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1. Petitioner Dianna Ortiz, a United States citizen and Catholic nun of the Ursuline order, alleges that she was kidnapped, brought to a clandestine detention center, and tortured in Guatemala by agents of the Guatemalan Government in November of 1989. She alleges violations of various articles of the American Convention on Human Rights (the "Convention"). Based on the information submitted and its investigation and analysis in the case, the Inter-American Commission on Human Rights (the "Commission") finds that the Guatemalan Government has violated Articles 1, 5, 7, 8, 11, 12, 16 and 25 of the Convention.

I. BACKGROUND

2. The allegations of fact in this case are contained in the statements of Sister Ortiz. The alleged facts are described below followed by a brief description of the processing of Sister Ortiz's case before the Commission. The Commission's analysis of the admissibility and merits of the case are found in Section II.

A. The Allegations of Fact Contained in Dianna Ortiz's Statements

3. On April 18, 1990, the Commission opened case No. 10.526, based upon the statements of petitioner Dianna Ortiz alleging that she was abducted and tortured by agents of the Guatemalan Government. According to Sister Ortiz's statements, she first went to Guatemala in September of 1987 to join several other nuns who had already been in Guatemala for approximately one year, working with the indigenous population in San Miguel Acatan and other small villages throughout the department of Huehuetenango.

4. In late 1988, the Bishop of Huehuetenango received an anonymous typewritten document accusing Sister Ortiz and the other nuns in San Miguel of planning to meet with "subversives." In early 1989, Sister Ortiz began to receive anonymous written threats directly. She received three threatening letters between January and March of 1989. One of the letters was slipped under her door, one was sent through the mail, and one was left under the windshield wiper of her vehicle. Two of the letters were addressed to "Madre Diana." The letters warned that she was in danger and should leave the country.

5. In July of 1989, Sister Ortiz went to Guatemala City to study Spanish. During the month that Sister Ortiz was attending language school in Guatemala, there was a teacher's strike in Guatemala. On one occasion, as Sister Ortiz walked to school near the main plaza where demonstrations were being held in front of the Government Palace, she saw people that she knew and stopped to talk with them. Several days later, she was accosted by an unknown man on the street near the home where she was staying. The man said, "We know who you are. You're working in Huehuetenango." The man told Sister Ortiz to leave the country.

6. After this occurrence, Sister Ortiz left Guatemala for an unscheduled vacation on July 15, 1989. She returned to Guatemala on September 18, 1989. On October 13, 1989, while in Guatemala City, Sister Ortiz received another death threat in the form of a letter dropped in the mail slot of the house where she was staying. It consisted of words that had been pasted together from letters cut from magazines and newspapers. The letter said, "Eliminate Diana. Raped. Disappeared. Assassinated. Decapitated. Leave the country." After receiving the letter, Sister Ortiz returned to San Miguel. On October 17, 1989, Sister Ortiz received another letter in San Miguel, which said, "It is dangerous for you to stay here, the army knows you are here. Leave the country." Sister Ortiz decided to seek refuge at the Posada de Belen, a religious center in Antigua.

7. According to Sister Ortiz's statements, she was kidnapped from the gardens of the Posada de Belen on November 2, 1989. Another threatening letter was sent to the Posada de Belen before she arrived, but she never received that letter.

8. Sister Ortiz's narrative of the facts indicates that on November 2, she asked a caretaker to unlock the door to the enclosed gardens. She was in the gardens alone for about ten minutes when she felt a man put his hand on her shoulder. The man said, "Hello my love," and Sister Ortiz recognized the voice as belonging to the man who had accosted her on the street four months previously. Sister Ortiz tried to back away from him but he grabbed her arm. Sister Ortiz realized that there were two men in the gardens. The first man, whom she recognized and who seemed to be in charge, insisted that Sister Ortiz accompany the two men. There was a struggle, and then the first man reached inside his jacket and showed her a gun.

9. The two men forced Sister Ortiz to walk with them to the back of the gardens at the Posada de Belen where there was an opening in the wall surrounding the gardens. The two men and Sister Ortiz walked out of the gardens and along a dry river bed until they came to the street leading out of Antigua.

10. The two men then forced Sister Ortiz to climb aboard a public bus. The first man showed Sister Ortiz a grenade in the pocket of his jacket and warned that if she tried to escape, innocent people would die. Sister Ortiz and the two men exited the bus near a sign for Mixco, a town outside of Guatemala City.

11. According to Sister Ortiz's statements, they walked down a dirt road until they came to a white National Police patrol car. The first man went ahead and talked with the driver, a uniformed National Policeman. Sister Ortiz was then blindfolded and placed in the backseat of the patrol car. The two men also got into the car. The Policemen said to the men, "I see that your trip was successful."

12. Sister Ortiz was driven in the police car and was then taken out of the car and moved into a warehouse-like building. Sister Ortiz could hear a woman's screams and the moans of a man. Sister Ortiz was ushered into a room where she was seated on a chair. The policemen and the two men who had kidnapped her left the room. After hours had passed, the second man who had come to the gardens to kidnap her entered the room and blindfolded her again. Two more men entered the room, and Sister Ortiz recognized the voices as belonging to the policeman and the first man who had taken her from the gardens. According to Sister Ortiz's statements, the men removed some of her clothes and started to touch her body.

13. Then the man that had first accosted her in Guatemala said, "We will get to that later, we have to take care of business first." He said that they were going to play a game. If she gave an answer that they liked, he said that they would let her smoke; if they did not like the answer, they would burn her with a cigarette.

14. The men asked Sister Ortiz her name, where she lived, what work she was involved in, and if she knew any subversives. With every answer, regardless of what she said, they burned her with a cigarette. They asked the same questions again and again and burned her again and again.

15. At some point, they stopped the interrogation and removed Sister Ortiz's blindfold. They showed her some pictures of herself taken in various parts of the country. The men also showed Sister Ortiz pictures of indigenous people. In one picture, a man was holding a gun and, in another one, a woman with long black hair had a gun. They insisted that Sister Ortiz was the indigenous woman in the picture and said that the indigenous people were subversives.

16. One of the men then blindfolded Sister Ortiz again, and somebody hit her in the face so hard that she fell to the floor. Two of them pulled her up to a sitting position and took off the rest of her clothes. According to Sister Ortiz's statements, the men began to abuse Sister Ortiz sexually and raped her repeatedly. Sister Ortiz was told that they would stop if she gave them the names of the people in the photographs and the names of her contacts. Sister Ortiz passed out.

17. According to Sister Ortiz's statements, at one point she regained consciousness and realized that her wrists had been tied to something overhead. She felt that she was in a courtyard of some type. The uniformed policeman asked again about the people in the photographs and raped her. Then Sister Ortiz heard people moving a heavy block on the ground. She was lowered

into a pit which was filled with bodies and rats. Sister Ortiz passed out again. She woke up on the ground, and the men were again abusing her sexually.

