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Title/Style of Cause: Maria Mejia, Pedro Castro Tojin et al. v. Guatemala
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Decided by: Chairman: Professor Claudio Grossman;
First Vice Chairman: Ambassador John S. Donaldson;
Second Vice Chairman: Professor Carlos Ayala Corao;
Members: Dr. Oscar Lujan Fappiano, Professor Robert Kogod Goldman, Dr. Jean Joseph Exume, Ambassador Alvaro Tirado Mejia.
Dated: 16 October 1996
Citation: Mejia v. Guatemala, Case 10.553, Inter-Am. C.H.R., Report No. 32/96, OEA/Ser.L/V/II.95, doc. 7 rev. (1996)
Represented by: APPLICANTS: Human Rights Watch/Americas, the Center for Justice and International Law, Emily Yozell, and CERJ
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I. THE FACTS

A. Context

1. In 1982, the military regime of General Efraín Ríos Montt established a system of Civilian Autodefense Patrols ("PACs"). The patrols were created as a part of a government policy of the time of extermination of the guerrilla movement through the relocation of the indigenous population and the eradication of all "suspicious" persons and communities.[FN1] The Guatemalan Government has changed the status and title of the civil patrols a number of times, but they are generally still referred to as PACs.[FN2] According to army sources, during certain periods, the PACs were over 800,000 persons strong.[FN3] During the time period of the events in this case, the person of the military commissioner served as a liaison between the community and the Army. The military commissioner reported directly to the Army and often worked closely with the PACs.[FN4]

[FN1] See Inter-American Commission on Human Rights, Fourth Report on the Situation of Human Rights in Guatemala at 53, OEA/Ser.L/V/II.83, Doc. 16 rev., June 1, 1993 [hereinafter Fourth Report].

[FN2] At the time of the events denounced in this case, the civil patrols were referred to as Voluntary Committees for Civil Defense ("CVDCs").

[FN3] See Fourth Report at 53.

[FN4] See Inter-American Commission on Human Rights, Third Report on the Human Rights Situation in the Republic of Guatemala at 101, OEA/Ser.L/V/II.66, Doc. 16, 3 October 1985 [hereinafter "Third Report"].

B. The Petition

2. On April 12, 1990, the Inter-American Commission on Human Rights (the "Commission") received a complaint from the petitioners (Human Rights Watch/Americas, the Center for Justice and International Law, Emily Yozell, and CERJ), which alleged that military commissioners and patrol chiefs had undertaken actions against inhabitants of the community known as Centro Parraxtut Segundo, in the municipal district of Sacapulas, department of El Quiché, which ended with the murder of María Mejía, the aggravated assault and wounding of her husband, Pedro Castro Tojín, and death threats to another 39 family and community members. The petition alleged that these attacks were carried out in reprisal for the refusal of members of the community of Parraxtut Segundo to participate in the PACs. Also related in the petition was an attack on March 27, 1990, by PAC members and military commissioners against Amílcar Méndez Urízar, a human rights activist, and the 39 threatened community members who were attempting to return to Parraxtut Segundo after having been away from the community following the harassment to which they were subjected. Finally, the petition denounced the lack of action taken by law enforcement and the courts in connection with complaints lodged by the members of the Parraxtut Segundo community to enforce their rights.

3. The petition points out that rural persons, indigenous peoples and residents of Centro Parraxtut Segundo learned, through educational workshops organized by the Runujel Junam Ethnic Communities Council (CERJ) that, as provided by Article 34 of the Political Constitution of Guatemala, they were not required to participate in the PACs and that, on that ground, a number of them refused to participate in them.

4. As a result of the aforementioned refusal to participate and their work with the CERJ, these persons were the targets of threats and harassment by the military commissioners and the PAC members. With the assistance of the CERJ, the affected persons filed motions for personal appearance (otherwise known as habeas corpus) with the Human Rights Ombudsman and the regional justice of the peace, but no authority investigated the charges.

1. Background

5. The complaint details that, as reprisal for not participating in the PACs, the military commissioner of the community of Parraxtut, Juan de León Pérez, ordered local mills to refuse to accept corn for grinding from the family of Pedro Castro Tojín or from 17 other persons as of January 29, 1990. Mr. Castro Tojín reported this fact to the authorities.[FN5]

[FN5] See Petition of Pedro Castro Tojín submitted to the Human Rights Ombudsman, Ramiro de León Carpio, on February 12, 1990 [hereinafter Petition of February 12, 1990].

6. On several occasions during the months of January and February, 1990, María Mejía was detained along with her children as she went to Santa Cruz del Quiché to buy supplies, and was forced to return home. Juan de León Pérez told one of María Mejía's sons, Francisco Castro Imul (15 years of age), that if the family left the town, they would be killed.

7. For their part, the older sons of María Mejía, Juan Tum Mejía, 23 years of age, and Domingo Tum Mejía, 17 years of age, and another community resident, Diego Yat Us, also 17 years of age, left Parraxtut in late February 1990 and filed complaints regarding the threats against them. Out of fear for their lives, they decided to take refuge at the CERJ offices in Santa Cruz del Quiché.[FN6]

[FN6] See the petition of Diego Yat Us and Domingo Tum Mejía, presented to the Assistant Ombudsman for Human Rights of Santa Cruz del Quiché on March 2, 1990 [hereinafter Petition of March 2, 1990]; Writ of Habeas Corpus filed on March 2, 1990, with the First Judge of the First Departmental Court and the District Justice of the Peace of Santa Cruz del Quiché on behalf of Domingo Tum Mejía and Diego Yat Us [hereinafter Writ of Habeas Corpus of March 2, 1990].

8. The district judge of the area (Santa Cruz del Quiché) refused to accept the writ of habeas corpus submitted in behalf of the threatened persons on March 2, 1990. As a result, the coordinator of the CERJ, Amílcar Méndez Urizar, had to request the President of the Supreme Court of Justice in the capital city to intervene to make sure the motion was accepted.[FN7]

[FN7] See Communication from Amílcar Méndez to the President of the Supreme Court of Justice, Edmundo Vásquez Martínez, dated March 2, 1990.

