospitals, pretrial detention centers, and police stations. It said that in spite of these efforts it had still not been possible to locate Ms. Gutiérrez.

21. Regarding the identities of the persons responsible for the disappearance of Mayra Angelina Gutiérrez, the State held that there was no evidence of involvement of state officials. It said that Juan Alberto Arancibia, a Chilean national who had reportedly had an affair with Ms. Gutiérrez, was suspected of being an accessory after the fact. The State said that a warrant had been issued for his arrest but that it had not been served because efforts to locate him had proved futile.

## **IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**

### **A. Competence *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae* of the Commission**

22. The petitioners have standing under Article 44 of the American Convention to lodge petitions. In addition, Mayra Angelina Gutiérrez and her family were individuals under the jurisdiction of the State of Guatemala at the time of the facts adduced. Therefore, the Commission has *ratione personae* competence to examine the petition. The Commission is competent *ratione loci* to take cognizance of the petition, insofar as it alleges violations of the American Convention that are said to have taken place in the territory of a state party to that treaty. Similarly, the IACHR has *ratione materiae* competence because the petition refers to alleged violations of the American Convention. The Commission is also competent *ratione temporis* to examine the claim as Guatemala has been a state party to the American Convention since May 25, 1978, when it deposited its instrument of ratification. Therefore, the obligation of the State to respect and ensure the rights recognized in the American Convention was in force at the time that the alleged facts are said to have occurred. Likewise, the IACHR has subject matter and temporal competence to pronounce on the Inter-American Convention on Forced Disappearance of Persons, to which the state has been a party since February 25, 2000, which predates when the alleged facts purportedly began to occur.

## B. Exhaustion of domestic remedies

23. Article 46(1)(a) of the American Convention provides that in order for a complaint submitted to the Inter-American Commission pursuant to Article 44 of the same instrument to be admissible, one must have pursued and exhausted domestic remedies in keeping with generally recognized principles of international law. This rule is designed to allow national authorities to examine alleged violations of protected rights and, as appropriate, to resolve them before they are taken up in an international proceeding.

24. That said, the prior exhaustion rule applies when there are actually available in the national system suitable and effective remedies to repair the alleged violation of human rights. In that regard, Article 46(2) of the Convention specifies that the requirement does not apply when: (i) there is no due process under domestic law to protect the right in question; (ii) the alleged victim did not have access to remedies under domestic law; or (iii) there is an unwarranted delay in the decision under those remedies.

25. The Commission recalls that in circumstances where evolution of the facts initially presented at the domestic level entails a change in terms of compliance or noncompliance with the admissibility requirements, its analysis must be based on the situation extant at the time of its pronouncement on admissibility.<sup>1</sup>

26. Furthermore, the precedents established by the Commission indicate that in cases of alleged forced disappearance, a criminal investigation and proceeding in the regular courts, initiated ex officio by the State upon being made aware of a possible crime of that nature, is the suitable recourse to clarify the facts, try those responsible, and, as applicable, establish appropriate criminal penalties, in addition to providing for other forms of reparation.<sup>2</sup>

27. The Commission notes that the criminal investigation opened in 2000. To date, almost 15 years later, the proceedings remain at the preliminary stage, without a final decision or clarification as to the fate or whereabouts of Ms. Gutiérrez. The Commission recalls that when petitioners invoke the exceptions set forth in Article 46 (2) of the Convention, as in this case, it is up to the State to demonstrate that those exceptions do not apply in a particular instance. In this case, the Commission notes that the State has offered no justification to explain, under the standard of *prima facie* analysis appropriate at this stage, the length of time taken by the criminal investigation and proceeding. The State's only argument concerns difficulties in locating the alleged culprit; however, the Commission is unable to grasp how that situation has a bearing on or might justify the time elapsed.

<sup>1</sup> IACHR, Report No. 2/08, Petition 506-05, Admissibility, José Rodríguez Dañín, Bolivia, March 6, 2008, par. 57; Report No. 20/05, Petition 714/00, Admissibility, Rafael Correa Díaz, Peru, February 25, 2005, par. 32; and Report No. 25/04, Case 12.361, Admissibility, Ana Victoria Sánchez Villalobos et al. (Costa Rica), March 11, 2004, par. 45.

<sup>2</sup> IACHR, Report No. 3/12, Case 12.224, Admissibility, Santiago Antezana Cueto et al., Peru, January 27, 2012, par. 24; and Report No. 48/13, Petition 880-11, Admissibility, Nitza Alvarado Espinoza et al., Mexico, July 12, 2013, par. 31.

28. Therefore, without prejudging the merits of the matter, the Commission finds that, *prima facie*, the State is guilty of unwarranted delay and, therefore, the exception recognized in Article 46 (2) (c) of the American Convention applies.

### C. Timeliness of the petition

29. Article 46(1)(b) of the Convention establishes that in order for a petition to be declared admissible it must be presented within six months counted from the date on which the petitioner was notified of the final decision that exhausted remedies in the domestic jurisdiction. This rule shall not apply when the Commission finds that one or more of the exceptions to the rule of prior exhaustion of domestic remedies set forth in Article 46(2) of the Convention are applicable. In such cases, the Commission must determine whether the petition was presented within a reasonable time, in accordance with Article 32 of its Rules of Procedure.

30. As noted in paragraphs 27 to 28 above, the Commission concluded that in this case there has been an unwarranted delay, as envisaged at Article 46(2)(c) of the American Convention. The original petition was launched on October 30, 2000. Bearing in mind the immediacy that should characterize the State's response to a report of a person's disappearance and the State's alleged failure effectively to provide such a response, as well as the continuing nature of the alleged violation, the Commission finds that the petition was lodged within a reasonable time.

### D. Duplication of international proceedings and *res judicata*

31. Article 46(1)(c) provides that the admissibility of petitions is subject to the requirement that the subject "is not pending in another international proceeding for settlement," while Article 47(d) of the Convention stipulates that the Commission shall not admit a petition that "is substantially the same as one previously studied" by the Commission or by another international organization. In the case, the parties have not shown the existence of either of those two circumstances, nor can they be deduced from the record.

### E. Colorable claim

32. For purposes of admissibility, the Commission must decide whether the petition states facts that tend to establish a violation, as stipulated in Article 47(b) of the American Convention, whether the petition is "manifestly groundless" or whether it is "obviously out of order," as per Article 47(c). The standard of appreciation of these measures is different from that required to decide on the merits of a complaint. The Commission must perform a *prima facie* evaluation to examine whether the complaint establishes a basis for an apparent or potential violation of a right guaranteed by the Convention and not to establish the existence of a violation. Such a review is a summary analysis that does not imply any pre-judging or any early formation of an opinion on the merits.

33. Neither the American Convention nor the Rules of Procedure of the IACHR require that the petition identify the specific rights allegedly violated by the State in a matter submitted to the Commission, though the petitioners may do so. It is up to the Commission, based on the case-law of the system, to determine in its admissibility reports which provision of the relevant inter-American instruments is applicable or could be established as having been violated, if the facts alleged are sufficiently proven.

34. The IACHR finds that the alleged facts could amount to violations of the rights to juridical personality, life, humane treatment, personal liberty, personality, a fair trial, and judicial protection, enshrined in Articles 3, 4, 5, 7, 8, and 25 of the Convention, in connection with Article 1(1) of that instrument. In addition, bearing in mind its authority to offer a legal opinion on facts submitted to it, the Commission believes it appropriate in the section on merits to examine how the investigation was handled, taking into account the right to equal protection of the law and the principle of nondiscrimination established in Articles 24 and 1 (1) of the American Convention. Finally, the Commission also considers it appropriate to evaluate in



the section on merits whether the provisions of the Inter-American Convention on Forced Disappearance of Persons are applicable.

## V. ANALYSIS OF MERITS

### A. Established Facts

#### 1. Context

35. Mayra Angelina Gutiérrez Hernandez was born in Guatemala City on January 23, 1958.<sup>3</sup> Her family comprises her daughter Ángela María del Carmen Argüello Gutiérrez; her sisters Ángela and Nilda Gutiérrez; and her brother Armando Gutiérrez.

36. Ms. Gutiérrez earned a psychology degree from San Carlos University in Guatemala in 1984.<sup>4</sup> Later, she studied sociology and attended a variety of specialization courses in human rights at the same university.<sup>5</sup>

37. According to her sister and daughter, Ms. Gutiérrez had been a member of the Revolutionary Armed Forces (FAR) since 1977.<sup>6</sup> They said that she withdrew partially in 1982 after she became pregnant, and entirely from 1985 to 1986.<sup>7</sup>

38. From 1980 until her disappearance on April 7, 2000, Ms. Gutiérrez worked at San Carlos University in Guatemala, first as a lecturer's assistant and then as a lecturer.<sup>8</sup> She was also a researcher on the University's Superior Council.<sup>9</sup> In addition, from June 1997 until her disappearance, she lectured on Saturdays at Mariano Gálvez University, which is located in the Department of Huehuetenango.<sup>10</sup>

39. According to an Amnesty International press release, Mayra Gutiérrez had been a very active member of the Women's Commission at San Carlos University (USAC), where she collaborated with several organizations and did research on women's issues.<sup>11</sup> She was also instrumental in helping found a gender studies program at the University and has attended many important women's conferences abroad on the subject of gender violence and discrimination.<sup>12</sup> The coordinator of the Education Research Section at San

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<sup>3</sup> Annex 14. Civil records of Mayra Angelina Gutiérrez Hernandez. Enclosed with the petitioners' communication of December 18, 2006.

<sup>4</sup> Annex 2. Curriculum Vitae of Mayra Angelina Gutiérrez Hernandez. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>5</sup> Annex 2. Curriculum Vitae of Mayra Angelina Gutiérrez Hernandez. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>6</sup> Annex 3. Communication from the petitioners received by the IACHR on October 30, 2000.

<sup>7</sup> Annex 3. Communication from the petitioners received by the IACHR on October 30, 2000.

<sup>8</sup> Annex 4. Certification from San Carlos University, Guatemala. Enclosed with the petitioners' communication received by the IACHR on December 13, 2006.

<sup>9</sup> Annex 3. Communication from the petitioners received by the IACHR on October 30, 2000.

<sup>10</sup> Annex 2. Curriculum Vitae of Mayra Angelina Gutiérrez Hernandez. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>11</sup> Annex 5. Amnesty International press release, Mayra Angelina Gutiérrez, May 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>12</sup> Annex 5. Amnesty International press release, Mayra Angelina Gutiérrez, May 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000; Annex 6. Communication from the Women's Commission, San Carlos University, Guatemala, May 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.



Carlos University said that Ms. Gutiérrez was part of the Educators for Peace project to build the curriculum for teachers at all levels in support of peace.<sup>13</sup>

40. Ms. Gutiérrez was also a key figure in preparing a report on illegal adoptions in Guatemala,<sup>14</sup> which identified a network of lawyers and members of the military.<sup>15</sup> That report was a source of information for the United Nations' Special Rapporteur on the sale of children, child prostitution and child pornography, who visited Guatemala in 1999, and in his later report issued in January 2000, which attracted considerable publicity.<sup>16</sup> According to press reports, Ms. Gutiérrez supported the *Unión de Izquierda Democrática* political party.<sup>17</sup>

41. The Commission notes that in its report the Rapporteur indicated that "all elements of the mandate (...), the sale of children, in particular, is of concern in Guatemala".<sup>18</sup> She argued that "the internal situation in Guatemala, especially extreme poverty, high birth rate, and the lack of effective control and monitoring of adoption procedures, favored this trade, and demand increased further in 1997".<sup>19</sup> She added that "currently, the rate of adoptions of Guatemala is very high"<sup>20</sup> and that "some notaries and lawyers buy children while still in the womb".<sup>21</sup>

42. According to information provided by family members of Mayra Angelina Gutiérrez, during the armed conflict in Guatemala, her brother, Julio Gutiérrez Hernández, who also worked as a lecturer at San Carlos University and was a member of the Guerrilla Army of the Poor (*Ejército Guerrillero de los Pobres*), was a victim of forced disappearance in 1982 and his whereabouts have never been determined.<sup>22</sup> The family also informed that Brenda Mercedes Gutiérrez, sister of the alleged victim and a student at the same university, was also a victim of forced disappearance in 1985.<sup>23</sup> They reported that prior to her disappearance, Brenda Gutiérrez had belonged to a student association and was purportedly a member of the so-called People in Arms Organization (*Organización del Pueblo en Armas*).<sup>24</sup>

<sup>13</sup> Annex 7. *Nadie entiende su desaparición*, article published in *El Periódico* newspaper, May 9, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>14</sup> Annex 5. Amnesty International press release, Mayra Angelina Gutiérrez, May 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>15</sup> Annex 8. *¿Qué pasó con Mayra?* article published in *Prensa Libre* newspaper, May 18, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>16</sup> Annex 5. Amnesty International press release, Mayra Angelina Gutiérrez, May 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>17</sup> Annex 8. *¿Qué pasó con Mayra?* article published in *Prensa Libre* newspaper, May 18, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>18</sup> Annex 9. UN, Joint report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mrs. Ofelia Calcetas Santos. Report on the mission in Guatemala. January 27, 2000, par. 11. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G00/104/20/PDF/G0010420.pdf?OpenElement>

<sup>19</sup> Annex 9. UN, Joint report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mrs. Ofelia Calcetas Santos. Report on the mission in Guatemala. January 27, 2000, par. 11. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G00/104/20/PDF/G0010420.pdf?OpenElement>

<sup>20</sup> Annex 9. UN, Joint report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mrs. Ofelia Calcetas Santos. Report on the mission in Guatemala. January 27, 2000, par. 12. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G00/104/20/PDF/G0010420.pdf?OpenElement>

<sup>21</sup> Annex 9. UN, Joint report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mrs. Ofelia Calcetas Santos. Report on the mission in Guatemala. January 27, 2000, par. 33. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G00/104/20/PDF/G0010420.pdf?OpenElement>

<sup>22</sup> Annex 10. Official letter from the Human Rights Ombudsman, July 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>23</sup> Annex 10. Official letter from the Human Rights Ombudsman, July 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>24</sup> Annex 10. Official letter from the Human Rights Ombudsman, July 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

43. According to information in the record, in April 2000, two student activists who attended San Carlos University were murdered.<sup>25</sup> In addition, on the day of Ms. Gutiérrez's disappearance Walter Peñate Flores, who worked in the Economic Science Faculty at San Carlos University, was also murdered.<sup>26</sup> The information mentioned in this paragraph has not been contested by the State.