18. Later, Sister Ortiz was taken back into the room and questioned again. Her captors held her down on the ground and began to rape her again. Then somebody said, "Alejandro, come and have some fun." A man who had just entered answered with an expletive in English. Then he switched to Spanish and told the men that Sister Ortiz was an American and that they should leave her alone. He announced that her story was already being covered in the news. He told the men to leave the room and helped Sister Ortiz to put on her clothes.

19. "Alejandro" took Sister Ortiz out of the building and drove her out of an attached garage. As they left, he repeatedly apologized and said that it had all been a mistake. He said that they had confused her with somebody else. He also said that they had tried to prevent this with the letters. Although "Alejandro" continued to speak in Spanish, he understood Sister Ortiz when she spoke in English, and he spoke Spanish with a Northamerican accent. In Sister Ortiz's statements, she indicates that she believes that this man was from the United States.

20. When the car in which Sister Ortiz and "Alejandro" were driving stopped for traffic, Sister Ortiz saw signs indicating that she was in zone 5 of Guatemala City. She jumped out of the car and fled.

21. She ran until a woman offered to take her into her home. She stayed there for several hours and then found her way to Hayter Travel Agency in Zone 1 of the city. She contacted members of her religious community who came to retrieve her. She left Guatemala for the United States within 48 hours of her escape.

B. Processing before the Commission

22. On April 18, 1990, in conformity with Article 34 of the Commission's Regulations, the Commission sent the Government of Guatemala the pertinent parts of a statement signed by Sister Ortiz dated January 3, 1990 and several press releases which had been sent to the Commission. Since that time, the Commission has received numerous communications in this case from the attorneys for the Government and the petitioner, Sister Dianna Ortiz.[FN1] In addition, a hearing was held before the Commission on February 3, 1995.

[FN1] The Government sent communications to the Commission on the following dates:

April 30, 1990	November 17, 1992
July 10, 1990	February 15, 1995
July 18, 1991	March 27, 1995
April 8, 1992	May 15, 1995
October 5, 1992	November 27, 1995

The petitioner, through her attorneys, sent communications to the Commission on the following dates:

October 30, 1992	March 7, 1995
July 19, 1994	May 17, 1995

October 3, 1994 August 30, 1995
January 5, 1995 October 25, 1995
February 17, 1995 December 1, 1995

23. The communications of the Government were accompanied by Government reports, newspaper clippings, press releases and other documents which provided updates relating to the investigation and processing of Sister Ortiz's case before the Guatemalan courts. The Government argued, beginning with its response of April 30, 1990, that domestic resources had not been exhausted in the case, as required by Article 47(a) of the Convention. The Government also argued that the criminal acts of which Sister Ortiz complained had not been proven, much less the identity of persons responsible for those acts. The Government additionally asserted that Sister Ortiz had frustrated the domestic proceedings by failing to cooperate with the investigation and processing of the case in Guatemala.

24. The petitioner's attorneys submitted a significant volume of documentary evidence, including affidavits, records from the courts of Guatemala, newspaper clippings, etc..., in support of the petitioner's accusations. The petitioner's attorneys also argued that an exception to the requirement of exhaustion of domestic remedies applied in this case. Additionally, they provided updates about the domestic proceedings and asserted that Sister Ortiz had offered assistance to the appropriate authorities.

25. On October 23, 1995, the Commission sent a letter to the Government of Guatemala requesting that the Government provide to the Commission copies of witness testimony, police reports and other information related to the domestic case. The Government responded on November 27, 1995, indicating that the information had been requested from the Public Ministry and that the agency would make a decision on the Commission's request.

II. ANALYSIS

26. The Commission's analysis of this case begins with its determination that the case is admissible. The discussion of the question of admissibility is followed by the Commission's conclusions on the merits of the case.

A. Admissibility

27. The complaint fulfills the formal admissibility requirements contained in the American Convention on Human Rights and the Commission's Regulations. In accordance with Article 47(b) of the Convention, the Commission is competent to examine this case as it alleges facts tending to establish a violation of rights and freedoms protected by the American Convention on Human Rights. In accordance with the requirements of Convention Articles 46(c) and 47(d) respectively, the subject of the petition is not pending settlement in another international proceeding, nor does it duplicate a petition previously examined by the Commission.

28. In accordance with Article 48(1)(f) of the Convention, the Commission, in a letter to the parties dated February 7, 1995, offered to place itself at their disposal for the purposes of arriving

at a friendly settlement. On February 17, 1995, Sister Ortiz's attorney indicated that Sister Ortiz was willing to participate in a friendly settlement discussion. On March 27, 1995, the Government of Guatemala communicated to the Commission its decision not to engage in friendly settlement discussions in this case.

29. Pursuant to Article 46(2) of the American Convention, the requirement of exhaustion of domestic remedies found in Article 46(1)(a) is not applicable in this case. Article 46(1)(a) specifies that admission of a petition requires that "remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." However, pursuant to Article 46(2)(b), exhaustion is not required where "the party alleging violations of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them." Pursuant to Article 46(2)(c), the requirement of exhaustion does not apply where "there has been unwarranted delay in rendering a final judgment." The provisions of Article 46(2)(b) and (c) excuse exhaustion in the instant case, since Sister Ortiz has insistently pursued remediation through domestic mechanisms and has not achieved any results nor any decision in her domestic case, although six years have passed since the appropriate domestic judicial proceeding was initiated.

30. On November 2, 1989, Darleen Chmielewski informed the National Police in Antigua, Guatemala that Sister Ortiz had disappeared. On November 4, 1989, a criminal proceeding was initiated before the Justice of the Peace of the Department of Sacatepéquez. Six years later, it is clear that there has been an unjustifiable and unreasonable delay in the resolution of the case. Sister Ortiz's efforts to pursue the case through judicial channels, as well as through diplomatic and political channels, have not achieved success. The case remains in its initial investigative period ("fase sumarial"). Neither the courts nor the prosecution in Guatemala have ever initiated proceedings against any suspect or ordered the arrest of any individual in relation to the case; no one has ever been tried in connection with this case.

31. Despite the fact that Sister Ortiz left Guatemala and fled to the United States soon after she was released by her captors, she has made numerous efforts to advance the domestic case and to provide information and assistance to the Guatemalan Government in the investigation of the case. Sister Ortiz's efforts have consistently met with resistance from the Government and have often been countered with criticisms of Sister Ortiz by Government officials. As a result, Sister Ortiz has been denied effective access to the appropriate domestic remedies and has been unable to exhaust those remedies. The Government's assertion, in its report of March 27, 1995 ("March 27 Report"), that domestic resources had not been exhausted because Dianna Ortiz had not returned to Guatemala to assist in the investigation of the case is not supported by the record. The record shows that, despite Sister Ortiz's efforts, the domestic case has not moved forward.

32. As early as November 7, 1989, the Guatemalan press reported that Sister Ortiz had issued a declaration describing the facts of her kidnapping, torture and eventual release. However, Government officials stated to the press that they would not rely upon the statement made by Sister Ortiz in their investigation of the case, because the statement might have been prepared by persons other than Sister Ortiz who wished to embarrass the country of Guatemala.[FN2]

[FN2] "Gobierno rechaza existencia de cárceles secretas", Nacional, November 7, 1989.