2. Murder of María Mejía and wounding of Pedro Castro Tojín

9. The human rights violations increased, ending with the murder of María Mejía at the hands of military commissioners, as well as serious injuries to her husband, Pedro Castro Tojín. On March 17, 1990, at approximately 7:30 pm, while María Mejía was eating supper with her spouse, Pedro Castro Tojín, and her two children, Francisco Castro Imul and Diego Castro Imul, they heard a dog bark. They went out into the yard to see who was coming and they met two armed men, dressed in camouflage military clothing. These men identified themselves as members of the Guerilla Army of the Poor. They shot María Mejía, wounding her in the chest. When Mr. Castro showed a flashlight in their faces, and recognized two military commissioners, they shot him in the leg. The two military commissioners returned approximately two minutes later, walked up to the body of Mrs. Mejía and shot her in the face. Showing their lights over the yard, they saw Pedro Castro, shot at him several times and left. Mr. Castro, and his younger son, Diego Castro Imul, then went to the house of Magdalena Us Lux, a family member and the closest neighbor.

10. The petition continues to the effect that on the following day, March 18, community members, including relatives of the victims, went to the justice of the peace in Sacapulas, Noriego Natareno, to inform him of the crime and to seek assistance. However, his response was that, "María Mejía was probably drunk, or if she wasn't, the military commissioners were drunk. But, if she was found lying dead in her house, we will bring her here."

11. The judge was informed, through the statements of Pedro Castro Tojín, that the death was caused by two military commissioners, but when he went to Parraxtut and asked about them, he was told that the community had not had any military commissioners for years, and he ended his inquiry at that point.

12. The petition notes that the autopsy of the body of María Mejía was conducted in a summary manner and without any legal physician in attendance. The forensic report states that the body showed four bullet wounds. The Commission, for its part, received news of the acts carried out during the investigation period by Judge Edwin Dominguez who ordered ballistics and fingerprint tests, but it did not receive any information as to whether or not these examinations were actually carried out.

3. Threats to family members of victims and members of the Parraxtut Segundo community

13. The petition goes on to say that on March 19, 1990, the day of María Mejía's burial in Parraxtut Segundo, the military commissioners gave the family members of the deceased ten days to leave the community or else they would suffer the same consequences. Out of fear, the majority sought refuge or moved to other places.[FN8]

[FN8] See Complaint presented by several residents of Parraxtut Segundo, including the children of María Mejía, to the Assistant Human Rights Ombudsman of Santa Cruz del Quiché, dated March 23, 1990 [hereinafter Complaint of March 23, 1990]; the Writ of Habeas Corpus filed by Amílcar Méndez Urizar with the District Justice of the Peace of Santa Cruz del Quiché, dated March 23, 1990 [hereinafter Writ of Habeas Corpus of March 23, 1990].

14. On March 22, 1990, three relatives of María Mejía, specifically, Domingo Tum Mejía, Abelardo Ixcotoyac Tum and Diego Yat Us, went to the office of the Justice of the Peace of Sacapulas to seek to have the military commissioners arrested because those persons continued to threaten community members and remained at liberty despite the fact that information pointed to them as the parties responsible for the death of María Mejía and the injuries to Pedro Castro Tojín. The Justice of the Peace asked the chief of the area military detachment to come to his office. The military officer stated that the military commissioners had told him that Mrs. María Mejía was murdered because she was a member of the guerrilla forces. The head of the military detachment told the relatives of María Mejía that they should stop working with human rights groups such as the CERJ.[FN9]

[FN9] See Complaint of March 23, 1990; Writ of Habeas Corpus of March 23, 1990.

15. On March 23, 1990, the CERJ filed several petitions with the Human Rights Ombudsman and the Justice of the Peace of Santa Cruz del Quiché requesting protection for 39 individuals from Parraxtut Segundo, including relatives of María Mejía. These persons were being threatened with death by the military commissioners and PAC members and were obliged to seek refuge outside their community. Many of them went to the CERJ offices in Santa Cruz del Quiché.[FN10]

[FN10] See Complaint of March 23, 1990; Writ of Habeas Corpus of March 23, 1990.

4. Unsuccessful return of Parraxtut Segundo community members

16. On March 27, 1990, in response to numerous requests, representatives of the Office of the Human Rights Ombudsman, including the Assistant Ombudsman, César F. Alvarez Guadamuz, went to Santa Cruz del Quiché to accompany the displaced members of Parraxtut Segundo on their return to their homes. Their intention was to speak with the military commissioners and to inform them of their duties and rights and to also see to it that the persons responsible for the crime against Mrs. Mejía were arrested.

17. The judge in charge of the case involving the death of María Mejía, the head of the Second Chamber of the First Criminal Court of Instruction, issued an arrest warrant for the two military commissioners identified by Pedro Castro Tojín as the persons who had killed his wife, following questions by the Assistant Ombudsman. To carry out the warrant, the Assistant Ombudsman went with two National Police Force agents as well as two individuals dressed as civilians who identified themselves as military representatives. Amílcar Méndez Urizar, a human rights activist and coordinator of CERJ, also accompanied the group.

18. As they approached the village of Parraxtut, they came upon a sentry box and a barrier across the road that blocked their advance. Twelve armed men awaited the group and ordered César F. Alvarez Guadamuz and Amílcar Méndez to get out of their vehicles and to identify themselves. The petition notes that when the patrol members realized that Amílcar Méndez was in their presence, they said, "we have the head man himself of the guerrilla force," and "we have orders to kill Amílcar Méndez." They pushed and insulted Mr. Méndez and pointed their guns at his head.