## 2. The events of April 7, 2000

44. On the morning of Friday, April 7, 2000, Ms. Gutiérrez accompanied her daughter to the bus stop in order to go to school.<sup>27</sup> Her brother, Armando Gutiérrez, stated that the alleged victim "told her family that she was going to run some personal errands, such as go to the bank, owing to the fact that her work at San Carlos University was on hold because of an impending strike."<sup>28</sup> He added that on Fridays Ms. Gutiérrez would travel to the Department of Huehuetenango to lecture at Mariano Gálvez University.<sup>29</sup>

45. Ms. Gutiérrez's daughter returned home after school to find the bags her mother usually took to Huehuetenango in their usual place, as were her money, mobile telephone, and credit cards.<sup>30</sup> She added that she also found her passport and checkbook.<sup>31</sup> The family of Ms. Gutiérrez was told that she had not traveled there, neither had she gone to her place of work on the Saturday. They then looked for her in prisons, hospitals, and morgues, without success.<sup>32</sup> Nilda Gutiérrez said that during the search for her sister a man told her that he knew that "her brother is in the *Diario Militar* and that she and her children should watch out."<sup>33</sup>

46. In a statement given to the Human Rights Ombudsman, one of Ms. Gutiérrez's neighbors said that at 8:30 a.m. on April 7, 2000, she had seen the alleged victim walking along the street with "a male companion ... who had his arm around her."<sup>34</sup> Ms. Gutiérrez's sister said that the day before her

<sup>25</sup> Annex 5. Amnesty International press release, Mayra Angelina Gutiérrez, May 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>26</sup> Annex 11. Certification from San Carlos University, Guatemala. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>27</sup> Annex 5. Amnesty International press release, Mayra Angelina Gutiérrez, May 31, 2000. Enclosed with the communication received by the IACHR on October 30, 2000; Annex 10. Official letter from the Human Rights Ombudsman, July 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>28</sup> Annex 10. Official letter from the Human Rights Ombudsman, July 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>29</sup> Annex 10. Official letter from the Human Rights Ombudsman, July 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>30</sup> Annex 10. Official letter from the Human Rights Ombudsman, July 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>31</sup> Annex 11. Record No. 82 of the Criminal Division of the Supreme Court of Justice, December 7, 2000. Enclosed with the petitioners' communication of December 18, 2006.

<sup>32</sup> Annex 5. Amnesty International press release, Mayra Angelina Gutiérrez, May 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>33</sup> Annex 12. Petitioners' communication of December 18, 2006. The organs of the inter-American system examined the case of *Gudiel Álvarez et al. ("Diario Militar")*. The document known as the *Diario Militar*, which was made public in 1999 by the National Security Archive, a nongovernmental organization, is a record of operations—kidnappings, secret arrests, and, in many cases, assassinations—and information about the victims of those operations. The document was drawn up by the Guatemalan presidential intelligence unit known as *El Archivo* between August 1983 and March 1985.

<sup>34</sup> Annex 10. Official letter from the Human Rights Ombudsman, July 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

disappearance she had put some heavy books in a briefcase and asked her to take it to her house.<sup>35</sup> She said that she did not know what had happened to the briefcase.<sup>36</sup>

### 3. Investigation

47. On April 9, 2000, Mayra Angelina Gutiérrez's brother, Armando Gutiérrez, reported the disappearance of Ms. Gutiérrez to the Criminal Investigation Service of the National Civil Police and the Public Prosecution Service.<sup>37</sup>

48. On April 11, Mario Polanco Pérez of *Grupo de Apoyo Mutuo* (GAM) filed a habeas corpus petition for Ms. Gutiérrez with the judicial authorities.<sup>38</sup> That same day, the Ninth Court of First Instance for Criminal Matters, Drug Trafficking and Environmental Crimes accepted the habeas corpus petition in favor of Ms. Gutiérrez.<sup>39</sup> The court requested different authorities of the Office of the Director General of the National Civil Police, prisons, and hospitals, to provide information, if they had any, on the whereabouts of Ms. Gutiérrez.<sup>40</sup> The IACHR notes that the judicial record shows that various state entities indicated that there was no record of her arrest.<sup>41</sup> On April 14, 2000, the Chief Secretary of the Office of the Director General of the Police presented a written communication to the court, saying that "there is no record of a complaint having been filed for Ms. Mayra Angelina Gutiérrez Hernández ... alleging her disappearance."<sup>42</sup>

49. On April 12, 2000, a prosecutor from the Public Prosecution Service requested the Chief of the Criminalistic Investigations Department to assign two agents "to investigate the disappearance of Ms. Mayra Angelina Gutiérrez Hernandez."<sup>43</sup>

50. On April 13, 2000, the Office of the Human Rights Ombudsman lodged a habeas corpus petition for Ms. Gutiérrez with the Seventh Justice of the Peace for Criminal Matters.<sup>44</sup> The Third Court of First Instance for Criminal Matters, Drug Trafficking and Environmental Crimes refused the petition because "the country's courts have informed that ... Mayra ... was not in any of the Republic's prisons."

51. On April 26, 2000, the Office of the Human Rights Ombudsman received a preliminary report from the Chief of the Juveniles and Missing Persons Section of the National Civil Police's Criminal Investigation Service.<sup>45</sup> The report concluded that the prime suspect in the disappearance of Ms. Gutiérrez "was Juan Alberto Arancibia in view of a contradiction between what he told investigators ... about his migratory movements and documentation obtained from the Immigration Authority (*Delegación de*

<sup>35</sup> Annex 2. Curriculum Vitae of Mayra Angelina Gutiérrez Hernandez. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>36</sup> Annex 2. Curriculum Vitae of Mayra Angelina Gutiérrez Hernandez. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>37</sup> Annex 10. Official letter from the Human Rights Ombudsman, July 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>38</sup> Annex 13. Presentation of habeas corpus petition, April 11, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>39</sup> Annex 1. Judicial record, p. 4. Enclosed with the State's communication of November 23, 2014.

<sup>40</sup> Annex 1. Judicial record, p. 4. Enclosed with the State's communication of November 23, 2014.

<sup>41</sup> Annex 1. Judicial record, pp. 22 and 27. Enclosed with the State's communication of November 23, 2014.

<sup>42</sup> Annex 1. Judicial record, p. 28. Enclosed with the State's communication of November 23, 2014.

<sup>43</sup> Annex 15. Communication from the prosecutor, Marta López, dated April 12, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>44</sup> Annex 5. Amnesty International press release, Mayra Angelina Gutiérrez, May 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>45</sup> Annex 10. Official letter from the Human Rights Ombudsman, July 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

*Migración*).<sup>46</sup> The report says that Mr. Arancibia provided a statement in which he professed to have known Ms. Gutiérrez since 1996 and that "they became lovers toward the end of 1999, whereupon they broke off that relationship and at the beginning of this year became good friends."<sup>47</sup>

52. The IACHR notes that the above report includes a statement from Efraín Medina, Rector of San Carlos University, who suggested as a possible hypothesis for the disappearance of Ms. Gutiérrez "research that she did ... into adoptions and trafficking in minors, in which it was possible that the names of lawyers involved were revealed ...."<sup>48</sup> In addition, Ms. Estela Zamora, a work colleague of Mayra Angelina Gutiérrez, stated that the alleged victim conducted investigated lawyers connected with illegal adoption procedures, which information was sent to UNICEF.<sup>49</sup>

53. On April 28, 2000, the Office of the District Prosecutor for Guatemala Department submitted a report saying that, based on the investigation carried out, "there are suspicions that [Mayra Angelina Gutiérrez] is in the ... building ... owned by Mauricio Calderón Valvert."<sup>50</sup> The report stated that the reasons for this were that:

(...) the missing woman often visited that house, where she had sexual relations with her lovers, for which reason it is suspected that Juan Alberto Arancibia Córdova is holding her captive there against her will, given that said person was having a love affair with the missing woman and that was the where they used to meet, and despite the fact that some days before their love affair ended, Juan Alberto Arancibia Córdova persistently called her at her home in order to harass her, in addition to which there are contradictions with respect to his stay in the country, given that he presented documents indicating that days before her disappearance he was out of the country and had traveled to the Republic of Honduras, when, according to the record of migratory movements, that person traveled to Mexico City. [Tr: Spanish somewhat unclear].<sup>51</sup>

54. The prosecutor's office requested authorization from the court to search the above-mentioned building.<sup>52</sup> On May 2, the Tenth Court of First Instance for Criminal Matters, Drug Trafficking and Environmental Crimes granted the request for a search order.<sup>53</sup> According to the report of police investigator Basilio Vásquez, a search was conducted of that building and of Mr. Arancibia's home without finding Mayra Angelina Gutiérrez.<sup>54</sup>

55. On May 3, 2000, Mario Polanco Pérez of GAM filed another habeas corpus petition for Ms. Gutiérrez with the judicial authorities.<sup>55</sup> Mr. Polanco said, "[i]t is coming up to a month since her disappearance and no one has heard from her; there is no sign as to where she may be."<sup>56</sup> That same day, the Eighth Court of First Instance for Criminal Matters, Drug Trafficking and Environmental Crimes accepted the

<sup>46</sup> Annex 10. Official letter from the Human Rights Ombudsman, July 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>47</sup> Annex 1. Judicial record, pp. 89-98. Enclosed with the State's communication of November 23, 2014.

<sup>48</sup> Annex 1. Judicial record, pp. 89-98. Enclosed with the State's communication of November 23, 2014.

<sup>49</sup> Annex 1. Judicial record, pp. 89-98. Enclosed with the State's communication of November 23, 2014.

<sup>50</sup> Annex 1. Judicial record, pp. 81-82. Enclosed with the State's communication of November 23, 2014.

<sup>51</sup> Annex 1. Judicial record, pp. 81-82. Enclosed with the State's communication of November 23, 2014.

<sup>52</sup> Annex 1. Judicial record, pp. 81-82. Enclosed with the State's communication of November 23, 2014.

<sup>53</sup> Annex 1. Judicial record, p. 115. Enclosed with the State's communication of November 23, 2014.

<sup>54</sup> Annex 1. Judicial record, pp. 657-658. Enclosed with the State's communication of November 23, 2014.

<sup>55</sup> Annex 1. Judicial record, p. 117. Enclosed with the State's communication of November 23, 2014.

<sup>56</sup> Annex 1. Judicial record, p. 117. Enclosed with the State's communication of November 23, 2014.

habeas corpus petition in favor of Ms. Gutiérrez and requested courts and prisons to advise if she was being held.<sup>57</sup> Information was received indicating that there was no record that Ms. Gutiérrez had been arrested.<sup>58</sup>

56. Press articles published between May 3 and 11, 2000, reported that the prosecutor from the Public Prosecution Service in charge of the investigation had said that "it [was] a strange case as the family ha[d] not been asked for a ransom."<sup>59</sup> It was also reported that a detective had stated that one hypothesis was that "the disappearance [had] to do with a study being conducted by [Ms. Gutiérrez] ... on illegal child adoptions but there [was] no solid evidence from which to conjecture." The Director of the National Civil Police, Baudilio Portillo, stated, "[t]he latest information we have is that she was seen in Huehuetenango on April 7 with her boyfriend," and that "she may have traveled to Mexico with her fiancé."<sup>60</sup> In addition, the then-Minister of the Interior, Guillermo Ruiz Wong, said that, according to a confidential report from a member of the Army infiltrated in the FAR, Ms. Gutiérrez had been abducted by the Guatemalan National Revolutionary Unit and other leftist organizations.<sup>61</sup> He also said that it could be a case of a crime of passion.<sup>62</sup>

57. On May 15, 2000, the Guatemalan Congress passed resolution 17-2000 by a majority vote, requesting the competent authorities to investigate and clarify Ms. Gutiérrez's disappearance.<sup>63</sup> According to a newspaper article, then-Minister Guillermo Ruiz Wong said that Ms. Gutiérrez had "left the country for personal reasons."<sup>64</sup>

58. That same day, the prosecutor from the Public Prosecution Service, Marta López, informed police investigators that, according to an ex-guerrilla informant who lived in Mexico, Ms. Gutiérrez was "being kept hidden at a former guerrilla safe house on Santiago Atitlán volcano, under the guard of three indigenous women and two Ladina women, who were well armed."<sup>65</sup> On May 16, 2000, an operation was carried out in that area to locate said building, without success.<sup>66</sup> The record also shows that, according to a tipoff from an anonymous telephone caller, Ms. Gutiérrez was being held by armed men at kilometer marker 69 on the Atlantic road.<sup>67</sup> On May 19, 2000, investigators staged an incursion in that area, which proved fruitless.<sup>68</sup>

59. In a communication sent on May 16, 2000, to the then-Constitutional President of the Republic, Alfonso Portillo, authorities and faculty at the Psychology School of San Carlos University requested him "to make an announcement and report as a matter of urgency ... on the disappearance ... of ... Mayra

<sup>57</sup> Annex 1. Judicial record, p. 118. Enclosed with the State's communication of November 23, 2014.

<sup>58</sup> Annex 1. Judicial record, pp. 123-334. Enclosed with the State's communication of November 23, 2014.

<sup>59</sup> Annex 17. Newspaper article "*Buscan a docente de la Usac*," published in *Diario Siglo XXI*, May 3, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>60</sup> Annex 18. Newspaper article "*En otro país*," published in *Prensa Libre*, May 10, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>61</sup> Annex 19. Newspaper article "*Ministro implica a ex guerrilla*," published in *El Periódico*, May 11, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>62</sup> Annex 19. Newspaper article "*Ministro implica a ex guerrilla*," published in *El Periódico*, May 11, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>63</sup> Annex 20. Newspaper article "*Piden aclarar caso Gutiérrez*," published in *Prensa Libre*, May 16, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>64</sup> Annex 20. Newspaper article "*Piden aclarar caso Gutiérrez*," published in *Prensa Libre*, May 16, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>65</sup> Annex 1. Judicial record, pp. 684-685, Volume 2, Enclosed with the State's communication of November 23, 2014.

<sup>66</sup> Annex 1. Judicial record, pp. 684-685, Volume 2, Enclosed with the State's communication of November 23, 2014.

<sup>67</sup> Annex 1. Judicial record, pp. 684-685, Volume 2, Enclosed with the State's communication of November 23, 2014.

<sup>68</sup> Annex 1. Judicial record, pp. 684-685, Volume 2, Enclosed with the State's communication of November 23, 2014.



Angelina Gutiérrez.”<sup>69</sup> They expressed concern at the lack of progress in the investigation to determine the whereabouts of Ms. Gutiérrez. They said that statements made by public officials on the investigation contradicted each other, given that it was suggested, on one hand, that Ms. Gutiérrez had left the country bound for Mexico and, on the other, that she was being held captive by Guatemalan guerrillas in “subhuman conditions.”<sup>70</sup> In that regard, they said that both theories were false and a distraction since all Ms. Gutiérrez’s documents were found at her home, which meant that she could not have traveled, while the leadership of the URNG had denied any involvement in the alleged victim’s disappearance.<sup>71</sup>

60. On May 18, 2000, the migration authorities [*Subdirección de Control Migratorio*] said that there was no record of any migratory movements for Ms. Gutiérrez at La Aurora international Airport since September 1995.<sup>72</sup> That same day, Ms. Gutiérrez’s sister and daughter had a meeting with the Prosecutor General, Adolfo González Rodas.<sup>73</sup> Both said that they were disappointed: (i) because there had been no progress in the investigation, and (ii) the Public Prosecution Service and the National Civil Police had pursued their investigations separately without coordinating their efforts.<sup>74</sup>

61. For their part, Ms. Gutiérrez’s sisters, Ángela and Nilda Gutiérrez, said that since learning of the disappearance, Juan Arancibia—a Chilean researcher and former partner of the alleged victim—and Felipe Figueroa—a university lecturer and partner of the alleged victim—had cooperated with the family in the preliminary inquiries, which “ruled out romantic liaisons as a possible hypothesis for her disappearance.”<sup>75</sup>

62. On May 24, 2000, Saúl Estrada, Chief of the Juveniles and Missing Persons Section of the National Civil Police’s Criminal Investigation Service, told the Office of the Human Rights Ombudsman that “a lot of information ha[d] leaked, which ha[d] hampered the investigation.”<sup>76</sup>

63. On May 31, 2000, Amnesty International issued a press release expressing concern at the disappearance of Ms. Gutiérrez and that the authorities had “taken no effective action to locate her.”<sup>77</sup> It said that there were suggestions that her disappearance may have taken place in the context of a campaign against San Carlos University, given that two activist students at the University were reportedly killed in the same month that Mayra Gutiérrez disappeared, and that the University had been a long-term target of human rights violations in Guatemala.<sup>78</sup>

<sup>69</sup> Annex 21. Open letter from the Psychology School of San Carlos University to Alfonso Portillo, Constitutional President of the Republic, May 16, 2000. Enclosed with the petitioners’ brief received by the IACHR on October 30, 2000.