33. On February 1, 1990, the Supreme Court of Guatemala directed letters rogatory, to be answered by Sister Ortiz in the United States, to the Guatemalan Minister of Foreign Affairs for the appropriate diplomatic processing. Sister Ortiz did not receive the letters rogatory until February of 1991 because of diplomatic delays.

However, she answered the letters rogatory immediately when received, providing a statement and offering evidence relevant to the case.[FN3]

[FN3] See Response to Letters Rogatory from Ambassador of Guatemala Certified by the United States District Court for the Western District of Kentucky on May 1, 1991 (including testimony of Sister Ortiz dated January 31 and March 18, 1991 and other documents).

34. In March of 1990, General Carlos Morales Villatoro, then Minister of the Interior, officially closed the Government's investigation, declaring that the case involved a "self-kidnapping." At this date, the letters rogatory had only been recently issued by the Guatemalan Supreme Court. Yet, the Government chose to close the case without awaiting the results of the only effort to obtain an official statement from Sister Ortiz. The case was reactivated only after international delegations organized by the Ursuline Sisters met with then President Vinicio Cerezo Arévalo and demanded further action in the case.[FN4]

[FN4] See April 6, 1990 Letter from President Vinicio Cerezo Arévalo to Paul Soreff.

35. At the request of Sister Ortiz, the Ursuline Sisters and other members of the international community, President Cerezo named a special commission to investigate Sister Ortiz's case in June of 1990.[FN5] After assuming office, President Jorge Serrano Elias dissolved the commission in April, 1991.[FN6] There is no indication that the commission ever met or engaged in any investigations during the time of its existence despite insistent efforts by Sister Ortiz's lawyers and others to mobilize that body.[FN7]

[FN5] June 6, 1990 Letter from Rita C. Sciolli, Charge d'Affaires, to Paul Soreff.

[FN6] April 11, 1991 Letter from President Jorge Serrano Elias to Thomas F. Stroock, Ambassador for the United States.

[FN7] See, e.g., April 29, 1991 Letter from Paul Soreff to President Serrano; April 5, 1991 Letter from Thomas F. Stroock, Ambassador for the United States, to President Serrano; July 20, 1990 Letter from Paul Soreff to President Cerezo.

36. According to the record, in December of 1990, Sister Ortiz's lawyer extended an invitation to the Office of the Human Rights Ombudsman of Guatemala to interview Sister Ortiz in the United States. The invitation was declined. Nevertheless, in October of 1991, officials from the Office of the Human Rights Ombudsman did interview Sister Ortiz in the United States. Afterwards, they prepared a report which indicated that the interview had not been satisfactory because of the nervousness of Sister Ortiz in the interview and the special arrangements that had to be made to accommodate her.[FN8] These criticisms were made by the Ombudsman's office despite the fact that it is understandable for an alleged victim of interrogation by torture to require some accommodation in approaching an interview of this nature and the fact that Sister Ortiz was able to provide significant new details in the interview.[FN9]

[FN8] Report on Interview with Sister Ortiz from María Eugenia de Sierra, Assistant Human Rights Ombudsman, to President Ramiro de Leon Carpio, October, 1991.

[FN9] See Transcript of Interview of Sister Ortiz conducted by María Eugenia de Sierra, Assistant Human Rights Ombudsman, October, 1991.

37. In July of 1991, the Government announced the appointment of a special independent prosecutor for the case, Fernando Linares Beltranena, and a private investigator, Carl West.[FN10] A series of letters between Sister Ortiz's attorney and Special Prosecutor Linares in late 1991 indicates that Special Prosecutor Linares was invited on numerous occasions to interview Sister Ortiz, yet the prosecutor failed to take this basic investigatory step. The prosecutor insisted that Sister Ortiz meet with West, but that interview also never materialized even after Sister Ortiz agreed, despite her misgivings, to meet with West without the presence of Special Prosecutor Linares.[FN11]

[FN10] August 5, 1991 Letters from Asisclo Valladares Molina, Attorney General of Guatemala, to Fernando Linares Beltranena and Carl West.

[FN11] See September 23, 1991 Letter from Paul Soreff to Special Prosecutor Beltranena; September 26, 1991 Letter from Special Prosecutor Beltranena to Paul Soreff; October 4, October 31 and December, 1991 Letters from Paul Soreff to Special Prosecutor Beltranena.

38. In April of 1992, Sister Ortiz travelled to Guatemala to provide a statement to the courts and to participate in the investigation of the case. On April 7, 1992, Sister Ortiz testified before Judge Leticia Stella Secaira Pinto of the Fifth Court of Instruction for Criminal Cases for approximately 12 hours.[FN12] The following day, Captain Yon Rivera, spokesman for the Guatemalan military, announced in the press that Sister Ortiz's activities in pursuing her case "could result in some sort of defamation charges." [FN13]

[FN12] "Interrogatorio a monja duró cerca de 12 horas", Prensa Libre, April 8, 1992.

[FN13] "American Nun Testifies to Abduction, Torture by Guatemalan Security Forces", Washington Post, April 8, 1992.

39. During her time in Guatemala, Sister Ortiz again expressed her willingness to meet with investigator West if a tape recording of the interview would be allowed or if a witness from the U.S. Congressional Task Force was allowed to be present.[FN14] Special Prosecutor Linares and West refused to allow such an interview.

[FN14] February 10, 1992 Letter from Paul Soreff to Special Prosecutor Beltranena.

40. Sister Ortiz has since returned to Guatemala three more times to push for the investigation of her case and to participate in domestic judicial proceedings, in March 1993, January 1994 and November 1994. During her trips to Guatemala, Sister Ortiz answered questions presented by the prosecutor, provided detailed descriptions of the persons involved in the commission of the crimes against her for the elaboration of electronic sketches and participated in several judicial recognition proceedings. In one of those proceedings, she was able to recognize the Antigua Escuela Politécnica, a military facility, as the place in which she was detained.[FN15]

[FN15] See Testimony of Sister Ortiz Provided on April 7, 1992; Proceeding for Identification of Photographs and Preparation of Electronic Sketches of March 22, 1993; Proceeding for Preparation of Electronic Sketches and Judicial Recognition Proceeding of March 23, 1993; Judicial Recognition Proceeding of March 24, 1993; Questioning Proceeding of March 25, 1993; Judicial Recognition Proceeding of January 26, 1994.

41. Dianna Ortiz has also continued to pressure various Guatemalan officials to resolve her case. In November of 1994, she met with the Prosecutor General for Guatemala, Ramsés Cuestas Gómez. Mr. Cuestas promised to provide her with periodic reports about the status of her case. He has failed to keep Sister Ortiz updated as promised despite Sister Ortiz's efforts to obtain reports from him.[FN16]

[FN16] See January 4, 1995 Letter from Michele Arington to Prosecutor General Ramsés Cuestas.