19. The Assistant Ombudsman and his companions attempted to convince the patrol members and the military commissioners that they were Government authorities but they too had guns pointed at them and were threatened. Approximately 50 armed men also came to the place where the deputy attorney and his group were detained. As César F. Alvarez Guadamuz attempted to carry out his mission, the distraction he created enabled Amílcar Méndez to get into his car and escape. The Office of the Human Rights Ombudsman carried videotaping equipment and filmed the incident. The members of the Parraxtut Segundo community escaped in their vehicles,

and were chased and fired at for a distance of two kilometers. The official representatives stayed to speak with the deputy mayor and the patrol members, and to try to carry out their mission. The attempt to carry out the arrests, however, did not succeed.

20. Juan Tum Mejía was able to identify six of the military commissioners and PAC members who carried out the attack. Documents were attached to the petition to verify the incident of March 27, 1990.[FN11]

[FN11] See Videotape recorded by the Office of the Attorney of Human Rights on March 27, 1990; "Attorney discusses incident," El Gráfico, March 29, 1990; "Assistant Attorney (HR) assaulted by PAC," Prensa Libre, March 29, 1990.

B. The reply to the Petition

21. In a letter dated May 29, 1990, the Commission informed the Government of Guatemala of the petition and requested information under the terms of Article 34 of its Regulations, within a period of 90 days. When no response was forthcoming, the Commission repeated its request on September 6, 1990. On that same day, the Commission received a communication from the Government requesting a 30-day extension of time to respond in this case. On September 12, 1990, the Commission sent a letter granting the extension of time. When no response was received from the Government, on January 24, 1991, the Commission once again reiterated its request and informed the Government of the possible application of Article 42 of its Regulations which allows for the presumption of the truth of the facts related by the petitioners.

22. Finally, on March 11, 1991, the Government of Guatemala responded to the Commission, providing information relating only to a portion of the events included in the petition. The response indicated that the Second Chamber of the First Court of Santa Cruz del Quiché, El Quiché, was processing criminal case No. 411-90 which was investigating the events that occurred on March 27, 1990, in prejudice to Mr. Amílcar Méndez Urizar and others. It also informed that the case was currently in the summary stage and that one of the four suspects in the judicial proceedings was being held in detention. On the basis of the existence of this legal case in progress, the Government of Guatemala requested the Commission to declare the petition inadmissible. The Commission transmitted the pertinent parts of this information to the petitioners.

C. Subsequent processing before The Commission

23. The petitioners sent their reply to the Commission in a note dated April 19, 1991. They considered that the response from the Government was neither timely nor serious and that it showed, furthermore, the Government's lack of willingness to investigate the case and to make sure that justice was done. The petitioners pointed out that the Government's response referred only to the incident of March 27, 1990. The response failed completely to take up the serious violations of the Convention that were charged, such as the extrajudicial execution of María Mejía, the serious injuries to her husband, Pedro Castro Tojín, the threats to family members and

other members of the CERJ, and the consequent forced displacement of 39 residents of Parraxtut Segundo.

24. The petitioners agreed that case No. 411-90 had been opened in the Second Chamber of the First Court of Santa Cruz del Quiché and that one of the four suspects had been detained. However, they clarified that this case referred only to the threats and mistreatment of Mr. Méndez Urizar when he attempted, in the company of relatives of Mrs. Mejía and members of the Parraxtut Segundo community, and the Assistant Human Rights Ombudsman, to enter the canton of Parraxtut to arrest the presumed murderers of Mrs. Mejía and to return the displaced families to their homes.

25. The petitioners also pointed out that the Government made no reference to the fact that the other three suspects in the judicial proceedings were living in freedom in Parraxtut despite the order to detain them issued on January 17, 1991, by the Second Chamber of the First Criminal Court.

26. The petitioners charged that the responsibility for the death of María Mejía had been proven because the two military commissioners responsible were identified by the personal eyewitness, Pedro Castro Tojín. The culpability of these two was further confirmed by the fact that they had threatened the family of María Mejía on previous occasions. The petitioners reported that one week before Mrs. María Mejía was murdered, the Assistant Human Rights Ombudsman of Santa Cruz del Quiché, Oscar Cifuentes Cabrera, called the two military commissioners identified by Pedro Castro Tojín to his office to insist that they end their threats and harassment of the victims.

27. Finally, the petitioners charged that the requirement of exhaustion of domestic remedies did not apply to the case because such remedies were totally lacking.

28. The response of the petitioners was transmitted to the Government on August 7, 1991, for its final considerations. On November 10, 1993, the Government was once again requested to provide information within a period of 30 days, and the Commission informed it that it would consider the possible application to this case of presumption of truth under Article 42 of its Regulations.

29. On December 9, 1993 and on April 4, 1994, the Government of Guatemala requested the Commission to grant extensions of 30 days for it to furnish the pertinent information. The Commission granted the requested extensions on December 10, 1993 and April 11, 1994.

30. On June 1, 1994, the Government of Guatemala furnished information relating to the case. The information indicated that the Second Chamber of the First Criminal Court was processing case No. 332-90. That court issued a temporary writ of incarceration on May 15, 1990, against the two military commissioners identified by Pedro Castro Tojín. The Government further indicated that, following this, the court decided that sufficient elements did not exist that would lead to the conclusion that the two suspects participated in the events charged. As a result, on May 31, 1990, the preventive detention order for the two aforementioned persons was revoked and they were freed on bail. It was finally reported that the case was in the summary

stage, waiting for the Public Ministry or relatives of the victim to provide new evidence. The pertinent parts of this letter were communicated to the petitioners.

31. Through letters dated June 23, 1994, to the petitioners and the Government, the Commission placed itself at the disposal of the parties for the purpose of reaching a friendly settlement.

32. On August 10, 1994, the petitioners provided their observations to the information provided by the Government. They indicated that the Government of Guatemala had not complied with its obligation under Article 1.1 of the Convention. They pointed out that after the passage of more than four years after the murder of María Mejía, the Government could still give no valid reasons to justify the obvious delay of justice and the lack of a serious investigation of the case beyond its systematic effort to ensure and legitimize the impunity of persons who commit violations of human rights.