<sup>70</sup> Annex 21. Open letter from the Psychology School of San Carlos University to Alfonso Portillo, Constitutional President of the Republic, May 16, 2000. Enclosed with the petitioners’ brief received by the IACHR on October 30, 2000.

<sup>71</sup> Annex 21. Open letter from the Psychology School of San Carlos University to Alfonso Portillo, Constitutional President of the Republic, May 16, 2000. Enclosed with the petitioners’ brief received by the IACHR on October 30, 2000.

<sup>72</sup> Annex 1. Judicial record, p. 38. Enclosed with the State’s communication of November 23, 2014.

<sup>73</sup> Annex 22. Newspaper article “*Desencantadas del Ministerio Público*,” published in *El Periódico*, May 19, 2000. Enclosed with the petitioners’ brief received by the IACHR on October 30, 2000.

<sup>74</sup> Annex 22. Newspaper article “*Desencantadas del Ministerio Público*,” published in *El Periódico*, May 19, 2000. Enclosed with the petitioners’ brief received by the IACHR on October 30, 2000.

<sup>75</sup> Annex 23. Newspaper article “*El misterio de Mayra*,” published in *El Mosaico*, May 21, 2000. Enclosed with the petitioners’ brief received by the IACHR on October 30, 2000.

<sup>76</sup> Annex 10. Official letter from the Human Rights Ombudsman, July 31, 2000. Enclosed with the petitioners’ brief received by the IACHR on October 30, 2000.

<sup>77</sup> Annex 5. Amnesty International press release, Mayra Angelina Gutiérrez, May 31, 2000. Enclosed with the petitioners’ brief received by the IACHR on October 30, 2000.

<sup>78</sup> Annex 5. Amnesty International press release, Mayra Angelina Gutiérrez, May 31, 2000. Enclosed with the petitioners’ brief received by the IACHR on October 30, 2000.

64. Amnesty International also suggested that the disappearance may have been politically motivated, in light of her participation in preparing a report on illegal adoptions in Guatemala.<sup>79</sup> It said that the investigation in which the alleged victim took part was a major source of information for a report published in January 2000 by the United Nation's Special Rapporteur on the sale of children, child prostitution and child pornography, following his visit to Guatemala. The Rapporteur's report attracted considerable publicity shortly before Mayra went missing.<sup>80</sup> It added that further factors suggesting that her disappearance may have been politically motivated were that she had had a brother and a sister who were political activists that disappeared in the 1980s.<sup>81</sup>

65. Amnesty International also said that Ms. Gutiérrez was listed on a Guatemalan military intelligence database compiled during the 1980s that was made public on May 7, 2000, by the then-Secretary of Strategic Affairs of the Presidency.<sup>82</sup> It said that he had found the list on a government computer, and published it "to deflect criticism after killings of protestors in the capital in April 2000."<sup>83</sup> Amnesty said that the list of "suspected subversives" contained the names of 650,428 people, each with a code number apparently referring to their status.<sup>84</sup>

66. On June 1, 2000, the Ninth Court of First Instance for Criminal Matters, Drug Trafficking and Environmental Crimes announced that the whereabouts of Ms. Gutiérrez had not been determined in the framework of the habeas corpus petition.<sup>85</sup> Consequently, it ruled that "the organ responsible for criminal prosecutions should conduct the necessary investigation into the disappearance of Ms. Mayra Angelina Gutiérrez."<sup>86</sup>

67. On June 2, 2000, the Office of the Human Rights Ombudsman received a signed report from the General Directorate of Migration stating with respect to Ms. Gutiérrez that there was "no record of any migratory movements for her ... during the period since April 6 of this year."<sup>87</sup>

68. On June 8, 2000, authorities and faculty at the Psychology School of San Carlos University sent another communication to the Constitutional President of the Republic saying, "[M]ore than two months have passed since [Mayra's disappearance] and there is still no concrete information on the matter."<sup>88</sup> That same day, they informed the Director of the National Civil Police that they were "concerned at receiving no news from the agency under his command or from the Public Prosecution Service."<sup>89</sup> Subsequently, on June

<sup>79</sup> Annex 5. Amnesty International press release, Mayra Angelina Gutiérrez, May 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>80</sup> Annex 5. Amnesty International press release, Mayra Angelina Gutiérrez, May 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>81</sup> Annex 5. Amnesty International press release, Mayra Angelina Gutiérrez, May 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>82</sup> Annex 5. Amnesty International press release, Mayra Angelina Gutiérrez, May 31, 2000. Amnesty International, *Guatemala's Lethal Legacy*, Madrid, 2002, p. 74. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>83</sup> Annex 5. Amnesty International press release, Mayra Angelina Gutiérrez, May 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>84</sup> Annex 5. Amnesty International press release, Mayra Angelina Gutiérrez, May 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>85</sup> Annex 1. Judicial record, p. 40. Enclosed with the State's communication of November 23, 2014.

<sup>86</sup> Annex 1. Judicial record, p. 40. Enclosed with the State's communication of November 23, 2014.

<sup>87</sup> Annex 10. Official letter from the Human Rights Ombudsman, July 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>88</sup> Annex 24. Communication from the Psychology School of San Carlos University to Alfonso Portillo, Constitutional President of the Republic, June 8, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>89</sup> Annex 24. Communication from the Psychology School of San Carlos University to the Director of the National Civil Police, June 8, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.



19, 2000, they again requested the Director of the National Civil Police to intervene in the case.<sup>90</sup> In that request they added that in statements to a media outlet the Director of the National Civil Police had said that the Anti-Kidnapping Unit [Comando Antisecuestros] had not taken any action because "so far they ha[d] received no complaint of an abduction."<sup>91</sup>

69. On June 12, 2000, the Criminal Division of the Supreme Court of Justice received a petition for a special proceeding lodged by Mario Polanco on behalf of Mayra Gutiérrez.<sup>92</sup> The Criminal Division ordered that the habeas corpus petitions presented on behalf of Ms. Gutiérrez be disposed of within three days.<sup>93</sup> Both the petitioners and the State informed that the habeas corpus petitions were dismissed as Ms. Gutiérrez had not been located.<sup>94</sup>

<sup>90</sup> Annex 24. Communication from the Psychology School of San Carlos University to the Director of the National Civil Police, June 19, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>91</sup> Annex 24. Communication from the Psychology School of San Carlos University to the Director of the National Civil Police, June 19, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>92</sup> Annex 25. Special Inquiry Order 01-2000, dated June 12, 2000. Enclosed with the petitioners' communication received by the IACHR on December 13, 2006. The Commission notes that the above procedure is governed by Articles 467 *et seq.* of the Code of Criminal Procedure of Guatemala.

ARTICLE 467.- Admissibility. If a habeas corpus petition [*recurso de exhibición personal*] has been lodged without the person on whose behalf it was requested being found, and sufficient grounds exist to suspect that they have been detained or illegally imprisoned by a public official, members of the state security forces, or regular or irregular agents, without informing about their whereabouts, the Supreme Court of Justice may, at the request of any person: 1. Instruct the Public Prosecution Service to report to the tribunal within five days on the progress and outcome of the investigation, on steps taken and requested, and on those yet to be taken. The Supreme Court of Justice may shorten the time allowed, as necessary. 2. Entrust the inquiry (preparatory proceeding) exclusively and in the following order to: (a) The Human Rights Ombudsman; (b) an entity or association legally incorporated in the country; (c) the spouse or relatives of the victim. ...

Article 469.- Contents of the order. The inquiry order shall contain: 1. The full name of the human rights ombudsman or whomsoever he or she designates for the inquiry, who may be a private individual independent of any institution. 2. The full name and particulars of the person assigned to the inquiry; in the case of an association or entity, the full name and particulars of the person who will represent them in the case, as nominated by the entity or association. 3. The full name and particulars of the missing person for whom the proceeding is being instituted and a summary of the alleged crime. 4. A statement setting out the reasons for the alleged ineffectiveness of the habeas corpus petition and the grounds for suspicion. 5. A statement to the effect that the designated investigator has the same powers and obligations as agents of the Public Prosecution Service in investigating the above-alleged crime and instructions to state officials and employees to provide him or her with the same cooperation and respect as they would to said official, with a warning that any refusal or lack of cooperation on their part will be punished in accordance to law. 6. The deadline for reporting the results to the Supreme Court of Justice. 7. Designation of the judge to monitor the investigation, who may be specifically appointed.

ARTICLE 470.- Preparatory proceedings The designated investigator will conduct the inquiry in accordance with the rules that normally govern preparatory proceedings for state prosecutions, without prejudice to such activities as may be performed by the Public Prosecution Service. The statement of the accused shall only be admissible, at the request of the designated investigator, if given before the judge having jurisdiction. Upon completion of the investigation, the regular rules of procedure shall apply. The Supreme Court of Justice shall provide the designated investigator with the necessary assistance to carry out their orders correctly. It shall also settle any disagreement that may arise between the latter and the Public Prosecution Service.

ARTICLE 471.- Intermediate proceedings If the Public Prosecution Service or the designated investigator presents charges, the judge having jurisdiction shall preside over the intermediate proceedings. Regardless of the order in which they may conclude, the investigator shall report to the Supreme Court of Justice on the results of his or her inquiry. If the designated investigator fails to conduct a diligent inquiry within the time provided by the Supreme Court of Justice, their mandate shall be voided and another investigator may be appointed.

ARTICLE 472.- Further proceedings Once the trial order has been issued, the regular rules shall apply, including for deciding the competent sentencing court. The designated investigator shall continue as plaintiff if they have so requested in their indictment and shall be regarded as such at all times during the proceedings.

<sup>93</sup> Annex 25. Special Inquiry Order 01-2000, dated June 12, 2000. Enclosed with the petitioners' communication received by the IACHR on December 13, 2006.

<sup>94</sup> Annex 26. Mario Polanco's brief, dated June 22, 2000. Enclosed with the petitioners' communication received by the IACHR on December 13, 2006; State's brief of June 8, 2001.

70. On June 14, 2000, police investigators took the statement of Enma Lucrecia Nuñez, a neighbor of Mayra Angelina Gutiérrez.<sup>95</sup> Ms. Nuñez stated that at 8:30 a.m. on April 7, 2000, she had seen the alleged victim walking along the street “accompanied by a man who had his arm around her.”<sup>96</sup>

71. On June 22, 2000, Mario Polanco sent a brief to the Criminal Division of the Supreme Court of Justice, in which he said that, despite the fact that the habeas corpus petitions presented were processed and the case file was forwarded to the Public Prosecution Service, the latter “has not issued any summonses nor is anything known about its investigations so far.”<sup>97</sup>

72. On June 28 and July 3, 2000, the Office of the Human Rights Ombudsman interviewed prosecutor Marta López, who said:

According to the investigation carried out ... it was determined that everything that happened in this case was planned by the missing woman, given that approximately one month after the incident Mr. Renato del Cid appeared at the home of Ms. Gutiérrez's family ... and informed them that he had two plane tickets to [Mexico] and, at the same time, he gave a sum of money in dollars to the missing woman's daughter ...; There is also information about [Ms. Gutiérrez's] companion on the day of her disappearance, who is suspected of being the aforementioned woman's contact ... in an illicit arms deal.<sup>98</sup>

73. The prosecutor added:

According to the aforementioned investigation, Ms. Gutiérrez ... was trained in the Republic of Cuba and was active in the guerrilla movement, which is why she was friendly with a former guerrilla by the name of Renato del Cid, who may be involved in this matter, as well as with another former guerrilla called César Montes, who is a close friend of the missing woman.<sup>99</sup>

74. The prosecutor also claimed that the alleged victim's sister, Nilda Gutiérrez, had made telephone calls to Mexico and El Salvador, so it was “assumed [that] she is also involved and knows her sister's whereabouts.”<sup>100</sup>

75. On July 4, 2000, in response to a communication from the authorities and faculty of San Carlos University in Guatemala, the Ambassador of Mexico said that “according to information from the regional offices of the National Institute of Migration [*Instituto Nacional de Migración*] no record was found of any entry by Ms. Gutiérrez's to Mexican territory.”<sup>101</sup>

76. On July 31, 2000, the Human Rights Ombudsman presented a report in which he said:

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<sup>95</sup> Annex 1. Judicial record, pp. 89-98. Enclosed with the State's communication of November 23, 2014.

<sup>96</sup> Annex 1. Judicial record, pp. 89-98. Enclosed with the State's communication of November 23, 2014.

<sup>97</sup> Annex 26. Mario Polanco's brief, dated June 22, 2000. Enclosed with the petitioners' communication received by the IACHR on December 13, 2006.