42. Soon after the case was opened and before any significant investigation could have occurred, officials of the Guatemalan Government began to declare that Sister Ortiz's allegations were false or that no Government agents had been involved. On November 9 and 10 of 1989, the press announced that President Cerezo had declared that he found it difficult to believe Sister Ortiz's story and that, if the kidnapping had occurred, it had not been the responsibility of government forces.[FN17] On November 12, 1989, the spokesperson for the National Police, Guillermo Mollinedo, announced that the National Police had not been involved in any

kidnapping of Sister Ortiz.[FN18] The National Police described Sister Ortiz's attempts to obtain justice as an attempt to embarrass the country and as a political maneuver implemented in an effort to obtain financing for her activities.[FN19]

[FN17] "Es cierto lo de la monja Diana Mea Ortiz?", Nacional, November 9, 1989; "Cerezo duda de lo dicho por la monja", Prensa Libre, November 10, 1989.

[FN18] "Reconstruyeron supuesta huida de monja en Antigua", Prensa Libre, November 13, 1989; "Policía no participó en secuestro", November 13, 1989.

[FN19]"La Policía descarta secuestro en caso de monja", Nacional, November 13, 1989.

43. In November 1989 and January 1990, General Alejandro Gramajo, then Minister of Defense, made several statements to the effect that Sister Ortiz's injuries did not occur or were self-inflicted. The first statement was made to a delegation of religious representatives, the second to Americas Watch. General Gramajo also stated that Sister Ortiz had invented her story to cover up her involvement in a "lesbian tryst." He suggested that her facial injuries resulted from a love affair. General Gramajo formally retracted these statements, admitting that the investigations in the case had not uncovered information which would support his claims.[FN20] However, he has continued to make similar statements.[FN21]

[FN20] April 6, 1990 Letter from General Gramajo.

[FN21] See Declaration of Allan Nairn at 23.

44. Other officials of the Government have also continued to make derogatory statements against Sister Ortiz in reprisal for her diligence in pursuing her case. In January of 1994, a spokesperson for the Army, Edith Vargas de Marroquín stated that Sister Ortiz suffered mental problems and from the vice of telling untruths.[FN22] These statements were made immediately after Sister Ortiz recognized the military installation where she alleged she had been detained. In November of 1994, another spokesman for the Army, Maurice DeLeon accused Sister Ortiz on television and in the press of being the principal spokesman for the rebel forces in Guatemala.[FN23]

[FN22] "La Politécnica no tiene calabozos", Gráfico, January 29, 1994.

[FN23] See Declaration of Dianna Ortiz, January 4, 1995 at 3.

45. It follows, therefore, from the foregoing that Sister Ortiz's efforts to pursue a domestic resolution of her case have been thwarted from the beginning. The Government blocked Sister Ortiz's efforts to push the case forward and attacked her personally to prevent her from accessing domestic remedies. The Government cannot assert that domestic remedies exist, simply because the case remains formally open long after it should have been resolved.

46. Article 46(b) of the American Convention, requiring that a petition be submitted within six months of the final decision in the domestic case, does not apply in this case, because exhaustion of domestic remedies has been excused. Pursuant to Article 38(2) of the Commission's Regulations, the Commission finds that, considering the circumstances of this case, the petition was presented "within a reasonable period of time . . . as from the date on which the alleged violation of rights has occurred." The petition was processed by the Commission on April 18, 1990, only four months after the violations of the Convention allegedly occurred. The petition was also filed one month after the Government announced its initial decision to close the case. The Commission was thus asked to exercise jurisdiction within a short period of time after the Government had initially indicated by its actions in the case that exhaustion of domestic remedies would be frustrated.

B. Merits

47. The Commission finds that Sister Ortiz was placed under surveillance and threatened, then kidnapped and tortured. The analysis of the evidence which leads the Commission to this conclusion is followed by a separate discussion of the Commission's additional finding that agents of the Government of Guatemala were responsible for these crimes against Sister Ortiz. After the discussion of its findings regarding the underlying violations in the case, the Commission expounds its findings of fact relating to the processing of Sister Ortiz's case in the domestic legal system of Guatemala. Finally, this report of the Commission applies the law of the American Convention to the facts of this case as established by the Commission.

1. Findings of Fact

a. The Commission's Finding that the Underlying Violations Did Occur

48. The Commission finds that Sister Ortiz was placed under surveillance as she conducted her work in Guatemala and that she received threats. Petitioner Ortiz has submitted copies of several of the threat letters that she received. According to uncontradicted statements made by Sister Ortiz, these letters reached her in various cities throughout Guatemala, demonstrating that she was being observed in a comprehensive and systemic manner over a period of time. According to Sister Ortiz's statements, she was also accosted on the street in Guatemala City by a man who threatened her. The Government has not provided any evidence contradicting this claim. In its response dated February 15, 1995 ("February 15 Response") and in its report of May 15, 1995 ("May 15 Report"), the Government points out that no complaint regarding the threats Sister Ortiz received was ever filed with the National Police or the courts in Guatemala. However, that fact does not serve to prove that Sister Ortiz did not receive threats, particularly when copies of written threat letters are found in the record.

49. The Commission also finds that Sister Dianna Ortiz was kidnapped and tortured in Guatemala in early November of 1989. The Commission has analyzed the detailed written and oral statements Sister Ortiz has made about the kidnapping and torture. The Commission finds that Sister Ortiz is a credible witness and that her consistent statements support a finding that she was kidnapped and taken to a clandestine detention center where she was tortured. Sister Ortiz's statements are supported by her ability to confirm her story through judicial proceedings. For

example, in the judicial reconstruction which took place on March 24, 1993, Sister Ortiz was able to recognize portions of the route that she and "Alejandro" took when they drove out of her place of detention. She was able to point out signs and landmarks which she recognized, some of which she had mentioned previously in statements made in the United States. For example, in her interview with the Office of the Human Rights Ombudsman, Sister Ortiz mentioned that she believed she had seen a Banco de Guatemala sign during her drive with "Alejandro." [FN24] In the March 24, 1993 judicial recognition proceeding, she identified the Banco de Guatemala sign she had previously mentioned. [FN25]

[FN24] Transcript of Interview of Sister Ortiz conducted by María Eugenia de Sierra, Assistant Human Rights Ombudsman, October, 1991.

[FN25] See Judicial Recognition Proceeding of March 24, 1993.

50. Also, immediately after she reappeared, Sister Ortiz was examined by Doctor David Alcare in Guatemala. Dr. Alcare observed injuries on Sister Ortiz's back, noting that Sister Ortiz's back showed numerous symmetrical injuries from the waist to the shoulder. He found that the injuries were first or second degree burns which had been inflicted during the preceding 24 hours. [FN26] After Sister Ortiz fled to the United States, Dr. G.R. Gutierrez, M.D. examined her on November 8, 1989 and found that she had 111 second degree circular burns on her back and two abrasions on her left cheek. [FN27]

[FN26] See Report prepared by Annabella Valdez Gutiérrez, a prosecutor assigned to the case in Guatemala, March 18, 1994 (referring to Dr. Alcare's examination) [hereinafter referred to as the Valdez Gutiérrez Report]; Report prepared by Investigator West, February 4, 1994 (also referring to Dr. Alcare's examination) [hereinafter referred to as the West Report]. On October 23, 1995, the Commission asked the Government to provide Dr. Alcare's report concerning his examination of Sister Ortiz before she left Guatemala and Dr. Alcare's testimony in the domestic case. The Government has not provided that information despite the fact that Article 48(1)(e) of the Convention provides that the Commission may request a state to provide information relevant to a case.