33. On August 17 and September 16, 1994, the Government of Guatemala furnished the Commission information relating to the case. It indicated in these two communications that case 332-90 was still in the summary stage and that for this reason, domestic remedies had still not been exhausted in this case. The Government also reported that the case had been transferred to the Office of the Attorney General of Guatemala for all appropriate investigations. In addition, the Government stated that at the moment it did not desire to submit the case to a friendly settlement proceeding since domestic remedies had still not been exhausted.

34. In a note dated September 28, 1994, the Commission addressed the parties requesting information and arguments from them regarding the effectiveness of the domestic remedies in the case and the applicability of the requirement of exhaustion of domestic remedies.

35. On November 21, 1994, the petitioners responded arguing that an exception to the application of the rule on exhaustion of domestic remedies applied on the basis of Article 46.2 of the Convention. The Commission transmitted to the Government of Guatemala the pertinent parts of this communication.

36. The Government of Guatemala furnished additional information on April 21, 1995. In this information it repeated that the remedies of domestic jurisdiction were still not exhausted in this case and it rejected the Commission's offer to start a friendly settlement proceeding.

37. In a letter dated June 27, 1995, the petitioners answered the communication from the Government and stated that they did not accept the offer of the Commission to mediate a friendly settlement proceeding.

38. On March 20, 1996, the Commission once again wrote to the petitioners and to the Government and placed itself at their disposal to explore a friendly solution to the case, requesting a response to the offer within a term of 30 days. On March 25, the petitioners reported to the Commission that they had decided to not agree to a friendly settlement proceeding of the case.

II. ANALYSIS

A. Considerations regarding the admissibility of the petition

1. Competence

39. The facts described above imply violations of the rights recognized in the American Convention on Human Rights such as the rights to life, (Article 4.1), the right to humane treatment (Article 5), the right to not be subject to forced labor (Article 6), the right to freedom of movement and residence (Article 22) and the right to protection under the law (Articles 8 and 25) and to the obligation established in Article 1 of the same. As a result, the Commission is competent to take up this case.

2. Formal requirements

40. In compliance with the conditions imposed by Articles 46.c and 47.d of the Convention, the Commission has received no information indicating that the petition constitutes a substantial reproduction of a petition already reviewed or that any other proceeding under international arrangements is pending.

41. The disposition of Article 46.b of the Convention which provides that every petition must be filed within a term of six months as from the date on which the final decision has been handed down is not applicable to this case because, according to the Government, the domestic remedies are still in progress and, as a result, no final ruling has been made in this case. In application of the provisions of Article 37.2 of the Commission's Regulations on the exception to exhaustion of internal remedies, in connection with Article 38.2 of its Regulations, the Commission concludes that the petition was presented within a reasonable term as from the date on which the presumed violations of human rights occurred.

3. Friendly settlement

42. On two occasions, the Commission placed itself at the disposal of the parties to initiate a proceeding of friendly settlement of this case. The two parties have communicated on repeated occasions that they have no intention of entering into negotiations for a prospective friendly settlement.

4. Exhaustion of domestic remedies

43. Pursuant to Article 46.2 of the Convention, the requirement of exhaustion of domestic jurisdiction remedies to which Article 46.1.a refers does not apply in this case. Article 46.1.a stipulates that for a petition to be admitted by the Commission, the requirement is that "the remedies under domestic jurisdiction must have been invoked and exhausted in accordance with the generally recognized principles of international law." However, according to Article 46.2.b, exhaustion is not required when, "the party alleging violation of his rights has not been permitted access to the remedies under domestic law or has been prevented from exhausting them." According to Article 46.2.c, the exhaustion requirement is not applicable when "there has been

unwarranted delay in rendering a final judgement under the aforementioned remedies." The provisions of Article 46.2.b, c exempt the present case from exhaustion since the victims and their relatives in the Parraxtut Segundo community have sought reparation by means of the appropriate mechanisms under domestic law but have nevertheless not obtained any result or decision, even six years after the time when the events occurred.

44. In connection with the murder of Mrs. María Mejía and the wounding of Mr. Pedro Castro Tojín, community members and the victims' relatives filed a complaint with the justice of the peace on the day after the events and later sought, on many occasions, to move the legal process ahead and bring about the arrest of the persons who allegedly committed the crime. For example, on March 22, 1990, three members of María Mejía's family appeared before a justice of the peace in Sacapulas to seek the arrest of the two military commissioners identified by Pedro Castro Tojín as being responsible for the death of María Mejía.[FN12] In addition, on March 27, 1990, Amílcar Méndez and the community members who had been forced to leave the community returned to Parraxtut Segundo along with the Assistant Human Rights Ombudsman, for the purpose of asserting their rights and moving the case ahead. Their efforts were in vain, however, as described above, because of the attack by the PACs and the military commissioners.

[FN12] See Writ of Habeas Corpus of March 23, 1990.

45. Despite the efforts of the community members and the victims' relatives, the case was not investigated and properly handled, as evidenced by the lack of any investigation by the justice of the peace immediately after the event and the negligent performance of the autopsy, and no results were achieved. Although an order for preventive detention was issued in case No. 332-90 by the Second Chamber of the First Court with respect to the two commissioners identified by Pedro Castro Tojín, the court later concluded that sufficient evidence did not exist regarding the involvement of those two suspects in the events as charged. On this ground, the Second Judge of the First Court revoked the writ of incarceration of the aforementioned parties on May 31, 1990, and set them free.

46. According to the latest information provided by the Government on the status of this case, which was forwarded to the Commission on September 16, 1994, the case continues at the investigation level and the file has been transferred to the Office of the Attorney General of the Republic, pursuant to the new Criminal Procedure Code of Guatemala, for continuation of the pertinent investigations. The Commission has not received any information indicating that the Office of the Attorney General has carried out any actions and the Government has not reported on any progress in the case. No final decision has been made for the case even though six years have passed since the time of the crimes against María Mejía and Pedro Castro Tojín.