<sup>98</sup> Annex 10. Official letter from the Human Rights Ombudsman, July 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>99</sup> Annex 10. Official letter from the Human Rights Ombudsman, July 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>100</sup> Annex 10. Official letter from the Human Rights Ombudsman, July 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>101</sup> Annex 28. Communication from the Ambassador of Mexico, Salvador Arriola, dated July 4, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

Based on the analysis of the complaint, the steps taken, and the reports received, it has been found that ... to date, [the] relatives [of the alleged victim have not] received any communication and/or information to help them find her; and that, in spite of the investigations pursued by the competent authorities and despite the time that has elapsed, they have been unable to establish [her] whereabouts or determine the motive for the deed ... for which reason, it is concluded that the omission on the part of the relevant authority in failing to guarantee the the missing woman's safety constitutes a violation of human rights.<sup>102</sup>

77. Consequently, the Ombudsman concluded that the State bore "institutional responsibility" by failing in its duty to guarantee, ensure, and protect the free exercise of Mayra Gutiérrez's rights.<sup>103</sup> He demanded that Guatemala "organize all the government apparatus (...) to ensure their ability to determine [her] whereabouts and if there should be anyone to blame for any wrongdoing, that the full penalty of the law be applied to them."<sup>104</sup>

78. On September 19, 2000, a technical consultant of the Public Prosecution Service sent a communication to the private secretary of the Public Prosecution Service in which he made reference to an examination of the prosecution's case file.<sup>105</sup> In that regard, it said:

Having examined the prosecution's case file, it was found that its contents essentially amount to the reports of the DICRI and one or two isolated statements. The majority of the investigative procedures carried out by the prosecution are not documented, which means that they do not legally exist; nor would we be able to accredit their existence should our institution be questioned. For example, it is claimed that numerous individuals were interviewed and provided some kind of information, yet there are no written statements from them.<sup>106</sup>

79. The technical consultant believed that the investigation of case could be helped by taking a number of measures. Among those measures, he mentioned a request to UNICEF for the report on the adoption of children in which Ms. Gutiérrez was said to have taken part "in order to verify or rule out if its contents could be considered as compromising Mayra's safety."<sup>107</sup>

80. On December 7, 2000, the Criminal Division of the Supreme Court of Justice convened a hearing in the framework of special inquiry 01-2000 invoked by Mario Polanco on behalf of Mayra Gutiérrez.<sup>108</sup> The Criminal Division noted that Mr. Polanco and the prosecutor from the Public Prosecution Service attended the hearing and that no one from the Office of the Human Rights Ombudsman did so.<sup>109</sup> At that hearing, Mr. Polanco held that "the responsibility belongs to the State, it stems from the passivity of the investigation ... they say that she ran off with a man and went to Mexico; she has now been forcibly disappeared for eight months and nothing is known of her whereabouts." For her part, the prosecutor from

<sup>102</sup> Annex 10. Official letter from the Human Rights Ombudsman, July 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>103</sup> Annex 10. Official letter from the Human Rights Ombudsman, July 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>104</sup> Annex 10. Official letter from the Human Rights Ombudsman, July 31, 2000. Enclosed with the petitioners' brief received by the IACHR on October 30, 2000.

<sup>105</sup> Annex 1. Judicial record, pp. 707-724. Enclosed with the State's communication of November 23, 2014.

<sup>106</sup> Annex 1. Judicial record, pp. 707-724. Enclosed with the State's communication of November 23, 2014.

<sup>107</sup> Annex 1. Judicial record, pp. 707-724. Enclosed with the State's communication of November 23, 2014.

<sup>108</sup> Annex 29. Record No. 82 of the Criminal Division of the Supreme Court of Justice, December 7, 2000. Enclosed with the petitioners' communication of December 18, 2006.

<sup>109</sup> Annex 29. Record No. 82 of the Criminal Division of the Supreme Court of Justice, December 7, 2000. Enclosed with the petitioners' communication of December 18, 2006.

the Public Prosecution Service claimed, “[A] full investigation has been carried out. Thus, several searches and investigative procedures have been conducted, including the taking of statements from friends and relatives, the inspection of corpses of matching characteristics and of prisons ... and other facilities ... in a bid to determine if there has been an illegal arrest. The list of telephone calls was investigated.” She added that any suspicion of abduction or illegal detention had been discarded “as she did not receive any telephone calls and in light of the habeas corpus petitions filed on behalf of the aforementioned woman.”<sup>110</sup>

81. The Criminal Division deemed it appropriate to admit the petition for a special inquiry. The Criminal Division found that:

In the case under review there are suspicions that Mayra Angelina Gutiérrez Hernández is in one of the circumstances envisaged [when sufficient grounds exist to suspect that they have been detained or illegally imprisoned by a public official, members of the state security forces, or regular or irregular agents, without informing about their whereabouts], which may be est. on the basis of evidence collected by the party invoking the proceeding .... Therefore, in order to protect the rights to life, safety, freedom, and well-being ... it is concluded that it would be advisable to order the inquiry requested.<sup>111</sup>

82. Consequently, in accordance with the above-referenced procedure, the Criminal Division requested that the Human Rights Ombudsman submit the results of his investigation by February 12, 2001.<sup>112</sup> In addition, the Second Court of First Instance on Criminal Matters, Drug Trafficking and Environmental Crimes was instructed to monitor said investigation.<sup>113</sup>

83. On January 10, 2001, Ms. Sonia Toledo, a work colleague of Mayra Angelina Gutiérrez, gave a statement to the Office of the Human Rights Ombudsman.<sup>114</sup> She said that a couple of days after Ms. Gutiérrez went missing, she went with officials from San Carlos University inquire about the investigation and they were told that “they had already formed hypotheses that showed that the investigation was skewed, as they were saying that she had committed suicide, that she had gone off with a boyfriend, or that she had been taken by former guerrillas.”<sup>115</sup>

84. On January 25, 2001, the United Nations Verification Mission in Guatemala presented a report to the Human Rights Ombudsman in which it said the following:

(...) the prosecutor's preliminary investigation (...) was not consistent with the principles of the objectiveness, impartiality, and thoroughness .... For its part, the PNC's Criminal Investigation Service presented a report to the authorities of San Carlos University that relied on a considerable amount of disinformation to concoct theories about Mayra Gutiérrez's life. Not only has this not helped the investigation but, by denigrating the victim, has furnished elements to support an interpretation of the facts in which she is responsible for her own disappearance.<sup>116</sup>

<sup>110</sup> Annex 29. Record No. 82 of the Criminal Division of the Supreme Court of Justice, December 7, 2000. Enclosed with the petitioners' communication of December 18, 2006.

<sup>111</sup> Annex 29. Record No. 82 of the Criminal Division of the Supreme Court of Justice, December 7, 2000. Enclosed with the petitioners' communication of December 18, 2006.

<sup>112</sup> Annex 29. Record No. 82 of the Criminal Division of the Supreme Court of Justice, December 7, 2000. Enclosed with the petitioners' communication of December 18, 2006.

<sup>113</sup> Annex 29. Record No. 82 of the Criminal Division of the Supreme Court of Justice, December 7, 2000. Enclosed with the petitioners' communication of December 18, 2006.

<sup>114</sup> Annex 1. Judicial record, p. 3502. Volume 3. Enclosed with the State's communication of November 23, 2014.

<sup>115</sup> Annex 1. Judicial record, p. 3502. Volume 3. Enclosed with the State's communication of November 23, 2014.

<sup>116</sup> Annex 1. Judicial record, Pages 923-929. Volume 2, Enclosed with the State's communication of November 23, 2014.

85. That report referred to various shortcomings in the investigation, including: (i) the account of the witness who said that she had seen Ms. Gutiérrez on the day of her disappearance, which has not been compared with other testimony or confirmed; (ii) tampering with evidence; and (iii) disinformation caused by people who provided distorted or incomplete background information on Ms. Gutiérrez that has been presumed credible.<sup>117</sup> The Mission held that "no evidence has been found that supports the hypothesis that this was a voluntary disappearance; this hypothesis is weakened by the confirmation that Mayra Gutiérrez found her work fulfilling and that the existence of her daughter was a decisive influence on life."<sup>118</sup>

86. The report added that "the hypothesis connecting the disappearance to the investigation that ... she did ... into adoptions was completely disregarded in the official investigation."<sup>119</sup> It also said that "acts of obstruction and disinformation have been recorded on the part of persons with ties to military intelligence, which, apart from influencing the course of the official investigation ... have affected how the case is perceived by public opinion, high-ranking congressional officials, the Ministry of the Interior, and the PNC."<sup>120</sup> The report concluded by offering possible reasons that would explain a politically motivated disappearance: (i) her left-wing political inclinations and membership of the URNG; (ii) her work in the area of human rights at USAC; (iii) the disappearance of her siblings at the time of the internal armed conflict; (iv) a blow against the student movement; and (v) a destabilizing factor in the context of an emerging pro-coup movement.<sup>121</sup>

87. On February 20, 2001, the prosecutor in charge of the case presented a report which stated that "it is known that in the 1980s the allegedly missing woman was a member of the guerrilla forces, as were her two siblings, which is relevant as far as considering the possibility of a forced disappearance is concerned." The prosecutor said that there was no reason to conclude that her disappearance constituted a forced disappearance based on the following causes:

- By order of state officials: A legal element that is not established ... since there were no signs of violence in her residence, based on the statement of a female neighbor ... Mayra was often accompanied by a male individual ...; at no point in the investigation ... has it been stated that persons dressed in National Civil Police or army uniforms were seen leaving her residence.
- Deprivation of liberty for political reasons: Several media outlets and members of her family have suggested that the disappearance ... is politically motivated, yet at no point has it been demonstrated with documents or with facts that [Mayra] was actively involved in the movements of guerrilla groups or that she belonged to any political party in Guatemala ....
- Concealment of her whereabouts: ... based on the habeas corpus petitions it was established that she is not being concealed at any state institution.
- Forced disappearance by groups or bands organized for subversive or insurgency reasons: This circumstance is completely nonexistent because paramilitary groups no longer exist in our country

88. The State informed that the prosecutor from the Public Prosecution Service stated on April 3, 2001, that "no significant progress has been made" in the investigation.<sup>122</sup> It also said that, according to a statement made by the Human Rights Ombudsman on May 4, 2001, "it was concluded that the lecturer's kidnapping was done for reasons of passion, given that, based on statements made by the owner of a shop near the residence of Mayra Gutiérrez, she was last seen on May 7, 2000 (sic), in the company of a person who matched the description of the Chilean citizen Juan Adalberto Arancibia Cardona."<sup>123</sup>

<sup>117</sup> Annex 1. Judicial record, Pages 923-929. Volume 2, Enclosed with the State's communication of November 23, 2014.

<sup>118</sup> Annex 1. Judicial record, Pages 923-929. Volume 2, Enclosed with the State's communication of November 23, 2014.

<sup>119</sup> Annex 1. Judicial record, Pages 923-929. Volume 2, Enclosed with the State's communication of November 23, 2014.

<sup>120</sup> Annex 1. Judicial record, Pages 923-929. Volume 2, Enclosed with the State's communication of November 23, 2014.

<sup>121</sup> Annex 1. Judicial record, Pages 923-929. Volume 2, Enclosed with the State's communication of November 23, 2014.

<sup>122</sup> Annex 30. State's brief of June 8, 2001.

<sup>123</sup> Annex 30. State's brief of June 8, 2001.

89. On March 23, 2001, the Division for Constitutional Relief and Preliminary Proceedings of the Supreme Court of Justice denied the habeas corpus petition brought by prosecutor Marta López in favor of Ms. Gutiérrez.<sup>124</sup> The court said that based on the steps taken, "the whereabouts of Mayra Angelina ... are uncertain and unknown and she will not be found via this action."<sup>125</sup>

90. The State said that Mr. Arancibia made a statement to the Human Rights Ombudsman on April 10, 2001, in which he said that Ms. Gutiérrez's disappearance "could be a political problem connected with the adoptions investigations that she was doing."<sup>126</sup> In addition, Mr. Arancibia defense counsel argued that the statements made by the ombudsman in the media blaming him for Ms. Gutiérrez's disappearance were completely unfounded.<sup>127</sup>

91. On April 30, 2001, the Human Rights Ombudsman submitted a report to the Second Court of First Instance for Criminal Matters, Drug Trafficking and Environmental Crimes in which he indicated that "the hypothesis reached by the investigation ... was kidnapping or abduction ... for reasons of passion based on an analysis of the statements of witnesses, documentary evidence, and the statement of the suspect ... Juan Alberto Arancibia."<sup>128</sup> He added that "doubtless, betrayal, jealousy, and fear of HIV infection led to [the] actions [of Juan Arancibia]."<sup>129</sup>

92. The report of the Ombudsman concluded, saying that "the fact that no body has been found does not mean that people in power or specialized individuals abducted Mayra Gutiérrez, since a husband, a friend, or a lover is in a splendid position to commit a crime with impunity, given that premeditation would enable them to take the victim without violence to the place or location prepared in advance and ensure that the corpus delicti did not appear."<sup>130</sup>

93. According to information from the State, on July 6, 2001, the Second Court of First Instance for Criminal Matters, Drug Trafficking and Environmental Crimes issued a decision in which it declared Mr. Arancibia to be "accused of the offense [of] being an accessory after the fact," ordered his arrest, and decided "to suspend this proceeding given that the accused is declared in contempt until he comes forward, is found, or is apprehended."<sup>131</sup>

94. In August 2002 and May 2003, prosecutor Sara Payes informed the Presidential Human Rights Commission that there remained a number of measures to carry out, such as: (i) the exhumation of women's corpses; (ii) comparison of photographs; (iii) additional interviews with family members; and (iv) a new request for Mr. Arancibia's migratory movements.<sup>132</sup> She added that "other investigative measures will be adopted."<sup>133</sup>

<sup>124</sup> Annex 1. Judicial record, Pages 3521-3523. Volume 4. Enclosed with the State's communication of November 23, 2014.

<sup>125</sup> Annex 1. Judicial record, Pages 3521-3523. Volume 4. Enclosed with the State's communication of November 23, 2014.

<sup>126</sup> Annex 31. State's brief of May 30, 2014

<sup>127</sup> Annex 32. Brief of Edgar Pérez, dated May 29, 2001. Enclosed with the petitioners' communication of August 27, 2001.

<sup>128</sup> Annex 1. Judicial record, Pages 957-962. Volume 2, Enclosed with the State's communication of November 23, 2014.

<sup>129</sup> Annex 1. Judicial record, Pages 957-962. Volume 2, Enclosed with the State's communication of November 23, 2014.

<sup>130</sup> Annex 1. Judicial record, Pages 957-962. Volume 2, Enclosed with the State's communication of November 23, 2014.

<sup>131</sup> Annex 31. State's brief of May 30, 2014

<sup>132</sup> Annex 1. Judicial record, Pages 4681-4688 and 4694-4700. Volume 4. Enclosed with the State's communication of November 23, 2014.

<sup>133</sup> Annex 1. Judicial record, Pages 4681-4688 and 4694-4700. Volume 4. Enclosed with the State's communication of November 23, 2014.



95. On March 18, 2004, the National Civil Police issued a preliminary investigation report which said that, based on the statement of Armando Gutiérrez, Osmín de Jesús Pineda Melgar was a suspect in the disappearance of Ms. Gutiérrez.<sup>134</sup> Armando Gutiérrez said that in 2000, Osmín Pinedo, who was made the new chief of the Technical Evaluation Office at San Carlos University by the Rector, Efraín Medina, had taken money which was supposed to have been invested in the University's infrastructure.<sup>135</sup> Mr. Gutiérrez said that Mayra Angelina Gutiérrez had apparently learned of the situation and, therefore, was "a major and serious obstacle for the Office of the Rector ... [T]he only solution was to "disappear" her to prevent them from being discovered, and better yet if Mayra never turned up as that would provide them with a way to justify her disappearance by inventing that she had eloped to another country with some boyfriend ...."<sup>136</sup>

96. An undated brief submitted by the prosecutor from the Public Prosecution Service after 2004 said that "so far, material impossibilities have meant that the status of the above-referenced proceeding has remained unchanged owing to a number of factors that prevent a meticulous and in-depth investigation. In spite of that, our efforts have been laudable and the inquiry has resumed, with guidelines given to the investigator ...."<sup>137</sup>

97. On February 9, 2005, prosecutor Sara Payes reported that Mr. Arancibia, for whom there is an outstanding detention order for the offense of being an accessory after the fact, is in Mexico and has not come forward to resolve his legal situation.<sup>138</sup> She said that there were a number of investigative measures pending, such as: (i) the exhumation of a number of persons who have appeared in the department of Quetzaltenango; (ii) the summons of Osmín Pineda; and (iii) "other investigations that cannot be disclosed for the time being."<sup>139</sup>

98. The State said that in October 2007 the criminal proceeding was still at the investigation stage.<sup>140</sup> The IACHR notes that the record of the criminal proceeding refers to the procedure for the exhumation of corpses.<sup>141</sup> The record contains a communication from prosecutor Sara Payes to the Administrative Chief of the Public Prosecution Service, saying that in order to carry out the exhumations "it is necessary to pay for the services of private individuals to perform the relevant tasks."<sup>142</sup>

99. The State added that in March 2008, the National Civil Police had attempted to locate Mr. Arancibia at the addresses on record for him but that "the results were negative."<sup>143</sup> On September 22, 2009, prosecutor Sandra Sosa indicated that the record for the case was in the possession of the Office of the Prosecutor for Property Crimes and, therefore, it had to be examined by the Special Prosecution Unit for Human Rights, "which, moreover, has the staff and capacity to perform a better investigation because of its

<sup>134</sup> Annex 1. Judicial record, Pages 4681-4688 and 4694-4700. Volume 4. Enclosed with the State's communication of November 23, 2014.