[FN27] November 8, 1989 Report of Dr. G.R. Gutierrez.

51. In its February 15 Response and May 15 Report, the Government asserted that Sister Ortiz did not seek the services of a physician after escaping from detention. These assertions are contradicted by the record, showing that she was examined by two physicians after her escape.

52. Sister Ortiz's claims of torture are also supported by a statement from the United States Ambassador to Guatemala in 1989, Thomas F. Stroock. Ambassador Stroock saw Sister Ortiz in Guatemala immediately after she reappeared. He later provided a letter which indicated that he had seen through his "own personal observation, that [Sister Ortiz] was seriously beaten and mistreated." [FN28]

[FN28] April 10, 1990 Letter from Ambassador Thomas F. Stroock.

53. The Commission considers it to be highly probable that Sister Ortiz was also raped by her captors during her time of detention. Sister Ortiz's statements provide significant evidence that she was raped, and a rape would be consistent with the physical evidence indicating that she was brutally tortured. However, based on its careful review of the record, the Commission cannot confirm the charge of rape with certainty.[FN29] The Commission believes it sufficient to find that Sister Ortiz was subjected to torture. Any sexual violence or abuse which occurred would have been a part of that torture.

[FN29] The record does contain a letter from Sister Ortiz's psychiatrist detailing Sister Ortiz's reaction to her torture and rape and explaining why it is difficult for her to provide further evidence or information about the rape. November 28, 1995 Letter from Mary R. Fabri, Psy.D. to Michele Arington.

54. The Government has conceded in documents prepared by its agents that Sister Ortiz was captured and tortured, even as it has asserted that the responsibility for those facts remains unknown. The Valdez Gutiérrez Report indicates that after National Police investigated the case, it "was established" that Sister Ortiz was kidnapped and tortured.[FN30] In a letter to the Supreme Court of Guatemala, the judge with responsibility for the case, Irma Leticia Lam Nakakawa de Rojas, indicated that the important elements to be clarified were the site of Sister Ortiz's detention and the identity of those responsible for the crimes.[FN31] The judge treated as established the occurrence of the crimes alleged.

[FN30] Valdez Gutiérrez Report at 1.

[FN31] January 14, 1994 Letter from Irma Leticia Lam Nakakawa de Rojas to Victor Manuel Rivera Woltke, Secretary of the Supreme Court of Guatemala.

55. However, in its February 15 Response, the Government argued that the facts of which Sister Ortiz complained had not been proven, much less the responsibility for those acts. The Government continued to proffer arguments in support of its theory that the kidnapping and torture had not been proven in its May 15 Report. The Government's arguments are not convincing in light of the serious documentary, medical and testimonial evidence supporting Sister Ortiz's claims.

56. In support of its claim that the facts regarding the kidnapping and torture of Sister Ortiz have not been proven, the Government points to the fact that two witnesses allegedly saw Sister Ortiz leaving the Posada de Belen alone on November 2, 1989. The statements of these two witnesses are not in the record of this case before the Commission. The Government communications which discuss the statements refer to police reports which contain the

statements. These police reports, referenced in the Government's communications have not been produced.[FN32] The police reports in the possession of the Commission which refer to the statements of the witnesses describe statements by the witnesses which are less detailed than those described in the Government's communications.[FN33] The information about the statements included in the Government's communications must therefore be viewed with caution. The Government's reports repeat the findings of police reports, not available to the Commission, which in turn repeat secondhand the testimony of witnesses.

[FN32] In its October 23, 1995 communication, the Commission requested that the Government provide it with each police report that had been prepared in relation to the case. However, the Government has failed to provide this information.

[FN33] See Police Reports dated November 2, 3 and 13 of 1989.

57. The testimony of these witnesses, if accepted, would serve to support the Government's theory that a "self-kidnapping" or staged kidnapping occurred. However, that theory is not consistent with the medical evidence which indicates that Sister Ortiz suffered significant injuries, including 111 burns on her back.

58. The Commission does not assign full weight to the statements made by these two witnesses for additional reasons. One of the witnesses, Jose Dieguez Castaneda, allegedly made a statement in which he indicated that he worked in the Posada de Belen and had been requested by Sister Ortiz to open the gates to the garden there for her. He stated that he saw her walking to the back of the garden, searching for a way out onto the street.

59. Mr. Dieguez's statement and Sister Ortiz's statements coincide in establishing that Mr. Dieguez opened the gate for Sister Ortiz and that she walked back into the garden. However, all descriptions of the garden indicate that it covered a large area. Although Mr. Dieguez may have seen Sister Ortiz walk towards the back of the garden, there is no indication that he could see the back of the garden, and it would be conjecture on his part to assert that she must have been searching for a way out onto the street. The Government also notes that Mr. Dieguez asserted that he saw no strange persons waiting in the garden. However, Sister Ortiz's statements indicate that she sat alone in the garden listening to music for about ten minutes before she was approached by the two men who kidnapped her. According to her statements, no strange men would have been visible when the gate was opened and she entered the garden.

60. Also, the statements made by Mr. Dieguez are placed in question by the fact that there is no record of any further statements by him other than those made in November, 1989 and described by the National Police. There is no record of Mr. Dieguez testifying under oath or before any tribunal, although the Valdez Gutiérrez Report indicates that the prosecutor working with the case in 1989 requested that he be summoned to testify. Nor was Investigator West able to find the witness when he attempted to do so in October of 1991.

61. The Commission notes various inconsistencies in the descriptions provided by the other witness, Carlos Astún Asturias. According to the information in the record before the

Commission, Carlos Astún Asturias provided several descriptions of Sister Ortiz and the clothing she was wearing on November 2 which varied in the details.[FN34] However, Mr. Astún Asturias does not mention in any of the descriptions that Sister Ortiz was wearing a blue sweatshirt. According to Sister Ortiz's statements, she was wearing a bright blue sweatshirt when she was kidnapped. According to the West Report, the employees of Hayter Travel Agency confirmed that she was wearing a sweatshirt when she appeared at their offices after escaping detention. Thus, the description provided by Mr. Astún Asturias does not coincide with the clothing that Sister Ortiz was wearing when she was kidnapped and when she reappeared.

[FN34] See, e.g., "La Policía descarta secuestro en caso de monja", Nacional, November 13, 1989; "Reconstruyeron supuesta huida de monja, en Antigua", Prensa Libre, December 13, 1989.