47. With respect to the incident of March 27, 1990, Mr. Amílcar Méndez Urízar filed a formal complaint with the authorities. This complaint initiated criminal case No. 411-90 at the Second Chamber of the First Court of Santa Cruz del Quiché. Four persons were charged in this case. Three additional persons identified as having participated in the attack by Juan Tum Mejía were never prosecuted. The Government reported in its response of May 13, 1991, that an arrest

order had been issued for the accused persons on January 17, 1991, and that the authorities had detained one of the suspects. The Government, however, never reported whether the other persons named as suspects in the case had been detained. In addition, based on information in the possession of the Commission, the only detained suspect was later released. Six years after the event, there has been no final decision with respect to this legal proceeding nor has any person been convicted.

48. In connection with the harassment experienced by the members of the Parraxtut Segundo community, besides the incident of March 27, 1990, a writ of habeas corpus was filed on March 23, 1990, on behalf of the 39 persons who were forced to leave their community.[FN13] The writ of habeas corpus is the appropriate remedy in Guatemala to protect persons who are experiencing harassment and threats.[FN14] The 39 Parraxtut Segundo community members who were particularly affected by the harassment by the PACs also filed complaints about their situation to the Assistant Human Rights Ombudsman at Santa Cruz del Quiché.[FN15] However, the Government has never reported on any investigation, action or resolution with respect to the case relating to the harassment of these 39 persons.

[FN13] See Writ of Habeas Corpus of March 23, 1990.

[FN14] See Article 26 of the Political Constitution of the Republic of Guatemala.

[FN15] See Complaint of March 23, 1990

49. The victims of the human rights violations charged in this case and their family members have not had effective access to domestic remedies theoretically available in Guatemala. They have been prevented from exhausting any such remedies despite their attempts to move ahead with domestic legal procedures in this case because the Government has not conducted the investigations or the appropriate court procedures. The Government was obliged to undertake the investigation of the violations which form the subject of this case "as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof." [FN16] The facts involved in this case, "because they involved crimes against the person, should have been investigated on the Government's own initiative in fulfillment of the State's duty to ensure public order." [FN17] However, despite the fact that the Government was notified of the violations and even with the cooperation of the victims and their families who engaged in actions which sought to clarify those violations, the Government never complied with its duty to investigate independently the violations and to move forward with the appropriate judicial processes.

[FN16] I/A Court H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988. Serie C No. 4, par. 177.

[FN17] Id., par. 180. Guatemalan law similarly provides that the investigations and prosecution should have been carried out at the Government's own initiative. See Code of Criminal Procedure of Guatemala, Law Number 52-73, Arts. 16 (Public Ministry) and 68 (Public Action).

50. In addition, there has been an unjustified delay in the resolution of the processes which were initiated. Six years have passed since the events that are the subject of these charges occurred, and there is still no resolution of the case initiated with respect to the death of María Mejía and the wounding of Pedro Castro Tojín, or the case initiated on the grounds of the incidents of March 27, 1990. No court case has been opened, much less any final decision issued, regarding the status of the 39 persons who had to flee the community of Parraxtut because of the harassment they experienced.

B. Considerations regarding the merits of the case

51. The Commission analyzes the facts denounced in this case within the context of the previous findings of the Commission and the findings of other international bodies which have concluded that the PACs and military commissioners commit serious human rights violations and create increased social insecurity in communities in Guatemala.[FN18]

[FN18] See, e.g., Fourth Report at 53; 1994 Annual Report of the Inter-American Commission on Human Rights at 191, OEA/Ser.L/V/II.88, Doc. 9 rev., February 17, 1995 [hereinafter 1994 Annual Report]; 1993 Annual Report of the Inter-American Commission on Human Rights at 414, OEA/Ser.L/V/II.85, Doc. 9 rev., February 11, 1994; First Report of the Director of the United Nations Mission for the Verification of Human Rights in Guatemala ("MINUGUA") at par. 35-36; Second Report of the Director of MINUGUA at par. 192, 194; Report of the United Nations Independent Expert on Human Rights in Guatemala, Mónica Pinto, December 20, 1994, par. 187.

52. The Commission believes that sufficient evidence exists to confirm that military commissioners murdered María Mejía and wounded Pedro Castro Tojín seriously on March 17, 1990. Besides the statements made by the surviving victim (Mr. Castro), whose testimony appears in the complaint and identifies two military commissioners as the aggressors, the file also contains documentary proof attesting to the event.

53. These proofs include statements provided to the appropriate Government authorities in relation to the murder of María Mejía and the wounding of Pedro Castro Tojín committed by military commissioners,[FN19] as well as documents which show that, prior to the events of March 17, 1990, María Mejía's family had complained to the Government authorities about threats and intimidation by the military commissioners and the PAC chiefs of Parraxtut Segundo.[FN20]

[FN19] See Petition of March 23, 1990; Writ of Habeas Corpus of March 23, 1990.

[FN20] See Complaint of February 12, 1990; Complaint of March 2, 1990; Writ of Habeas Corpus of March 2, 1990.

54. In addition, the facts alleged in connection with the death of María Mejía and the wounding of Pedro Castro Tojín at no time were refuted or denied by the Government. The Government responded to the charges in this case with extremely brief answers which referred strictly to the processing of the criminal proceedings under domestic law. The jurisprudence of the Inter-American Court of Human Rights (the "Court") states that, "the silence of the accused or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations, so long as the contrary is not indicated by the record or is not compelled as a matter of law."^[FN21] In the present case, the Commission has sufficient information to establish the events charged and evidence or information showing the contrary does not appear in the record.

[FN21] Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 138.