<sup>135</sup> Annex 1. Judicial record, Pages 4681-4688 and 4694-4700. Volume 4. Enclosed with the State's communication of November 23, 2014.

<sup>136</sup> Annex 1. Judicial record, Pages 4681-4688 and 4694-4700. Volume 4. Enclosed with the State's communication of November 23, 2014.

<sup>137</sup> Annex 1. Judicial record, Volume 2, Enclosed with the State's communication of November 23, 2014.

<sup>138</sup> Annex 1. Judicial record, Pages 4681-4688 and 4694-4700. Volume 5. Enclosed with the State's communication of November 23, 2014.

<sup>139</sup> Annex 1. Judicial record, Pages 4681-4688 and 4694-4700. Volume 5. Enclosed with the State's communication of November 23, 2014.

<sup>140</sup> Annex 32. State's brief of October 15, 2007

<sup>141</sup> Annex 1. Judicial record, Pages 3378 and 3665-3666. Volume 5. Enclosed with the State's communication of November 23, 2014.

<sup>142</sup> Annex 1. Judicial record, Pages 3665-3666. Volume 5. Enclosed with the State's communication of November 23, 2014.

<sup>143</sup> Annex 33. State's brief of March 5, 2008.



light caseload; and ... it is being jointly investigated with the Office of the Human Rights Ombudsman."<sup>144</sup> In a writing dated December 23, 2009, prosecutor Sosa said that the Human Rights Prosecution Unit had refused the case's transfer.<sup>145</sup>

100. The Commission notes that in 2006 and 2011, the Human Rights Ombudsman requested the Supreme Court of Justice to extend the investigation deadline on a number of occasions as it was reportedly waiting to receive information requested from several institutions as well as to analyze the National Police archives.<sup>146</sup> The Supreme Court accepted each request and periodically extended the investigation deadline.<sup>147</sup> On January 27, 2011, the investigator from the Office of the Human Rights Ombudsman informed the Criminal Division of the Supreme Court of Justice that the Public Prosecution Service had been requested to expedite the request to the competent organ for an arrest warrant for the persons responsible who took part in the woman's forced disappearance."<sup>148</sup>

101. On July 9, 2013, Mario Polanco requested the Criminal Division of the Supreme Court to instruct the Human Rights Ombudsman to report on the status and progress of the investigation to determine Ms. Gutiérrez's whereabouts.<sup>149</sup>

102. On August 1, 2013, Agency 9 of the Investigations Unit of the Office of the District Prosecutor for the Metropolitan Area submitted a report saying that the process was "in investigation status."<sup>150</sup> The prosecutor's office concluded:

Based on an analysis of the investigations carried out and public statements made by the victim's family, which have revealed that Ms. Gutiérrez ... was a member during the 1980s of the ... EGP, then actively collaborated with the ... ANN, as well as being a lecturer and researcher at San Carlos University ... and that she did research on adoptions at that university, there is sufficient cause to consider that ... there may have been a political crime [in the disappearance], coupled with the fact that ... the Human Rights Ombudsman ... declared that her disappearance constituted a human rights violation ....<sup>151</sup>

103. On September 13, 2013, the Criminal Division of the Supreme Court delivered a ruling in which it stated that the Human Rights Ombudsman presented his final report on the investigation, which concluded that "there is evidence to believe that there was no direct participation, acquiescence, or tolerance on the part of members of the State security forces ... but, rather, elements ... that have led one possible culprit to be singled out ... Juan ... Arancibia."<sup>152</sup> It said that based on this report, the investigations of the special inquiry had concluded and it ordered the report to be referred back to prosecutor's office at the Public Prosecution Service.<sup>153</sup> Mario Polanco presented a brief opposing the closure of the special inquiry.<sup>154</sup>

104. On January 31, 2014, prosecutor Olga Arias informed the Criminal Division of the Supreme Court that she had received the record of the case concerning Ms. Gutiérrez from the Human Rights

<sup>144</sup> Annex 1. Judicial record, Page 5461. Volume 6. Enclosed with the State's communication of November 23, 2014.

<sup>145</sup> Annex 1. Judicial record, Page 5466. Volume 6. Enclosed with the State's communication of November 23, 2014.

<sup>146</sup> Annex 1. Judicial record, Volumes 5 and 6. Enclosed with the State's communication of November 23, 2014.

<sup>147</sup> Annex 1. Judicial record, Volumes 5 and 6. Enclosed with the State's communication of November 23, 2014.

<sup>148</sup> Annex 1. Judicial record, Page 5412, Volume 6. Enclosed with the State's communication of November 23, 2014.

<sup>149</sup> Annex 1. Judicial record, Pages 2694-2695. Volume 6. Enclosed with the State's communication of November 23, 2014.

<sup>150</sup> Annex 1. Judicial record, Pages 2671-2674, Volume 6. Enclosed with the State's communication of November 23, 2014.

<sup>151</sup> Annex 1. Judicial record, Pages 2671-2674, Volume 6. Enclosed with the State's communication of November 23, 2014.

<sup>152</sup> Annex 1. Judicial record, Pages 2701-2702, Volume 6. Enclosed with the State's communication of November 23, 2014.

<sup>153</sup> Annex 1. Judicial record, Pages 2701-2702, Volume 6. Enclosed with the State's communication of November 23, 2014.

<sup>154</sup> Annex 1. Judicial record, Pages 2706-2714, Volume 6. Enclosed with the State's communication of November 23, 2014.

Ombudsman.<sup>155</sup> On March 11, 2014, prosecutor Olga Arias said that Agency 5 of the Investigations Unit of the Office of the District Prosecutor for the Metropolitan Area was in charge of the investigation of the case.<sup>156</sup>

## B. Legal analysis

105. The petitioners claimed that what happened to Mayra Angelina Gutiérrez matches the definition of forced disappearance and they argued that several of the hypotheses as to motive, particularly the one that her disappearance had to do with her active involvement with guerrilla groups during the armed conflict and the one concerning her role as a researcher in the area of irregular adoptions, involve state officials. Before commencing its legal analysis, the Commission notes that, as the established facts indeed show, since the beginning of the investigations multiple theories have emerged about what befell Ms. Gutiérrez, which involve various actors, including state agents. In such circumstances, the Commission considers it appropriate to analyze, first, the domestic investigations and proceedings in connection with Ms. Gutiérrez's disappearance in light of the duty to investigate, particularly the specific obligations in cases where forced disappearance alleged, before pronouncing on whether or not, based on information available, the state violated the other rights under dispute.

### 1. Right to a fair trial and judicial protection (Articles 8, 25, and 1(1) of the American Convention and Article I(b) of the Inter-American Convention on Forced Disappearance of Persons)

106. Article 8(1) of the American Convention provides:

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

107. For its part, Article 25(1) of the Convention stipulates:

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

108. Article I(b) of the Inter-American Convention on Forced Disappearance of Persons provides that:

The States Parties to this Convention undertake:

(...)

b. To punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories.

109. According to the consistent case law of the organs of the inter-American system, as a result of the protection granted by Articles 8 and 25 of the Convention, the States are obliged to provide effective judicial recourses to the victims of human rights violations that must be substantiated in accordance with the

<sup>155</sup> Annex 1. Judicial record, Page 2734, Volume 6. Enclosed with the State's communication of November 23, 2014.

<sup>156</sup> Annex 1. Judicial record, Page 2747, Volume 6. Enclosed with the State's communication of November 23, 2014.

rules of due process of law.<sup>157</sup> Furthermore, the Court has held that the right of access to justice should ensure, within a reasonable time, the right of the alleged victims or their next of kin to have everything necessary done to learn the truth about what happened and to investigate, try and, as appropriate, punish those responsible.<sup>158</sup> That obligation, which relates to means rather than to results, must be assumed by the State as its own legal duty and not as a mere formality preordained to be ineffective.<sup>159</sup>

110. As the established facts show, in this case multiple habeas corpus petitions were presented, a criminal investigation was opened, and a special inquiry procedure was ordered. Bearing in mind that these processes went ahead simultaneously, the Commission will make a determination as to whether the three petitions constituted effective mechanisms for establishing the whereabouts of Ms. Gutiérrez, and if the criminal investigation and the special inquiry process were effective means to identify possible culprits and to impose the appropriate penalties.

111. For that purpose, taking into consideration the established facts and the submissions of the parties, the Commission will pronounce on: (i) due diligence initially and in the course of the ensuing proceedings; (ii) due diligence in pursuing logical lines of inquiry; and (iii) reasonableness of time in the investigation.

**i. Due diligence initially and in the course of the ensuing proceedings**

112. The Court has held that the investigation should be undertaken utilizing all the legal means available<sup>160</sup> and be undertaken with due diligence.<sup>161</sup> The IACHR recalls that states have the obligation to act with all diligence from the very first stages of a proceeding.<sup>162</sup> That is because the first investigative steps are key components for an appropriate development of the judicial investigation.<sup>163</sup> Thus, the Court has found, "All these requirements, together with criteria of independence and impartiality also extend to the non-judicial bodies responsible for the investigation prior to the judicial proceedings."<sup>164</sup>

113. In particular, as this case concerns the disappearance of a woman in a specific context of violence against women, the Inter-American Court has stated that "in this context, an obligation of strict due diligence arises in regard to reports of missing women, with respect to search operations during the first

<sup>157</sup> I/A Court H.R., Case of Rodríguez Vera et al. (Persons Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 14, 2014. Series C No. 287, par. 435, citing Cf. Velásquez Rodríguez Case v. Honduras. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, par. 91; and Case of Human Rights Defender et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 283, par. 199.

<sup>158</sup> I/A Court H.R., Case of Rodríguez Vera et al. (Persons Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 14, 2014. Series C No. 287, par. 435, citing. Cf. Case of Bulacio v. Argentina. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para. 114; and Case of Human Rights Defender et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 283, par. 199.

<sup>159</sup> I/A Court H.R., Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, par. 177; I/A Court H.R., Case of Cantoral-Huamaní and García-Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para.

<sup>160</sup> I/A Court H.R., Case of García-Prieto et al. v. El Salvador. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, par. 101.

<sup>161</sup> I/A Court H.R., Case of the Gómez Paquiyauri Brothers v. Peru. Judgment of July 8, 2004. Series C No. 110, par. 146; and I/A Court H.R., Case of Cantoral-Huamaní and García-Santa Cruz v. Peru. Judgment of July 10, 2007. Series C No. 167, par. 130.

<sup>162</sup> I/A Court H.R., Case of Zambrano-Vélez et al. v. Ecuador. *Merits, Reparations and Costs*. Judgment of July 4, 2007. Series C No. 166, par. 121.

<sup>163</sup> I/A Court H.R., Case of Myrna Mack Chang v. Guatemala. Judgment of November 25, 2003. Series C No. 101, par. 167. IACHR, Report No. 37/00, Case of 11.481, Merits Monsignor Oscar Arnulfo Romero y Galdámez, El Salvador, April 13, 2000, par. 85.

<sup>164</sup> I/A Court H.R., Case of Cantoral-Huamaní and García-Santa Cruz v. Peru. Judgment of July 10, 2007. Series C No. 167, par. 133.

hours and days. Since this obligation of means is more rigorous, it requires that exhaustive search activities be conducted.<sup>165</sup> In the words of the Court:

[I]t is essential that police authorities, prosecutors and judicial officials take prompt immediate action by ordering, without delay, the necessary measures to determine the whereabouts of the victims or the place where they may have been retained. Adequate procedures should exist for reporting disappearances, which should result in an immediate effective investigation. The authorities should presume that the disappeared person has been deprived of liberty and is still alive until there is no longer any uncertainty about her fate.<sup>166</sup>

114. The Commission and the Court have already expressed their views about the growing climate of violence against women in Guatemala around the time of the events in this case.<sup>167</sup> Therefore, the standard of strict due diligence upon receiving a report of a missing woman is applicable to this case.

115. Moreover, in addition to the possibility that Mayra Angelina Gutiérrez was a victim of an act of violence against women by non-state actors, in this case, the hypothesis of a forced disappearance by state agents was suggested from the moment that this case was initially reported.

116. Therefore, it is pertinent to recall that in cases of alleged forced disappearance, the Court has found that “the investigation will have certain specific connotations that follow from the nature and complexity of the incident under investigation; that is, in addition, the investigation should include all the measures necessary to determine the fate of the victim and establish their whereabouts.”<sup>168</sup> The Inter-American Court of Human Rights has clearly stated that the duty to investigate facts of this type continues as long as there is uncertainty about the fate of the person who has disappeared, given that the right of the relatives to know the fate of the victim and, as the case may be, the location of their remains is a fair expectation that the State has a duty to meet using all means available to it.<sup>169</sup>

117. Furthermore, in accordance with Article 25 of the American Convention, the Court regards habeas corpus petitions as a means to ensure a person's liberty as well as to prevent their disappearance or uncertainty about their place of detention.<sup>170</sup> The Court has also held that in addition to formally existing, such remedies should also be suitable and capable of producing “results or addressing violations of rights.”<sup>171</sup> The IACHR recalls that in cases of alleged forced disappearance it is not “the mere formal verification of the official detainee records, as occurred in this case, or the acceptances as true of the denial of the detention by

<sup>165</sup> I/A Court H.R., Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, par. 282.

<sup>166</sup> Veliz 141, citing I/A Court H.R., Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, par. 283.

<sup>167</sup> In the *Case of Véliz Franco v. Guatemala*, the Inter-American Court took note of the situation that existed in 2001 (the year of the disappearance and death of the victim in that case) and declared that there was a climate of violence against women. Bearing in mind that the references cited by the Court speak of rising numbers of cases of violence against women by 2001, it is reasonable to surmise that said climate already existed the preceding year. See Veliz, pars. 73-81.

<sup>168</sup> I/A Court H.R., Case of Rodríguez Vera et al. (Persons Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 14, 2014. Series C No. 287, par. 439.