62. The description provided by Mr. Astún Asturias does coincide with the description provided by Sister Darleen Chmielewski to the National Police immediately after Sister Ortiz's disappearance.[FN35] In Sister Chmielewski's description, there is no mention of a sweatshirt, presumably because Sister Chmielewski did not know that Sister Ortiz had put on a sweatshirt after she was last seen by Sister Chmielewski. The National Police first obtained a statement from Mr. Astún Asturias before Sister Ortiz reappeared, on the same day that Sister Chmielewski provided a description of Sister Ortiz to the Police, including the clothes she believed Sister Ortiz was wearing. The obvious inference is that Mr. Astún Asturias was briefed by the Police before making his statement.

[FN35] November 2, 1989 Letter from the National Police to the Justice of the Peace.

63. Also, the National Police reported to the Guatemalan press that Astún Asturias had described Sister Ortiz as wearing a canvas vest ("chaleco de lona").[FN36] There is no indication in any other description that Sister Ortiz was wearing such a vest on the day of her kidnapping. The description provided to the Police by Sister Chmielewski indicated that Sister Ortiz was using a wool shawl ("chal de lana").[FN37] Again, the testimony of Mr. Astún Asturias, when reviewed in Spanish, more closely coincides with the description of Sister Ortiz in possession of the Police than with the actual clothing that Sister Ortiz was wearing. The Commission finds that the statements of Mr. Astún Asturias were formed by the description given by Sister Chmielewski to the Police rather than by the memory of an event that he witnessed.

[FN36] "La Policía descarta secuestro en caso de monja," Nacional, November 13, 1989.

[FN37] November 2, 1989 Letter from the National Police to the Justice of the Peace.

64. In addition, according to the Valdez Gutiérrez Report, Mr. Astún Asturias was summoned to testify in 1989 but did not appear. The Police were not able to locate the witness. According to the West Report, various persons indicated that Mr. Astún Asturias was a

vagabond. Investigator West was not able to locate Mr. Astún Asturias to interview him when he sought to do so in October, 1991. In its February 15 Response, the Government indicated that Astún Asturias did appear for a judicial reconstruction proceeding on April 8, 1992. However, the record of that proceeding has not been produced before the Commission.[FN38]

[FN38] The Commission requested, in its October 23, 1995 communication, a copy of any testimony provided by Mr. Astún Asturias. The Government has failed to provide that information.

65. To support its argument that the facts of the kidnapping and torture are not proven, the Government argues in its February 15 Response that Sister Ortiz's statements demonstrate that there was no violence or use of force in the alleged kidnapping. The Government thus questions the fact that certain personal effects were later found in the garden. In the Guatemalan press, the Government suggested that the items which were later found were intentionally placed in the garden to provide greater realism to the story of the kidnapping.[FN39] In its May 15, 1995 Report, the Government repeats its argument that Sister Ortiz's statements lead to the conclusion that there was no violence or use of force in the alleged kidnapping. Presumably, the Government suggests that no kidnapping occurred, because Sister Ortiz was not forcibly removed from the Posada de Belen.

[FN39] See "La Policía descarta secuestro en caso de monja," Nacional, November 13, 1989.

66. Sister Ortiz indicated in the statement quoted by the Government that her captors showed her a pistol and threatened that they would harm her friends if she did not follow them. The Commission finds that a kidnapping occurred, whether or not physical contact and violence was actually used, because Sister Ortiz was removed from the Posada de Belen against her will under threats of violence to herself and others. In any case, the statements quoted by the Government indicate that actual physical force was used in the kidnapping. Sister Ortiz explained that the first man, that she had seen on the street in Guatemala, grabbed her by the arm. When this man insisted that Sister Ortiz follow the two captors, she refused and tried to get away. Then, Sister Ortiz was shown the pistol and stopped struggling.

67. Newspaper reports and the West Report indicate that the nuns at Posada de Belen found the shawl that Sister Ortiz had been wearing, described by Sister Chmielewski to the National Police, some hours after Sister Ortiz's disappearance.[FN40] Reporters from Prensa Libre later found a watch in the garden.[FN41] The Bible Sister Ortiz had been carrying was also later found in the garden.[FN42] The physical struggle between Sister Ortiz and her captor would have been sufficient to dislodge the watch from Sister Ortiz's arm. It is also consistent with Sister Ortiz's statement about the kidnapping that the shawl and the Bible would have been left behind when she was led out of the garden. The Government maintains that a ring was also found by reporters from Prensa Libre. The Commission possesses no information to corroborate the

assertion that a ring was found. The article published in Prensa Libre which reports the discovery of the watch by a reporter does not make mention of a ring.[FN43]

[FN40] See "Liberaron a Religiosa," Prensa Libre, November 4, 1989; West Report.

[FN41] See "Liberaron a Religiosa," Prensa Libre, November 4, 1989.

[FN42] See West Report.

[FN43] "Liberaron a Religiosa," Prensa Libre, November 4, 1989.

b. The Commission's finding that Government Agents were responsible for the underlying violations

68. The Commission finds that the acts carried out against Sister Dianna Ortiz were committed by agents of the Government of Guatemala acting under color of their official capacity. This conclusion is based on the evidence in the record which indicates that a uniformed policeman participated in the acts against Sister Ortiz, and that she was detained in a Guatemalan military installation. In addition, the evidence shows that, before she was kidnapped, Sister Ortiz was subjected to surveillance of a nature which could only have been carried out by the Guatemalan Government. Finally, the kidnapping and torture of Sister Ortiz corresponds to a pattern of activity by the Guatemalan Government in violation of human rights.

69. Sister Ortiz's credible statements indicate that she was taken to the detention center in a police car driven by a uniformed policeman who also took part in Sister Ortiz's torture. Sister Ortiz was able to recognize the type of car in which she was driven to her place of detention in a judicial recognition proceeding.[FN44] Sister Ortiz was also able to recognize the place of her detention and torture in a judicial recognition proceeding. Sister Ortiz recognized the Antigua Escuela Politécnica, a military installation in Guatemala City, as the place where she was detained and tortured.[FN45]

[FN44] Judicial Recognition Proceeding of March 23, 1993.

[FN45] Judicial Recognition Proceeding of January 26, 1994.

70. The Government has contested Sister Ortiz's claim that agents of the National Police took part in the crimes against Sister Ortiz. The Commission finds unconvincing the evidence offered by the Government to support its argument.

71. First, in its February 15 Response and May 15 Report, the Government claims that there exists no National Police patrol car with the number described by Sister Ortiz in her statements. The Government asserts that Sister Ortiz stated that she observed that the number on the patrol car in which she was driven contained a number "7" in the middle. The Government has pointed to reports from the National Police which indicate that there exist no patrol cars in Guatemala with a number "7" in the middle of the three numbers normally found on patrol cars. This contradiction would tend to disprove, although it alone would not be sufficient, Sister Ortiz's

allegation that she was driven in a National Police patrol car to the center where she was detained. However, the contradiction pointed out by the Government is not clearly present.