55. The Commission also concludes that the information contained in the file for this case proves the fact that 39 members of the community of Parraxtut Segundo, persons who worked with the CERJ, who refused to serve with the PACs and who were related to the case of the death of María Mejía, were the targets of threats and harassment by the military commissioners and the PAC chiefs in Parraxtut Segundo. This harassment included a threat made by the military commissioners during the burial of María Mejía to her family members in attendance that they would be killed within 10 days. It has been proven that these 39 persons had to leave their community to escape the threats and attacks they were experiencing and that many of them were forced to take refuge at the CERJ offices at Santa Cruz del Quiché for an extended period.^[FN22] The Government has also not denied these events at any time nor has it provided any information in connection with them.

[FN22] See Petition of March 23, 1990; Writ of Habeas Corpus of March 23, 1990.

56. Finally, the Commission accepts as clearly proven, through the videotape included in the record and other evidence, the attack of March 27, 1990, against Amílcar Méndez and the 39 members of the community of Parraxtut Segundo who sought to return to their homes in the company of the Assistant Human Rights Ombudsman, César F. Alvarez Guadamuz. The documents in the record prove that this attack was committed by military commissioners and PAC members.^[FN23] The Government has not denied these events nor has it provided any information about them.

[FN23] See the videotape recorded by the Office of the Human Rights Ombudsman, March 27, 1990; "Attorney discusses incident," *El Gráfico*, March 29, 1990; "Assistant Ombudsman (HR) assaulted by PAC," *Prensa Libre*, March 29, 1990.

C. Considerations regarding the law

1. The acts described were committed by State agents acting in their official capacity

57. In the present case, agents of the Guatemalan State committed the violations described in this report. Members and leaders of the PACs and military commissioners were responsible for the events which have been proved to have taken place in this case. The PACs are a form of paramilitary entity, and their members act as state agents. Guatemalan law provides explicitly that the PACs are coordinated by the National Defense Ministry.[FN24] During the period of time relevant to this case, the Guatemalan Army openly provided them with training and arms, and the Army held control over the decision as to when a PAC was no longer necessary and should be dissolved.[FN25] The military commissioners frequently worked in collaboration with the PACs and reported directly to the Army.[FN26] The Commission concludes, also, that the patrollers, leaders of the PACs and military commissioners carried out the attacks acting as such and, therefore, while under color of official authority.

[FN24] See Law 19-86 (January 7, 1986).

[FN25] See Doctrinal Concepts Relating to Civil Matters, published by the Army Directorate on Civil Matters (D-5); Self-Defense Civil Patrols: People's Response to a Socio-Economical Political Integration in Guatemala Today, published by the Public Relations Office of the Guatemalan Army, May, 1984 at 11, 13, 16; The Civil Defense Committees in Guatemala, published by the Institution of the Human Rights Ombudsman, 1994, at 37; Third Report, at 101.

[FN26] See Third Report, p. 101. Although in recent years Government policy relating to the PACs and military commissioners has been modified, the Commission has received no information which indicates that the situation in the community of Parraxtut Segundo has changed significantly.

2. The right to life

58. The arbitrary deprivation of the life of María Mejía at the hands of State agents constitutes a clear and grave violation of Article 4 of the Convention.

3. Right to humane treatment

59. The wounds to Pedro Castro Tojín caused by the actions of the military commissioners constitute a violation of Article 5.1 of the Convention, which recognizes the duty of the state to respect and guarantee humane treatment (physical, mental and moral) of its citizens.

60. The threats to the community members of Parraxtut Segundo committed by the PACs and the military commissioners, which forced 39 persons to abandon their homes, also constitute a violation of Article 5.1. Through these threats, the military commissioners and the PAC members caused trauma and anxiety to the victims and constrained their ability to lead their lives as they desire. The victims lived in fear until they were eventually forced to leave their community, thereby having to reorganize their lives as a result of the threats. The harassment seriously

endangered the mental and moral integrity of these 39 members of the community of Parraxtut Segundo.

61. The attack of March 27, 1990, on Amílcar Méndez and the members of the community of Parraxtut Segundo who tried to return to their homes in the company of the Assistant Human Rights Ombudsman, César F. Alvarez Guadamuz, also violates Article 5.1 of the Convention. The military commissioners and the armed patrols who detained and harassed the group clearly acted with the intention of, at a minimum, intimidating Amílcar Méndez and the community and sowing the seeds of panic among its members. This activity was a deliberate violation of the rights of Amílcar Méndez and the members of the community to their mental and moral integrity.

4. Prohibition of slavery and servitude

62. The persecution by the members of the PACs and the military commissioners against those who leave the PACs constitutes a violation of Article 6.2 of the Convention. Members of the PACs are required to participate in watch patrols and other vigilance and similar types of work without any compensation. Obligatory participation in the PACs thus implies an obligation of forced labor with the PACs.[FN27] As a result, the Commission concludes that Article 6.2 of the Convention, which expressly proscribes forced labor, prohibits forced participation in the PACs and protects the right to refuse such an obligation. The Commission also points out that the exercise of the rights protected in the American Convention can never justify attacks or reprisals by state agents.[FN28]

[FN27] See *Iversen v. Norway*, App. No. 1468/62, Judgment of December 17, 1963, Yearbook of the European Convention on Human Rights, vol. 6, p. 338 (defining forced labor as work: 1) executed by the worker against his will; 2) which is unjust or oppressive in and of itself or which involves an unjust or oppressive obligation).

[FN28] *Velásquez Rodríguez Case*, Judgment of July 29, 1988, par. 144.

63. In the present case, Government agents sought to maintain the obligatory participation in the PACs in Parraxtut Segundo and carried out reprisals against the individuals who attempted to assert their rights, as embodied in the Convention, by refusing to serve in the PACs. Military commissioners murdered María Mejía and wounded Pedro Castro Tojín as a consequence of the work being carried out by the family of María Mejía with the CERJ and their support for the members of the Parraxtut Segundo community who refused to serve in the PACs. In addition, in reprisal for working with the CERJ and refusing to work with the PACs, military commissioners and PAC members threatened and harassed continuously the members of the Parraxtut Segundo community, forcing 39 persons to leave their homes in that community, and attacked Amílcar Méndez and members of the community when they attempted to return to their homes on March 27, 1990. These reprisals for having refused to serve in the PACs amount to clear violations of Article 6.2 of the Convention.