<sup>169</sup> I/A Court H.R., Case of Rodríguez Vera et al. (Persons Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 14, 2014. Series C No. 287, par. 439, citing Cf. Velásquez Rodríguez Case v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, par. 181; and Case of Osorio Rivera and Family v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 26, 2013. Series C No. 274, par. 179.

<sup>170</sup> I/A Court H.R., Case of García and Family v. Guatemala. Merits, Reparations and Costs. Judgment of November 29, 2012, Series C No. 258, par. 142; and Case of Contreras et al. v. El Salvador. Merits, Reparations and Costs. Judgment of August 31, 2011, Series C No. 232, par. 158.

<sup>171</sup> I/A Court H.R., Velásquez Rodríguez Case v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, pars. 63-66; and Case of García and Family v. Guatemala. Merits, Reparations and Costs. Judgment of November 29, 2012, Series C No. 258, par. 142.

those presumably responsible, without an objective, impartial and independent verification, is neither reasonable nor diligent and does not constitute an effective remedy.”<sup>172</sup>

118. It follows from the foregoing that in the instant case the State's duty to investigate was clear for multiple reasons, as were the requisite nature and rigor of its investigation. First, for the fact that the complaint concerned a disappearance from which it could be logically assumed that the life and physical integrity of the missing person were in danger. In that sense, a prompt and diligent response in terms of an investigation and search were critical, not only in the interests of justice, but also to protect the life and well-being of Mayra Angelina Gutiérrez. Second, the case concerned the disappearance of a woman amid a high incidence of murders and violence against women in Guatemala. And third, because from the outset the complaints suggested the possibility of a forced disappearance.

119. The Commission notes that the disappearance was reported on April 9, 2000, by Mayra Angelina Gutiérrez's brother. There is nothing in the record to show that any search for Mayra Angelina Gutiérrez was ordered in the hours immediately after the report was filed. According to the record, the first efforts to look for her began on April 11, 2000, in response to a habeas corpus petition lodged on that date. Bearing in mind the above-described standards on the need for an immediate response in such cases, as well as the critical nature of the first few hours, the Commission considers that the failure to conduct a search for 48 hours after the State was made aware in the first missing person's report that she could be in serious and imminent danger, in itself constitutes a breach of the duty to investigate with due diligence.

120. In second place, the Commission notes that these violations continued not only during the initial months, but also throughout the investigation, and in the decisions on the habeas corpus petitions. The Commission underscores that the efforts made in the days following the missing person's report merely consisted of the dispatch of official letters to various officials in the framework of the habeas corpus petitions lodged, which proved fruitless because in response to those letters the relevant authorities said that Mayra Angelina Gutiérrez was not in state custody. The Commission has no information regarding specific follow-up measures. So it was that during the entire month of April 2000, on one hand state authorities formally processed the habeas corpus petitions without taking specific steps to search in concrete locations, while the agency in charge of the investigation simply collected information and conducted a single search in pursuit of a solitary line of inquiry which had to do with Mayra Angelina Gutiérrez's alleged romantic liaisons. The way in which the relevant authorities approached that line of inquiry is analyzed in paragraph 137 below. For the purposes of this section, those were the only investigative procedures during the first month after the disappearance was reported. There is no information to suggest that immediate measures were ordered in pursuit of other plausible lines of inquiry that emerged in the wake of the missing person's report.

121. The Commission notes that this lack of diligence led the petitioning organization to file a new habeas corpus petition on May 3, 2000, almost a month after the disappearance. That petition was processed and dealt with following the same formalities as the previous one; in other words, there was merely a repetition of official letters to state entities, with a note taken of the response that Ms. Gutiérrez was not being deprived of her liberty at any detention center. In May, the second month after the disappearance was reported, apart from multiple contradictory public statements by state agents, the authorities in charge of the investigation simply conducted raids at two locations and, six weeks after the disappearance, checked Ms. Gutiérrez's migratory movements. In July, the fourth month after the alleged victim was reported missing, a statement was taken from one of Ms. Gutiérrez's neighbors.

122. The Commission notes that the paucity of initial steps taken in the investigation during the first four months after the disappearance was reported progressively diminished over the rest of the investigation up to the present. Thus, the record shows that no other steps were taken to find the alleged victim over the remainder of 2000. Toward the end of that year the special inquiry procedure was ordered, in which context the Office of the Human Rights Ombudsman was instructed to conduct the investigation. It was

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<sup>172</sup> I/A Court H.R., Case of García and Family v. Guatemala. Merits, Reparations and Costs. Judgment of November 29, 2012, Series C No. 258, par. 143.



only then that the habeas corpus petitions were denied, in disregard of the urgency with which such remedies should be addressed. There is nothing in the record to show that the Ombudsman's Office took effective steps to search for the victim, and the few procedures that it does contain have to do with the hypothesis concerning the purported romantic liaisons. Indeed, a report from the Ombudsman's Office of May 4, 2001, on that hypothesis gave rise to a detention order for the alleged victim's supposed former partner. Over the remainder of 2001, nothing was done to pursue the investigation.

123. The slow pace of the investigation and the failure to adopt measures to find the victim and elucidate what happened became increasingly sluggish over the ensuing years, even lapsing into spells of complete inactivity.

124. Thus, to summarize, in 2002 and 2003 the prosecutor assigned to the case simply enumerated pending measures which, based on the record, do not appear to have been carried out. For 2004, there is only a police report that mentions a new possible line of inquiry connected with discoveries of alleged corruption at the University. There is no information whatsoever on the outcome of any pursuit of that line of inquiry. Between 2005 and 2007, the prosecutor again merely reported a number of pending measures without any record that they were actually carried out. In 2009, without no explanation as to why, the record of the case was in the hands of the Office of the Prosecutor for Property Crimes, which stated that it was not competent to take up the matter, despite which, the Prosecution Unit for Human Rights refused to accept the case and continue the investigation. Apart from the attempt to locate Ms. Gutiérrez's supposed former partner and the multiple continuance requests by the Office of the Human Rights Ombudsman for submitting its report, which were granted over the course of many years without any oversight whatsoever, there is no evidence in the record of any follow-up until 2013, when Agency 9 of the Investigations Unit of the Office of the District Prosecutor for the Metropolitan Area submitted a report saying that the case could concern a political crime. There no record of any follow-up on that report either. On the contrary, the IACHR notes that a couple of months later the investigation was transferred to another agency. In 2013 the Office of the Human Rights Ombudsman issued a report on the special inquiry procedure begun 12 years earlier, concluding, without having exhausted the various lines of inquiry, that there was evidence to tie in Ms. Gutiérrez's former partner. From then until this writing here is no record whatsoever of any further follow-up.

125. The Commission finds, based on the preceding paragraph, that it is clear that neither the criminal investigation, nor the habeas corpus petitions, nor the special inquiry procedure were conducted with the due diligence required of the authorities in charge of the domestic proceedings in this case. The IACHR recalls that in cases of alleged disappearance, only if the State has made every effort necessary by all available means to uncover the truth of the victim's fate and whereabouts, will it be considered that an effective remedy has been provided.<sup>173</sup>

126. The lack of due diligence in the case was not only exposed on multiple occasions by relatives of Mayra Angelina Gutiérrez,<sup>174</sup> but also by state authorities and external actors. For example, the Commission notes that on May 24, 2000, the Chief of the Juveniles and Missing Persons Section of the National Civil Police admitted that "a lot of information has leaked, which has hampered the investigation." Likewise, the Commission draws attention to the report of the Human Rights Ombudsman of July 31, 2000, in which he concluded that "the omission on the part of the relevant authority in failing to guarantee the the

<sup>173</sup> I/A Court H.R., Case of Ticona Estrada et al v. Bolivia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, par. 80. See, also, IACHR, Report No. 111/09, Case 11.324, Merits, Narciso González Medina, Dominican Republic, November 10, 2009, par. 225.

<sup>174</sup> Thus, Ms. Gutiérrez's relatives said that since presenting their complaint, the State had not taken the minimum steps to establish her whereabouts, uncover the facts, and punish those responsible in keeping with lines of investigation that logically followed from the statements and reports contained in the judicial record. In that respect, the IACHR notes that on May 18, 2000, a sister and the daughter of Ms. Gutiérrez announced, following a meeting with the Prosecutor General, that there had been no progress in the investigation and that the Public Prosecution Service and the National Civil Police had acted independently without coordinating their efforts. Furthermore, Mario Polanco, the representative of Ms. Gutiérrez's relatives, stated in a hearing before the Criminal Division on December 7, 2000, that the Public Prosecution Service had not provided them with information about the investigations pursued. He added that the only hypothesis that the authorities were considering was that Mayra Angelina Gutiérrez had supposedly run off to Mexico.

missing woman's safety constitutes a violation of human rights." Consequently, the Ombudsman said that the State bore institutional responsibility and he demanded that it "organize all the government apparatus (...) to ensure their ability to determine [her] whereabouts and if there should be anyone to blame for any wrongdoing, that the full penalty of the law be applied to them."

127. The Commission also notes that the technical consultant of the Public Prosecution Service identified serious irregularities in the judicial record, particularly with respect to the lack of documentation of investigative procedures. In an April 2001 communication, the prosecutor from the Public Prosecution Service stated that "no significant progress has been made" in the investigation. Similarly, the United Nations Verification Mission in Guatemala (MINUGUA) released a report in which it said that "the Public Prosecution Service's investigation is not consistent with the principles of the objectiveness, impartiality, and thoroughness." MINUGUA identified irregularities to do with a failure to compare testimony and tampering with evidence.

128. That conclusion is consistent with the findings of the Commission in its 2003 report on Guatemala, in which it highlighted information which suggested that in violent crimes, including forced disappearance, several essentials were missing: technical expertise, determination in compiling evidence, and follow-through to prosecution and punishment on the part of the authorities, prosecutors' failings and mistakes, which make the work of judges that much more difficult, cause delays in the administration of justice, and can even result in crimes going unpunished.<sup>175</sup> The Court has also pronounced on this situation, saying that at that time Guatemala did not have the necessary legal standards, procedures, and measures in place to properly carry out, in cases of suspected disappearance, the initial investigative steps in accordance with international standards.<sup>176</sup>

## ii) Due diligence in pursuing logical lines of inquiry

129. Regarding the duty to investigate, the IACHR has also indicated that the State may be liable for a failure "to order, practice or evaluate evidence" that may be essential for a proper clarification of the facts.<sup>177</sup> Thus, the IACHR recalls that the obligation to investigate and punish every act that entails a violation of the rights protected by the Convention requires that not only the direct perpetrators of human rights violations be identified, but also the masterminds.<sup>178</sup>

130. In addition, the Inter-American Court has held that it is not the task of the organs of the inter-American system to "analyze the hypothesis about perpetrators prepared during the investigation of the events of the ... case and determine individual responsibility, whose definition corresponds to domestic criminal tribunals, but rather evaluate the acts and omission of State agents, pursuant to the evidence submitted by the parties."<sup>179</sup> However, in cases that involve the violent death or disappearance of a person, the Commission and the Court have held that the investigation initiated should be carried out in such a manner as guarantee proper analysis of the hypotheses as to responsibility arising from it,<sup>180</sup> and, in order to

<sup>175</sup> IACHR, Justice and Social Inclusion: The Challenges of Democracy in Guatemala, OEA/Ser.L/V/II.118, December 29, 2003, par. 30.

<sup>176</sup> I/A Court H.R., Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, par. 180.

<sup>177</sup> I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.) v. Guatemala*. Judgment of November 19, 1999. Series C No. 63, par. 230. See also IACHR, Report No. 56/12, Merits (Florentín Gudiel Ramos, Makrina Gudiel Álvarez et al.), Guatemala, March 21, 2012, par. 126; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, par. 41.

<sup>178</sup> IACHR, Report No. 56/12, Merits (Florentín Gudiel Ramos, Makrina Gudiel Álvarez et al.), Guatemala, March 21, 2012, par. 110; IACHR, Report 100/11, Merits (Carlos Antonio Luna López et al.), Honduras, July 22, 2011, par. 188. See, also, IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, par. 109.

<sup>179</sup> Cf. I/A Court H.R., *Case of Kawas-Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009 Series C No. 196, par. 79, *Case of Cantoral-Huamaní and García-Santa Cruz. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 10, 2007. Series C No. 167, par. 87.

<sup>180</sup> I/A Court H.R., *Case of Kawas-Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, par. 112.



demonstrate the diligence of its inquiries, the State must show that it carried out an immediate, exhaustive and impartial investigation<sup>181</sup> in which all possible lines of inquiry have been explored in a bid to identify the perpetrators of the crime with a view to their subsequent prosecution and punishment.<sup>182</sup>

131. Taking into account the activities of Mrs. Gutierrez described previously (see supra paras. 39-40) related to her work on irregular adoptions, the Commission recalls the State's obligations in terms of due diligence in investigations of violations of human rights in detriment of human rights defenders. Specifically, the Commission notes that the investigating authority must consider the activity of the assaulted person in order to identify the interests that could have been affected and thus establish lines of inquiry and hypotheses about the crime.<sup>183</sup>

132. The IACHR has emphasized that impunity in these cases is the factor that greatly increases the risk of the defenders of human rights, as it puts them in a situation of helplessness and vulnerability. The Commission also reiterates that in the case of possible effects against women human rights defenders, States have the reinforced duty to pursue an investigation with full diligence and without delay; taking into account the specific risks women defenders face in terms of violations to their human rights in the context of the facts.<sup>184</sup>

133. Additionally, the Court has also highlighted the importance of identifying "patterns of joint action and all those who, in different ways, participated in the said violations and their corresponding responsibilities,"<sup>185</sup> and that it is essential to analyze the information on the power structures "that permitted, designed, masterminded and perpetrated it, as well as the individuals or groups who had interests in or would benefit from the crime (beneficiaries)." As the Court has held, this, in turn, can lead to the generation of theories and lines of investigation.<sup>186</sup>

134. The IACHR observes that from the outset of the investigation logical lines of inquiry based on available information were not pursued. It should be mentioned that at least two hypotheses arose that suggested a possible link between Ms. Gutiérrez's disappearance and state actors.

135. To begin with, the Commission points out Ms. Gutiérrez's active and visible participation in an investigation into illegal adoptions and children's rights in Guatemala during the armed conflict, which apparently implicated high-ranking state officials. That activity was confirmed, as the established facts show, by statements, newspaper articles, and press releases by human rights organizations. In that regard, the Commission found no mention in the record of any investigations to corroborate, for instance, the contents of Ms. Gutiérrez's report on illegal adoptions, the interests that might have been harmed by that report's publication, and individuals or groups possibly linked to such interests.

136. Second, the IACHR notes Ms. Gutiérrez's reported involvement during the armed conflict with the Revolutionary Armed Forces (FAR), her supposed inclusion as a "suspected subversive" in a military

<sup>181</sup> IACHR, Report on Merits No. 55/97, *Juan Carlos Abella et al. (Argentina)*, November 18, 1997, par. 412.

<sup>182</sup> IACHR, Report No. 25/09, Merits (Sebastião Camargo Filho) Brazil, March 19, 2009, par. 109. See, too, IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, par. 41; I/A Court H.R., Case of Gonzalez-Medina and Family v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012, Series C No. 240, par. 115. See, also, IACHR, Report No. 111/09, Case 11.324, Merits, Narciso González Medina, Dominican Republic, November 10, 2009, par. 240.