72. In translations to Spanish of statements made by Sister Ortiz in several proceedings before the court in Guatemala, Sister Ortiz is quoted as having stated that the number "7" was in the middle of the numbers on the patrol car in which she was driven.[FN46] However, in other statements from the same time period made by Sister Ortiz in English, she simply indicated that among the numbers on the patrol car was included the number "7".[FN47] This confusion among the statements made by Sister Ortiz may have resulted from translation difficulties which occurred when Sister Ortiz made her statements to the court in Guatemala in English. Although Sister Ortiz has a Spanish surname, her Spanish is poor as it is not her first language. In a statement to the court in Guatemala on March 25, 1995, Sister Ortiz clarified that she could not indicate what position the number "7" occupied among the numbers on the patrol car.[FN48] The Commission notes that some patrol cars in Guatemala City and the surrounding areas do have the number "7" among the three numbers.

[FN46] See Declaration of Sister Ortiz of April 7, 1992; Judicial Recognition Proceeding of March 23, 1993.

[FN47] See Statement of Sister Ortiz of June 10, 1992 (submitted in the United States civil proceedings against General Gramajo).

[FN48] See Questioning Proceeding of March 25, 1995.

73. Second, the Government also seeks to show that National Police agents were not involved in the kidnapping and torture of Sister Ortiz by referring to a National Police report which indicates that no patrol cars were directed to cover the route from Antigua, Guatemala to Guatemala City on the day of the kidnapping.[FN49] Sister Ortiz has alleged and the Commission has found that Sister Ortiz was kidnapped and tortured. The Commission finds that it would be extremely unlikely for the National Police to formally schedule a patrol car to kidnap Sister Ortiz and to record that information in official logs.

[FN49] According to the Government, this report was dated July 8, 1991 and was prepared by the administration of the National Police Department for Sacatepéquez. However, the Government has not provided the Commission with a copy of that report despite the Commission's request for all police reports prepared in relation to the case.

74. The Government has also argued that Sister Ortiz has failed to support her claim that she was detained in the Antigua Escuela Politécnica by pointing out that Sister Ortiz was unable to complete the judicial recognition at the Escuela Politécnica. The court document reflecting the judicial recognition proceedings indicates that Sister Ortiz could not continue the proceedings, because she suffered a nervous attack immediately upon entering the building and recognizing it as her place of detention.[FN50] Her reaction supports a finding that her recognition of the place of her detention was credible. Sister Ortiz's recognition is further supported by the fact that she

had previously recognized the outside of the Escuela Politécnica as the possible place of her detention in another judicial recognition proceeding.[FN51]

[FN50] Id.

[FN51] Document Reflecting Judicial Recognition Proceeding of March 24, 1993.

75. The Government has noted that the judge in charge of the proceeding, Judge Lam Nakakawa de Rojas, was not able to locate any places of clandestine detention in the building. Judge Lam Nakakawa's inability to locate the place of detention within the Escuela Politécnica does not constitute adequate proof that the Escuela Politécnica was not the site of Sister Ortiz's detention. The document reflecting the proceeding specifically indicates that the judge only viewed the rooms which were in use, not all parts of the building.[FN52]

[FN52] Id.

76. The Commission's finding that State agents were responsible for the acts committed against Sister Ortiz is also supported by evidence in the record which indicates that, before the kidnapping, Sister Ortiz was held under strict surveillance for a significant period of time. Agents of the security forces of Guatemala would be most likely to have the means required to conduct such extensive surveillance.

77. Sister Ortiz received threat letters in various parts of the country where she spent time. She received one written death threat only days after she returned to Guatemala from the United States in September of 1989. That fact demonstrates that those following and threatening Sister Ortiz must have known of her reentry into Guatemala almost immediately. In addition, Sister Ortiz indicated in her statements that, during her interrogation and torture, she was shown pictures of herself in different parts of the country. The first photograph was taken within weeks of her first arrival in Guatemala in September of 1987. One of the pictures was of Sister Ortiz and her companions at the retreat center in Antigua taken a few days before she was kidnapped. The involvement of Government security forces is also supported by Sister Ortiz's statements which indicate that the Guatemalan military had been present in several of the towns where the pictures were taken. Those statements are uncontradicted by the Government.

78. The fact that Sister Ortiz's captors showed her surveillance photos during her interrogation demonstrates the connection between Sister Ortiz's captors and the systematic surveillance and threats to which she was exposed. Evidence of this connection is also found in Sister Ortiz's statements regarding the conversation she had with "Alejandro," the man who led Sister Ortiz out of the detention center. "Alejandro" acknowledged her captors' connection to the threatening letters by suggesting that they had tried to warn her and that she should have taken the threats more seriously.

79. Further evidence of State involvement is found in the fact that the attacks on Sister Ortiz conform to a pattern of repressive treatment by the Government. In the inter-American system for human rights, Government participation in abuses against a victim can be proven by showing that the Government carried out, or at least tolerated, a practice which violates human rights, so long as the victim's case can be linked to the Government practice.[FN53]

[FN53] See I/A Court H.R. Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 126. Series C No. 4.

80. The Government has engaged in a pattern of repression of representatives of the Church and others working on behalf of the poor and indigenous.[FN54] Phillip Berryman, an expert on the history of the Church in Central America, has concluded that the military in Guatemala believes that the Church is to be blamed for dissent or opposition. His view is supported by a publication of the Army Public Relations Office which states that "some religious activists -- both from catholic as well as protestant churches -- preached to the peasants so that these, with new ideas and religious principles backed by the authority of the preachers, would reject the bases of a democratic system." [FN55] The Commission has noted that rural indigenous groups and those who work with them are also often unjustly treated by the Government as enemies of the Government or as accomplices of the armed subversive movement.[FN56]

[FN54] See 1991 Annual Report of the Inter-American Commission on Human Rights at 221, OEA/Ser.L/V/II.81/Doc. 6 rev. 1, February 14, 1992 (hereinafter "1991 Annual Report"); Statement of Phillip Berryman at 7; Statement of Allan Nairn at 21-23.

[FN55] Self-Defense Civil Patrols: People's Response to a Socio-Economical-Political Integration Process in Guatemala Today, Army Public Relations Office, Guatemala, May 1984.

[FN56] See Inter-American Commission on Human Rights Fourth Report on the Situation of Human Rights in Guatemala at 36-38, OEA/Ser.L/V/II.83, Doc. 16 rev., June 1, 1993 (hereinafter "Fourth Report").

81. Dianna Ortiz was present in Guatemala as a representative of the church who worked with poor indigenous persons in Huehuetenango. The evidence indicates that Dianna Ortiz was attacked at least partly as a result of her work and involvement. According to her statements, when she was accosted on the street in Guatemala, the attacker told Sister Ortiz that they knew who she was and that she was working in Huehuetenango. This same man later kidnapped her with the assistance of other persons.