5. Right of free movement and residence

64. The forced displacement of 39 members of the population of Parraxtut Segundo, who had to take refuge at the CERJ offices and other places outside their community because of threats by the military commissioners and PAC leaders, constitutes a violation of Article 22.1 of the Convention which recognizes the right of freedom of movement and residence.

65. The Commission considers that the right of movement and residence also was violated when local PAC members detained and threatened on March 27, 1990, the group headed by the Assistant Human Rights Ombudsman, César F. Alvarez Guadamuz, and which included Amílcar Méndez Urízar and the 39 members who attempted to return to their residences. The PAC members detained the group on the road to Parraxtut Segundo for a significant amount of time, blocking their entrance to the town, and thereby infringing on the rights of these persons to free movement. In addition, the incident helped to intimidate the displaced persons into not returning to live in their community, implying a violation of the right of these persons to choose their place of residence.

6. Right to judicial guarantees and judicial protection

66. The actions of the jurisdictional authorities who have prevented the investigation and processing of those responsible for the criminal events which are proven in this case, and the lack of implementation of proper procedures to bring about an effective investigation of the two criminal cases that were initiated and in the processing of the right of habeas corpus filed on behalf of the 39 displaced persons constitute a violation of the right to due process and judicial protection, as embodied in Articles 8 and 25 of the Convention.

67. As explained before in the discussion of the application of the exceptions to the requirement of exhaustion of domestic remedies, the court cases initiated in this case have been ineffective and inefficient and have not produced any result for six years. The Court has stated that this situation not only justifies the application of the exceptions to the exhaustion of domestic resources but also implies a violation, by the state, of the Convention, which provides that, "States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law." [FN29]

[FN29] I/A Court H.R., Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987. Series C No. 1, par. 91.

7. Obligation to respect and guarantee rights

68. The violations to which this case refers demonstrate that the State of Guatemala has not complied with the commitment assumed by the States Parties in conformity with Article 1.1 of the American Convention, "to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms."

69. The first obligation of any State Party to the American Convention consists of respecting the rights and liberties established in it.

Whenever a State organ, official or public entity violates one of those rights [recognized in the Convention], . . . the State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law.[FN30]

[FN30] Velásquez Rodríguez Case, Judgment of July 29, 1988, pars. 169, 170.

70. As stated above, PAC leaders and members and military commissioners acted as State agents when they committed the violations which form the subject of this case. The State of Guatemala, consequently, has violated Article 1.1 of the Convention with respect to the violations of Articles 4, 5, 6, 22, 8 and 25 committed by those agents.

71. The second obligation of the State consists of ensuring the full and free exercise of the rights recognized by the Convention. The Court has expressed that it is:

the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically assuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.[FN31]

[FN31] Id., par. 166.

72. The Government also has failed to comply with this obligation to ensure. The Government has not acted to prevent the violations of the rights of María Mejía, Pedro Castro Tojín or the 39 persons who had to leave the community of Parraxtut Segundo. First, despite many complaints to the authorities about the harassment experienced by the members of the community who had refused to join the PACs, the Government did not provide any protection to prevent a violation of human rights as occurred when María Mejía was murdered and her spouse was wounded seriously on March 17, 1990. The Government also failed to act after March 17, 1990, despite the complaints registered with the authorities indicating new threats, to protect the members of the community. As a result of this, 39 persons had to leave their homes to take refuge in other places.

73. Finally, the Government has not complied with its duty to investigate and sanction the human rights violations that occurred in this case nor has it provided reparation for the damages produced by the violations. As pointed out before, none of the legal proceedings initiated in this case has been properly processed nor yielded any results. No person has been found responsible

for the acts committed against María Mejía, Pedro Castro Tojín, Amílcar Méndez Urízar and the 39 persons who had to leave the community of Parraxtut Segundo, and no reparations or compensation have been provided for damages suffered by these persons.

III. RESPONSE TO THE COMMISSION'S ARTICLE 50 REPORT

74. Pursuant to Article 50 of the Convention, the Commission during its 92^o Special Session, approved Report 27/96 concerning the present case. That report and the recommendations contained therein were transmitted to the Government of Guatemala by communication of June 3, 1996 with a request that the Government inform the Commission of the measures which it had adopted to comply with the recommendations of the Commission and to remedy the situation examined within a period of 60 days.

75. By note of July 22, 1996, the Government of Guatemala requested an extension of time to provide its response to the Article 50 report. An extension of 30 days was granted by the Commission on August 1, 1996. By note of September 20, 1996, the Government of Guatemala responded to Report 27/96.

76. In relation to the Government's response, the Commission notes the importance and significance of the steps which the new Government of Guatemala has taken to prevent further violations of the nature which occurred in this case. The Commission finds especially important the implementation of the decision of the Guatemalan Government to eliminate the system of "military commissioners" and the recent decision to dismantle and disarm the PACs.

77. In its response to Report 27/96, the Government emphasizes that, "[O]n September 15, 1995, the Government . . . eliminated the position of 'military commissioner,' and those persons were demobilized." The Government added that, "campaigns have been carried out on a national level to make available information so that the population learns of the demobilization." The Government attached to its response Government Decree No. 434-95 which provides for the demobilization of the military commissioners.

78. Also, the Government notes in its response that:

On August 13, 1996, the Government officially announced the complete dissolution and disarmament of the members of the Voluntary Civil Defense Committees throughout the national territory. That process has already been initiated and it is expected to be concluded before November 15 of this year.