<sup>183</sup> IACHR, Report No. 56/12, Merits (Florentín Gudiel Ramos, Makrina Gudiel Álvarez et al.), Guatemala, March 21, 2012, par. 126. See, also, IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, December 31, 2011, par. 236

<sup>184</sup> IACHR, Report No. 86/13, Casos 12.595, 12.596 y 12.621, Merits, Ana Teresa Yarce and others (Comuna 13), Colombia, November 4, 2013, par. 347.

<sup>185</sup> I/A Court H.R., Case of the "Mapiripán Massacre" v. Colombia. Judgment of September 15, 2005. Series C No. 134, para. 219; Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, par. 101.

<sup>186</sup> I/A Court H.R., Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, para. 119.

intelligence database, the reported forced disappearance of her brother and sister—said to have belonged to the Guerrilla Army of the Poor and the People in Arms Organization, respectively—during that time, and her support for the Union of the Democratic Left, a political party. These things were highlighted by Ms. Gutiérrez's relatives and can be found in newspaper articles and press releases by human rights organizations. There is nothing in the record to suggest that what happened to Ms. Gutiérrez's siblings was looked into in any detail or, based on that information, that possible links were explored between what befell them and Ms. Gutiérrez's disappearance.

137. In spite of the aforementioned evidence, which was present from the start of the investigation and was reiterated by relatives, colleagues, and organizations in the course of it, the Commission observes that in neither in habeas corpus petitions, nor the criminal investigation, nor the special inquiry was an investigative strategy devised for addressing such logical lines of inquiry. On the contrary, the priority remained on the line of inquiry concerning Ms. Gutiérrez's supposed romantic liaisons, without compelling objective evidence to support it. It is worth mentioning that officials from San Carlos University said that the only theory investigated by the State was “false and a distraction,” as all Ms. Gutiérrez's documents, including her passport, were found at her home, which meant that she could not have traveled. Indeed, the General Directorate of Migration itself issued a report saying that there was no record of any migratory movements for Ms. Gutiérrez during the relevant period, information that was backed up by the regional offices of the National Institute of Migration of Mexico, which indicated that no entry records for Ms. Gutiérrez were found.

138. The State has not disputed the omission to follow up on the aforementioned lines of inquiry. Nor has it offered any explanation as to why priority was given to the line of inquiry connected with Ms. Gutiérrez's purported romantic liaisons, or the reasons why the lines of inquiry mentioned in the preceding paragraphs were discarded without first being exhausted.

139. Based on the foregoing, the Commission concludes that another component of the breach of the duty to investigate with due diligence in this case has to do with the failure to pursue logical lines of inquiry which, by the standards of the inter-American system, is especially serious since the hypotheses either implicated state agents or were related to the work of human rights defenders.

### iii) Reasonable period of time

140. Article 8(1) of the American Convention establishes as one of the elements of a fair trial that tribunals reach a decision on cases submitted for their consideration within a reasonable time. Therefore, a long delay may per se constitute a violation of the principle of due process.<sup>187</sup> It is for the State to explain and prove why it has required more time than would be reasonable to deliver final judgment in a specific case.<sup>188</sup> In that connection, reasonableness of time must be analyzed with regard to the total duration of the criminal process<sup>189</sup> and in the light of the four elements that Court has considered in its case law: (i) the complexity of the matter; (ii) the procedural activity of the interested party; (iii) the conduct of the judicial authorities, and (iv) the general effects on the legal situation of the person involved in the proceeding.<sup>190</sup>

<sup>187</sup> I/A Court H.R., Case of García Asto and Ramírez Rojas v. Peru. Judgment of November 25, 2005. Series C No. 137, par. 166; Case of Gómez Palomino v. Peru. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, par. 85; and I/A Court H.R., Case of the Moiwana Community v. Suriname. Judgment of June 15, 2005. Series C No. 124, par. 160.

<sup>188</sup> I/A Court H.R., Case of Ricardo Canese v. Paraguay. Judgment of August 31, 2004. Series C No. 111 par. 142.

<sup>189</sup> I/A Court H.R., Case of López Álvarez v. Honduras. Judgment of February 1, 2006. Series C No. 141, par. 129; I/A Court H.R., Case of Acosta Calderón v. Ecuador. Judgment of June 24, 2005. Series C No. 129, par. 104; and I/A Court H.R., Case of Tibi v. Ecuador. Judgment of September 7, 2004. Series C No. 114, par. 168; IACHR, Report 77/02, Case 11.506, Merits, Waldemar Gerónimo Pinheiro and José Víctor dos Santos, Paraguay, December 27, 2002, par. 76.

<sup>190</sup> I/A Court H.R., Case of the Santo Domingo Massacre v. Colombia. Preliminary Objections, Merits and Reparations. Judgment of November 30, 2012. Series C No. 259, par. 164.

141. As far as complexity is concerned, the State merely indicated that the only suspect in Ms. Gutiérrez's disappearance was a fugitive. In that regard, the IACHR considers that for a complexity argument to be valid the State must provide specific information directly connecting the elements of complexity invoked to the delays in the proceeding. That has not happened in this case. Moreover, the Commission notes that Mr. Arancibia's situation is related to one of the hypotheses as to what happened; however, there is no causal link between his fugitive status and the omission to pursue the other lines of inquiry and gather evidence in connection with those lines of inquiry. The Commission recalls the position of the Court in the sense that a delay in an investigation cannot be justified by the complexity of the matter when possible lines of inquiry exist.<sup>191</sup>

142. As to the activities of the interested parties, the Commission finds nothing whatever in the record to suggest that the relatives obstructed the proceeding or could be blamed in any way for the delay. On the contrary, despite it being an investigation that the State had an *ex officio* obligation to pursue, the family participated actively in the process by providing statements, suggesting lines of inquiry, and repeatedly complaining about the delay in the proceedings and about the long periods of procedural inaction. It is worth noting, in fact, that the special inquiry procedure was activated at the family's behest.

143. As to the conduct of the judicial authorities, the Commission has already established in this report that there was a breach of the obligation to act with due diligence in all the proceedings instituted. In that regard, the Commission reiterates the above-described omissions and inactivity. Specifically, what limited steps were taken in the first months following the disappearance grew progressively fewer thereafter and eventually slumped into prolonged bouts of inactivity. Thus, there was minimal follow-up in 2001 and for the whole of 2002 and 2003 the prosecutor assigned to the case simply enumerated pending measures which, based on the record, do not appear to have been carried out. For 2004, there is only a police report that mentions a new possible line of inquiry connected with discoveries of alleged corruption at the University Between 2005 and 2007, the prosecutor again merely reported a number of pending measures without any record that they were actually carried out. Apart from the attempt to locate Ms. Gutiérrez's supposed former partner and the multiple continuance requests by the Office of the Human Rights Ombudsman for submitting its report, which were granted over the course of many years without any oversight whatsoever, there is no evidence in the record of any follow-up until 2013, the report on the special inquiry procedure was issued, 12 years after it began. At this writing, the investigation remains open without any significant progress made.

144. The Commission finds, based on the preceding paragraph, that it is clear that neither the criminal investigation, nor the habeas corpus petitions, nor the special inquiry procedure were conducted with the due diligence required of the authorities in charge of the domestic proceedings in this case. The IACHR recalls that in cases of alleged disappearance, only if the State has made every effort necessary by all available means to uncover the truth of the victim's fate and whereabouts, will it be considered that an effective remedy has been provided.<sup>192</sup>

145. The lack of due diligence in the case was not only exposed on multiple occasions by relatives of Mayra Angelina Gutiérrez,<sup>193</sup> but also by state authorities and external actors. For example, the Commission

<sup>191</sup> See I/A Court H.R., Case of the Barrios Family v. Venezuela. Merits, Reparations and Costs. Judgment of November 24, 2011. Series C No. 237, par. 275.

<sup>192</sup> I/A Court H.R., Case of Ticona Estrada et al v. Bolivia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, par. 80. See, also, IACHR, Report No. 111/09, Case 11.324, Merits, Narciso González Medina, Dominican Republic, November 10, 2009, par. 225.

<sup>193</sup> Thus, Ms. Gutiérrez's relatives said that since presenting their complaint, the State had not taken the minimum steps to establish her whereabouts, uncover the facts, and punish those responsible in keeping with lines of investigation that logically followed from the statements and reports contained in the judicial record. In that respect, the IACHR notes that on May 18, 2000, a sister and the daughter of Ms. Gutiérrez announced, following a meeting with the Prosecutor General, that there had been no progress in the investigation and that the Public Prosecution Service and the National Civil Police had acted independently without coordinating their efforts. Furthermore, Mario Polanco, the representative of Ms. Gutiérrez's relatives, stated in a hearing before the Criminal Division on December 7, 2000, that the Public Prosecution Service had not provided them with information about the investigations pursued. He added that the only hypothesis that the authorities were considering was that Mayra Angelina Gutiérrez had supposedly run off to Mexico.

notes that on May 24, 2000, the Chief of the Juveniles and Missing Persons Section of the National Civil Police admitted that “a lot of information has leaked, which has hampered the investigation.” Likewise, the Commission draws attention to the report of the Human Rights Ombudsman of July 31, 2000, in which he concluded that “the omission on the part of the relevant authority in failing to guarantee the the missing woman’s safety constitutes a violation of human rights.” Consequently, the Ombudsman said that the State bore institutional responsibility and he demanded that it “organize all the government apparatus (...) to ensure their ability to determine [her] whereabouts and if there should be anyone to blame for any wrongdoing, that the full penalty of the law be applied to them.”

146. Regarding the fourth element, the Court has said that, in the analysis of reasonableness of time the adverse effect of the duration of the proceedings on the judicial situation of the person involved in it should be considered along with the interests at stake.<sup>194</sup> The Commission considers that in cases of alleged disappearance the passage of time is especially important to the situation of the victim, as the way in which the danger to their life and wellbeing materializes may hinge on a prompt and efficient state response.

147. The Commission believes that the almost 15 years that have elapsed since the report was filed constitute an excessively long time that has not been justified by the State. Therefore, the Commission finds that the State violated the reasonable-time rule.

#### **iv) Conclusion**

148. In accordance with previous sections, the Commission considers that the State of Guatemala breached its duty of due diligence throughout the investigation. Likewise, the IACHR concludes that the facts reflect affirmative efforts to deflect the investigation, which prevented proper monitoring and effective logical lines of inquiry in order to clarify the facts, identify the whereabouts of Mrs. Gutierrez and punish the persons responsible, and involved the loss of evidence and opportunities to advance the investigation. The Commission also considers that the process does not comply with the guarantee of reasonable time.

149. Based on the foregoing, the Commission concludes that the Guatemalan State violated the rights to a fair trial and judicial protection recognized in Articles 8(1) and 25 of the American Convention taken in conjunction with the obligations set forth in Article 1(1) thereof, to the detriment of Mayra Angelina Gutiérrez and her family, namely, her daughter Ángela María del Carmen Argüello Gutiérrez, her sisters Ángela and Nilda Gutiérrez, and her brother Armando Gutiérrez. The Commission also considers that the Guatemalan State violated Article I(b) of the Inter-American Convention on Forced Disappearance of Persons to the detriment of Mayra Angelina Gutiérrez and her family, namely, her daughter Ángela María del Carmen Argüello Gutiérrez, her sisters Ángela and Nilda Gutiérrez, and her brother Armando Gutiérrez.

## **2. Right to a fair trial and judicial protection and the principle of equal protection and nondiscrimination (Articles 8(1), 24, and 1(1) of the American Convention)**

150. Article 24 of the Convention provides:

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

151. The Court has stressed that investigations of cases involving possible acts of violence against women should be conducted with a gender-aware approach.<sup>195</sup> The Commission recalls what its report entitled “Access to Justice for Women Victims of Violence in the Americas” says, in the sense that

<sup>194</sup> I/A Court H.R., Case of Garibaldi v. Brazil, Preliminary Objections, Merits, Reparations and Costs. Judgment of September 23, 2009. Series C No. 203, par. 138; Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, par. 155; and Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs. Judgment of April 3, 2009 Series C No. 196, par. 115.

<sup>195</sup> I/A Court H.R., Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, par. 216.

[t]he influence exerted by discriminatory socio-cultural patterns may cause a victim's credibility to be questioned in cases involving violence, or lead to a tacit assumption that she is somehow to blame for what happened, whether because of her manner of dress, her occupation, her sexual conduct, relationship or kinship to the assailant and so on. The result is that prosecutors, police and judges fail to take action on complaints of violence. These biased discriminatory patterns can also exert a negative influence on the investigation of such cases and the subsequent weighing of the evidence, where stereotypes about how women should conduct themselves in interpersonal relations can become a factor.<sup>196</sup>

152. On the issue of gender stereotyping, the Inter-American court has found that it refers to a preconception of personal attributes, characteristics or roles that correspond or should correspond to either men or women.<sup>197</sup> The Court has stated that the creation and use of stereotypes becomes one of the causes and consequences of gender-based violence against women.<sup>198</sup> The Court has found that the duty not to discriminate is breached in cases where officials in charge of an investigation concerning the disappearance of—or violence against—women make statements that denote the existence of prejudice and stereotypes with regard to the role of women in society.<sup>199</sup>

153. As the Commission has already indicated, the line of inquiry that was given priority from the outset and on which the great majority of the activities of the relevant authorities centered, concerned the alleged responsibility of the Chilean citizen Juan Arancibia, Ms. Gutiérrez's supposed former partner. The Commission has already stated that the focus on this single hypothesis, to the exclusion of all others that emerged, constituted a violation of the duty to investigate with due diligence. In addition to that violation, the Commission considers that the references to this hypothesis in several parts of the record reflect gender stereotypes similar to those that have prompted the organs of the inter-American system to highlight their existence in other cases.<sup>200</sup>

154. Thus, according to articles in the press, the Director of the National Civil Police stated that Ms. Gutiérrez “was seen ... with her boyfriend” and that “she may have traveled to Mexico with her fiancé.” Likewise, the then-Minister of the Interior announced that “it could be a case of a crime of passion” or that she “left the country for personal reasons.” According to the statement of Sonia Toledo, a work colleague of Ms. Gutiérrez, a couple of days after her disappearance the state authorities were already suggesting as hypotheses that she had committed suicide, that she had gone off with her boyfriend, or that she had been taken by former guerrillas. The Commission finds that the judicial record contains nothing about the investigative procedures carried out to arrive at those theories. The commission also observes that the first prosecutor assigned to the case added that “everything that happened ... was planned by the missing woman” and that Renato del Cid, a former guerrilla fighter and friend of Ms. Gutiérrez with whom she had run off to Mexico, had been involved. On this latter point, the IACHR finds that the judicial record does not say what judicial procedures served as the basis for that hypothesis. Other reports and public statements in the course of the investigation contained opinions in which Ms. Gutiérrez alleged romantic involvement with more than one person, jealousy, and even a supposed fear of possible HIV infection continued to be considered motives for her disappearance.

<sup>196</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc. 68, January 20, 2007 (Annexes to the petition, Volume VII, Annex 2, page 1822).

<sup>197</sup> I/A Court H.R., Case of González et al. (“Cotton Field”) v. *Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205. par. 401.

<sup>198</sup> Cf. I/A Court H.R., Case of González et al. (“Cotton Field”) v. *Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205. pars. 400 and 401, and IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc. 68, January 20, 2007.

<sup>199</sup> I/A Court H.R., Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, par. 212.

<sup>200</sup> I/A Court H.R., Case of González et al. (“Cotton Field”) v. *Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205. par. 208.



155. The such language occurred in a context in Guatemala in which, as the Inter-American Court found, there were delays in investigating the disappearance of women and the authorities would: (1) fail to launch an immediate search for the victim and (2) blame the victim for what happened, thereby implying that she is somehow undeserving of state efforts to locate and protect her.<sup>201</sup>

156. This case epitomized that situation. As is noted above, in spite of the existence of objective leads to follow in other lines of inquiry that emerged from the record, the domestic authorities arbitrarily ignored those lines of inquiry and, instead, concentrated on the hypothesis concerning Ms. Gutiérrez's supposed romantic liaisons with several persons, which were based on the statement of a neighbor and which, in practice, were an invasion of Ms. Gutiérrez's private life without objective evidence to support their continued relevance, particularly in the face of other indicia that pointed to other, stronger theories. Apart from the fact that the authorities centered on a weak hypothesis and groundlessly discarded others, elements were incorporated that lacked any basis or cause whatever, such as the existence of a crime of passion born from jealousy or the risk of HIV infection.

157. In that regard, the Commission believes that in this matter the position of the Court in the case of *Véliz Franco v. Guatemala* is applicable, in the sense that "gender stereotyping had a negative influence on the investigation of the case, to the extent that the blame for what happened was transferred to the victim and her relatives, closing other possible lines of inquiry into the circumstances of the case and the identity of the perpetrators."<sup>202</sup>

158. Based on the foregoing, the Commission concludes that the investigation of the disappearance of Mayra Angelina Gutiérrez was not conducted with a gender-aware approach and that it was colored by stereotypes as to the role and social behavior of women, which constituted a violation of the principle of equality and nondiscrimination in access to justice.

### **3. Rights to life, juridical personality, humane treatment, and personal liberty (Articles 4, 3, 5, and 7 of the American Convention in connection with Article 1(1) thereof)**

#### **3.1 The alleged responsibility of the State for forced disappearance**

159. The Court has stated a number of times that forced disappearance, whose prohibition has the character of *jus cogens*, constitutes a multiple violation of several rights protected by the American Convention, including the rights to life, juridical personality, humane treatment, and personal liberty.<sup>203</sup>

160. Last, forced disappearance comprises the following concurrent, basic elements: (1) deprivation of liberty; (2) direct involvement of governmental officials or acquiescence thereof; and (3) refusal to acknowledge the deprivation of liberty or to disclose the fate and whereabouts of the person concerned.<sup>204</sup> In the context of the inter-American system, that characterization emerges from the Inter-American Convention on Forced Disappearance of Persons, to which the State of Guatemala has been a party

<sup>201</sup> IACHR, Access to Justice for Women Victims of Violence in the Americas, OEA/Ser. L/V/II. doc.68, January 20, 2007, par. 135; Report No. 170/11, Case 12.578, Merits, María Isabel Véliz Franco et al., Guatemala, November 3, 2011, par. 188.

<sup>202</sup> I/A Court H.R., Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, par. 213.

<sup>203</sup> I/A Court H.R., Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, par. 139; Case of Goiburú et al. Paraguay. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, par. 84; and Case of Tiu Tojín v. Guatemala. Merits, Reparations and Costs. Judgment of September 3, 2012. Series C No. Series C No. 190, par. 91.

<sup>204</sup> I/A Court H.R., Case of Gómez Palomino v. Peru. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, par. 97; Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, par. 55; and Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, par. 60.

since February 25, 2000.<sup>205</sup> Several international instruments, as well as the jurisprudence of international organs and national tribunals coincide with the above definition.<sup>206</sup>

161. In this case, as was established in the preceding section, the proceedings instituted in connection with the disappearance of Mayra Angelina Gutiérrez were discriminatory and incompatible with the minimum standards of due diligence and the guarantee of a reasonable time. In particular, the Commission noted that the investigation did not include the logical lines of inquiry that emerged from the information available, some of which could have involved state agents.

162. In this regard, the Court has reiterated that failure to investigate alleged violations committed against someone when there are suggestions of involvement of state agents “prevents the State from presenting a satisfactory and convincing explanation of the [facts] alleged, and disproves the arguments concerning its responsibility, with adequate probative elements.”<sup>207</sup> The Court has considered such failure to clarify the facts as a factor to be borne in mind in accrediting alleged violations and the attendant international and responsibility.<sup>208</sup>

163. Without prejudice to the foregoing, the Commission considers that in this particular case the negligence with which the investigations have been conducted have created a situation of complete uncertainty as to what happened to Mayra Angelina Gutiérrez, and the Commission lacks a consistent array of evidence that is sufficiently specific about the facts in the case to categorize what happened as a forced disappearance. In particular, although there are elements to suggest that certain actors, including state agents, may have had a hand in the victim's disappearance, there are no circumstantial elements or other indicia to show that Ms. Gutiérrez was in state custody at any time.

### **3.2 The duty to protect the rights to life and humane treatment of Mayra Angelina Gutiérrez**

164. Article 4(1) of the American Convention on Human Rights provides, “Every person has the right to have his life respected [and] “[n]o one shall be arbitrarily deprived of his life.” Article 5(1) of the American Convention provides, “Every person has the right to have his physical, mental, and moral integrity respected.”

165. The Court has established that the rights to life and human treatment are of critical importance in the Convention. According to Article 27(2) of the said treaty, these rights form part of the non-

<sup>205</sup> On this point, it should be mentioned that the Court has held that the characteristics of forced disappearance may be inferred from the definition contained in Article III of the Inter-American Convention on Forced Disappearance of Persons, its travaux préparatoires and its preamble and standards. See: I/A Court H.R., Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, par. 140, citing Annual Report of the Inter-American Commission on Human Rights 1987-1988, Chapter V.II. This crime “is permanent because it is committed permanently, rather than instantaneously, and it continues while the person remains disappeared” (OEA/CP-CAJP, Report of the President of the Working Group responsible for examine the draft Inter-American Convention on Forced Disappearance of Persons, doc. OEA/Ser.G/CP/CAJP-925/93 rev.1, January 25, 1994, p. 10)

<sup>206</sup> In the context of the inter-American system, see: I/A Court H.R., Case of Gómez Palomino v. Peru. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, par. 97; Case of Ticona Estrada et al v. Bolivia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, par. 55; and Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, par. 60. In the framework of European system, see: ECHR Case of Kurt v. Turkey. Application No. 15/1997/799/1002. Judgment of 25 May 1998, paras. 124-128; Case of Çakici v. Turkey, Application no. 23657/94. Judgment of 8 July 1999, paras. 104-106. As regards national tribunals, see, *inter alia*: Case of Marco Antonio Monasterios Pérez, Supreme Court of Justice of the Bolivarian Republic of Venezuela, judgment of August 10, 2007; Case of Withdrawal of Immunity of Pinochet, Supreme Court of Justice of Chile, en banc, judgment of August 8, 2000; Case of Castillo Páez, Constitutional Court of Peru, judgment of March 18, 2004.

<sup>207</sup> I/A Court H.R., *Case of J. v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, par. 353.

<sup>208</sup> I/A Court H.R., *Case of J. v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, par. 354.



derogable nucleus because they cannot be suspended in case of war, public danger or other threats to the independence or security of the States Parties.<sup>209</sup> The Court reiterates that states should not merely abstain from violating rights, but must adopt positive measures to be determined based on the specific needs of protection of the subject of law, either because of their personal situation or because of the specific circumstances in which they find themselves.<sup>210</sup>

166. Specifically with respect to the duty to prevent, it “includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damages.”<sup>211</sup>

167. It follows from inter-American jurisprudence that insofar as a missing person's report is concerned the response of the State is inevitably linked to the protection of the life and well-being of the person reported missing. Whether the disappearance may have occurred at the hands of private citizens or at the hands of state agents is immaterial where duty of the State to render an immediate and exhaustive response is concerned. The Commission reiterates that “when there are reasonable grounds to suspect that a person has been disappeared, it is essential for prosecutorial and judicial authorities to take prompt and immediate action by ordering timely and necessary measures to determine the whereabouts of the victim or the place where he or she might be deprived of liberty.”<sup>212</sup>

168. In this case, there is nothing in the record before the IACHR to indicate either a situation of prior threats or the persistence, at the time of the events, of the already examined context of the armed conflict in Guatemala. In that regard, the Commission considers that the State's response must be analyzed from the moment at which it was made aware that Mayra Angelina Gutiérrez was missing; in other words, when the family filed the report on April 9, 2000. The Commission believes that the nature of the reported facts should have made it abundantly clear to the state authorities that the victim was in a situation of extreme danger. From that point forward, the Commission considers that the State knew, or should have known, that Ms. Gutiérrez was in dire peril. It is also worth mentioning what the Court has said, in the sense that at that time, when a woman was reported missing it was an indication to the State authorities that her rights had likely been violated.<sup>213</sup>

169. The Commission has already analyzed here the initial response of the State of Guatemala to the report that Mayra Angelina Gutiérrez was missing. Specifically, the Commission concluded that for the first 48 hours after the report the State did nothing to look for Ms. Gutiérrez and that over the ensuing weeks the investigative procedures carried out were minimal and unrelated to the lines of inquiry that emerged the moment the report was filed. Therefore, and bearing in mind the analysis in paragraphs 119–121 above, the Commission considers that the lack of an immediate and diligent response in terms of mounting a search for Ms. Gutiérrez as soon as the report was filed constituted a violation of the duty to protect her rights to life and humane treatment, when the State was aware of the extreme danger that she was in.

<sup>209</sup> I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 119.

<sup>210</sup> I/A Court H.R., *Case of González et al. F“Cotton Field” v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, par. 243. Cf. *Case of Baldeón García v. Peru*. Merits, Reparations and Costs. Judgment of April 6, 2006. Series C No. 147, par. 81; *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, para. 154; and *Case of the Massacre of Pueblo Bello v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, par. 111.

<sup>211</sup> I/A Court H.R., *Velásquez Rodríguez Case v. Honduras*. Judgment of July 29, 1988, Series C No. 4, par. 175.

<sup>212</sup> I/A Court H.R., *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, par. 134; *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, par. 221; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*. Merits, Reparations and Costs. Judgment of September 1, 2010. Series C No. 217, para. 167. See, also, *Matter of Natera Balboa regarding Venezuela*. (Provisional Measures) Order of the Inter-American Court of Human Rights of February 1, 2010, preambular par. 13.

<sup>213</sup> I/A Court H.R., *Case of Veliz Franco et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, par. 147.

170. Based on the foregoing, the Commission concludes that the State of Guatemala violated its duty to ensure rights, concretely its obligation to protect the rights to life and humane treatment recognized at Articles 4 and 5 of the American Convention, taken in conjunction with Article 1(1) of that instrument, to the detriment of Mayra Angelina Gutiérrez.

**4. Right to humane treatment (Article 5(1) of the American Convention in connection with Article 1(1) thereof)**

171. Article 5(1) of the American Convention on Human Rights provides, "Every person has the right to have his physical, mental, and moral integrity respected." The Inter-American Court has indicated that the next-of-kin of victims of certain human rights violations may, in turn, be considered victims.<sup>214</sup> In that regard, the Court has ruled that their right to mental and moral integrity [may be] violated based on the ... particular circumstances of the violations perpetrated against their loved ones and owing to the subsequent acts or omissions of the State authorities in relation to the facts.<sup>215</sup>

172. Specifically with respect to cases where a complete and effective investigation was lacking, as in this matter, the Court has held that:

The absence of a complete and effective investigation into the facts constitutes a source of additional suffering and anguish for victims and their next of kin, who have the right to know the truth of what happened. This right to the truth requires a procedural determination of the most complete historical truth possible, including the determination of patterns of collective action and of all those who, in different ways, took part in the said violations, as well as their corresponding responsibilities.<sup>216</sup>

173. Based on the foregoing, the Commission considers that the disappearance of a loved one and the lack of a thorough and effective investigation which in turn causes pain if the truth is not revealed, in themselves constitute harm to the mental and moral integrity of the members of Mayra Angelina Gutiérrez's family. The IACHR also notes that Ms. Gutiérrez's family have said that they are also afraid that something similar might happen to them. It is clear to the Commission that the anguish that the victim's family have endured in the quest to obtain justice and uncover the truth about what happened, the lack of effective protection, and the profound suffering and radical change wrought on their lives have harmed their well-being.

174. Accordingly, the Commission concludes that the State violated the right respect for mental and moral integrity enshrined in Article 5(1) of the American Convention in connection with the duty to ensure rights recognized in Article 1(1) thereof, to the detriment of Mayra Angelina Gutiérrez's family: her daughter Ángela María del Carmen Argüello Gutiérrez, her sisters Ángela and Nilda Gutiérrez, and her brother Armando Gutiérrez.

**VI. CONCLUSIONS**

<sup>214</sup> I/A Court H.R., Case of Cantoral-Huamaní and García-Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, par. 112; and Case of Bueno-Alves v. Argentina. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 164, par. 102.

<sup>215</sup> I/A Court H.R., Case of Cantoral-Huamaní and García-Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, par. 112; and Case of Vargas-Areco v. Paraguay. Judgment of September 26, 2006. Series C No. 155, par. 96.

<sup>216</sup> I/A Court H.R., Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, par. 102; I/A Court H.R., Case of the Rochela Massacre v. Colombia. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C, No. 163, par. 195; Case of Heliodoro-Portugal v. Panama. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008. Series C No. 186, par. 146; and Case of García-Prieto et al v. El Salvador. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, par. 102.

175. Based on the factual and legal considerations set out above, the Inter-American Commission concludes that the State of Guatemala is responsible for violation of the rights to life, humane treatment, a fair trial, equal protection and non-discrimination, and judicial protection recognized at Articles 4, 5, 8, 24, and 25 of the American Convention taken in conjunction with the obligations enshrined in Article 1 (1) of that international instrument, to the detriment of the persons named in each section of this report. The Commission also concludes that the State violated the duty to investigate recognized in Article I(b) of the Inter-American Convention on Forced Disappearance of Persons.

176. Based on the foregoing conclusions,

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

1. Provide full reparation for the human rights violations found in the instant report, including both material and moral dimensions.
2. Conduct and complete a full, effective, impartial judicial investigation in a prompt manner, in order to establish the circumstances in which Mayra Angelina Gutiérrez Hernández disappeared; explore and thoroughly exhaust the logical lines of inquiry in connection with the case; and identify and, as appropriate, punish all those who participated in the acts.
3. Perform an exhaustive search to ascertain the fate or whereabouts of Mayra Angelina Gutiérrez Hernández.
4. Impose appropriate administrative, disciplinary or criminal penalties for the acts or omissions of state officials that contributed to the denial of justice and impunity regarding the facts in the case.
5. Implement measures to avoid a repetition and ensure that investigations of reported disappearances conform to the standards established in this report.