The Commission has received information indicating that the process of dissolution of the PACs is moving forward, and Government authorities have shown a serious interest in acknowledging and ending the abuses committed by the PACs. On the occasion of the dissolution of the PACs in Colotenango, Huehuetenango, the President of the Presidential Coordinating Commission for Executive Policy on Human Rights Issues, Dra. Marta Altolaguirre, gave a speech in which she recognized that some PACs members "acted in excess of their authority and in abuse of their weapons, attacking outsiders for the mere fact that they did not participate in PAC activities."

She went on to state that Government authorities seek to "ensure the full exercise of the fundamental human rights of the person and to reject any act which violates the law."

79. The Commission considers, however, that the Government 's response does not establish that the Government has fully complied with the recommendations of the Commission for the resolution of the situation under examination in this case. In its response, the Government indicates that it is "premature" for the Government to take a position on the case, because the events under examination are still under investigation in the domestic tribunals.

80. The State of Guatemala may not avoid responsibility nor avoid compliance with the recommendations of the Commission on the grounds that an investigation is ongoing in this case. The events subject of the case took place more than six years ago. Yet, the Commission has been informed of no results or significant advances in the investigations or judicial proceedings.

81. The Government notes in its response the jurisprudence of the Inter-American Court of Human Rights which holds that:

In certain circumstances, it may be difficult to investigate acts that violate an individual's rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result.[FN32]

The Commission acknowledges that there may exist difficulties in investigating violations of human rights and that the duty of the State is not to obtain a specific result.

[FN32] Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 177.

82. However, the Commission wishes to make reference to the latter part of the citation of the Court which is also quoted by the Government of Guatemala. The Court there states that an investigation:

must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.[FN33]

In this case, it has not been shown that the Guatemalan State is carrying out a serious and effective investigation and search for the truth. The Commission discussed this point in the original Article 50 report. In its response to the Article 50 report, the Government limits itself on this point to a statement indicating that the case and the Commission's recommendation to investigate have been transferred to the Office of the Prosecutor General of Guatemala and to the Public Ministry and that the Commission will be informed of any advances.

[FN33] Id.

83. Nor may the State avoid responsibility alleging that the Government may not interfere in the work of the Public Ministry or the Judiciary. Although certain Government entities, such as the Judicial Branch or the Public Ministry may be independent from the Executive Branch, the decisions or actions taken by those entities or their omissions generate international responsibility directly imputable to the State party to the Convention.[FN34] In fact, the State is obliged to investigate and sanction those representatives of the Public Ministry and the Judiciary who do not carry out their duties fully and in accordance with the law.

[FN34] See, e.g., Report No. 1/95, Case 11.006 (Peru), 1994 Annual Report, at 111.

Therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

CONCLUDES:

84. On the basis of the information and the observations set out in this report and taking into consideration the observations submitted by the Government of Guatemala in relation to Report 27/96, that the State of Guatemala has failed to comply with the obligations established in Article 1.1 of the American Convention and is therefore also responsible for violations of:

- a. The right to life of María Mejía, embodied in Article 4 of the American Convention,
- b. The right to humane treatment embodied in Article 5 of the American Convention as to Pedro Castro Tojín, Amílcar Méndez Urízar and the 39 persons who were obligated to leave the community of Parraxtut Segundo, which persons are the following:

- (1) Juan Tum Mejía
- (2) Domingo Tum Mejía
- (3) Diego Yat Us
- (4) Abelardo Ixcotoyat Tum
- (5) Miguel Lux
- (6) Miguel Castro Tojín
- (7) María Pu
- (8) Margarita Lux Tum
- (9) Juan Ixcotoyac de Leon
- (10) Miguel Ixcotoyac de Leon
- (11) María Lux Tum
- (12) Magdalena Us Lux
- (13) Josefa Yat Us
- (14) María Yat Us
- (15) María Us

- (16) Francisco Castro Imul
- (17) Diego Castro Imul
- (18) Antonia Tiu Imul
- (19) Ana Castro Tiu
- (20) Izabel Castro Tiu
- (21) Francisco Castro Tiu
- (22) Francisco Castro Tiu
- (23) Gaspar Castro Tiu
- (24) Domingo Castro Tiu
- (25) Manuel Castro Tojín
- (26) Ana Imul Us
- (27) Diego Tojín Imul
- (28) Victoria Tiu Tojín
- (29) Josefa Tojín Imul
- (30) Rosa Tiu Tojín
- (31) Juana Tiu Tojín
- (32) Elena Lux Tiu
- (33) Basilio Lux Tiu
- (34) Gilberto Lux Tiu
- (35) Gaspar Lux Tiu
- (36) Manuel Tiu Tojín
- (37) Agustin Tum Mejía
- (38) María Mejía Tiu
- (39) Pedro Castro Tojín

c. The right to freedom from slavery and involuntary servitude embodied in Article 6 of the Convention with respect to the members of the community of Parraxtut Segundo who were the targets of reprisals for having refused to join the PACs, especially María Mejía, Pedro Castro Tojín and the 39 persons named above who had to leave their community because of the reprisals taken by the military commissioners and the members of the PACs.

d. The right of freedom of movement and residence embodied in Article 22.1 of the Convention with respect to Amílcar Méndez Urizar and the 39 persons named above.

e. The right to due process, judicial guarantees and judicial protection protected through Articles 8 and 25 of the Convention with respect to the family members of María Mejía who sought to obtain justice in the case of her death, including Pedro Castro Tojín, and also with respect to Amílcar Méndez Urizar, and the 39 persons named above.

RECOMMENDS:

85. The Inter-American Commission on Human Rights recommends that the State of Guatemala:

a. Undertake an immediate, impartial and effective investigation of the violations proven in this case to establish the identity of the authors, including the identity of the members of the

judicial agencies that have not complied with their obligations, and to impose all appropriate sanctions.

b. Provide reparation for the violations committed, including a compensatory indemnity to the victims and their family members.

c. Take the measures necessary to insure that violations of this nature do not occur in the future.

86. To publish this report, pursuant to Article 48 of the Commission's Regulations and Article 51.3 of the Convention, because the Government of Guatemala did not adopt measures to correct the situation denounced within the time period.