82. In addition, Sister Ortiz was accosted for the first time on the streets of Guatemala after she was seen speaking with persons who were participating in a teacher's strike in Guatemala City. During that same period of time, Sister Ortiz was attending a language school which combined Spanish instruction with a live-in experience with a Guatemalan family. She stayed with a family, that of Rosa Pu and Miguel Pajarito, whose members belonged to the Grupo de

Apoyo Mutuo ("GAM"). According to Sister Ortiz's statements, Miguel Pajarito was subsequently "disappeared," his whereabouts unknown since he was abducted in 1990.

83. The Commission and other experts have noted the pattern of violence by the Government of Guatemala against teachers and human rights groups, including GAM.[FN57] It can be inferred from the facts of this case and the patterns of violence in Guatemala that Sister Ortiz was attacked by elements of the Government who associated her with groups and persons whom it wished to control and intimidate.

[FN57] See 1990-1991 Annual Report of the Inter-American Commission on Human Rights at 449, OEA/Ser.L/V/II.79, Doc. 12 rev. 1, February 22, 1991; 1991 Annual Report at 210, OEA/Ser.L/V/II.81/Doc. 6 rev. 1, February 14, 1992; Fourth Report at 44, 46, 92-94; Statement of Allan Nairn at 16-17; Statement of Anne Manuel, Associate Director of Human Rights Watch at 19.

84. Finally, according to expert testimony in the record before the Commission, the manner in which Sister Ortiz was held under surveillance and then kidnapped and tortured corresponded to methods used by the Government during the time when the crimes against Dianna Ortiz were committed. A statement in the record by Allan Nairn, an expert on army and security forces and problems of human rights abuses in Guatemala, indicates that it was typical for Guatemalan military intelligence forces to send written threats and conduct photo surveillance during the time in which Sister Ortiz was subjected to these activities.[FN58] Nairn also indicates that it was common practice for Guatemalan intelligence, the G-2 forces, to use members of the police force to capture and torture their victims.[FN59]

[FN58] See Nairn Statement at 21.

[FN59] See id.

c. The Commission's findings regarding the domestic judicial proceedings

85. The Government does not dispute that the judicial proceeding in Dianna Ortiz's domestic case remains in the original investigative phase and that no suspect has ever been arrested or charged. The Government has argued, in its February 15 Response, May 15 Report and March 27 Report, as well as in the Guatemalan press, that the lack of progress in the domestic proceedings is due to Sister Ortiz's failure to lend her cooperation to the investigation of the case. As described in the above section on admissibility, Sister Ortiz has engaged in numerous efforts to assist in the investigation of the case, within the judicial proceedings and in addition to them. Nor has the Government ever explained what information it required which was unavailable because of Sister Ortiz's alleged failure to cooperate.

86. In its March 27 Report, the Guatemalan Government stated that Dianna Ortiz "has not returned to Guatemala" to offer proof in the process. In fact, Sister Ortiz has visited Guatemala

on four different occasions to take part in court proceedings and investigative efforts. She has provided testimony to the Guatemalan courts, participated in judicial recognition proceedings and provided detailed descriptions of those she accuses of the crimes against her for the elaboration of electronic sketches.

87. In its February 15 Response, the Government offered several factual assertions to support its claim that Sister Ortiz had failed to offer her cooperation. First, the Government indicated that Sister Ortiz presented her declaration in the case only two years and five months after she was attacked. The Government refers to the statement made by Sister Ortiz to the Criminal Court of First Instance for Instruction in Guatemala City on April 7, 1992.

88. The Government is incorrect in asserting that the April 7, 1992 statement was the first statement made by Sister Ortiz. Articles which appeared in the Guatemalan newspapers demonstrate that Guatemalan Government officials had a statement from Sister Ortiz in their possession within days after her reappearance. Sister Ortiz also provided an official statement to the Guatemalan courts as soon as she received a request to do so through the letters rogatory issued in the United States in February of 1991.[FN60]

[FN60] See Response to Letters Rogatory from Ambassador of Guatemala Certified by the United States District Court for the Western District of Kentucky on May 1, 1991 (including testimony of Sister Ortiz dated January 31 and March 18, 1991 and other documents.)

89. The judge of the court with jurisdiction over the case and the Special Prosecutor assigned to the case later asserted that Sister Ortiz's response to the letters rogatory was not a valid declaration before the courts of Guatemala for jurisdictional reasons.[FN61] Yet, the letters rogatory were issued by the Supreme Court of Guatemala. Presumably, they would not have been issued if the response was to have no effect in the Guatemalan courts. In any case, whether Sister Ortiz's statement was formally valid or not, it was available to Guatemalan officials and could have been used to begin or advance investigations in the case.

[FN61] "Secaira: Reconocimiento legal en la posada Belén", Siglo Veintiuno, April 8, 1992; Announcements Published by Fernando Linares Beltranena, February 20, 1992, March 1, 1992, April 7, 1992.

90. The Government also noted in its February 15 Response that, when Sister Ortiz gave her declaration on April 8, 1992, she referred to the original statement that she made from the United States and so did not provide a spontaneous statement. The Government cites the court document reflecting the proceeding to make this comment. However, the Government fails to cite that part of the document in which Special Prosecutor Linares indicates that Sister Ortiz acted fully within her rights in referring to her previous statement.[FN62] The Government cites no provision of Guatemalan law which would prevent Sister Ortiz from referring to the document and there is no indication that Sister Ortiz was ever told that she could not do so.

[FN62] See Declaration of the Victim, April 7, 1992 at 22.

91. The Government asserts in the February 15 Response that Sister Ortiz failed to participate in the judicial recognition proceedings which took place in the Posada de Belen and in the Antigua Escuela Politécnica. The Government notes that the proceedings were not carried out, because Sister Ortiz "fainted and became indisposed." The Commission finds that the Guatemalan investigatory technique of judicial recognition is a very difficult proceeding for a victim who claims to have been kidnapped, tortured and raped. Sister Ortiz's actions, rather than demonstrating a lack of cooperation on her part, show her willingness to overcome her personal fear and discomfort in order to fully cooperate in the investigation of her case.

92. Next, the Government states that there exists no medical certification relating to Sister Ortiz's injuries and burns in the record in the domestic case. This statement by the Government is contradicted by the Valdez Gutiérrez Report. That Report indicates that the record in the domestic case contains the medical examination certificates of both Dr. David Alcare and Dr. Gutiérrez, both indicating that Sister Ortiz had suffered injuries. The letter from Dr. Gutierrez was sent with Sister Ortiz's response to the letters rogatory in the first part of 1991. Sister Ortiz did fail to follow through with an examination scheduled to take place in Guatemala on March 23, 1993. However, this fact does not lessen the probative force of the prior medical examinations which took place more contemporaneously to the injuries in question.

93. Finally, the Government asserts in its February 15 Response that Sister Ortiz failed to cooperate when the prosecutor presented ten cross-examination questions related to her statement to the court. The Government does not make clear during which proceeding this alleged failure to cooperate occurred nor does it provide any document or other evidence to support its contention.

94. Petitioner Ortiz has indicated that, after she provided her testimony on April 7, 1992, Special Prosecutor Linares asked a series of irrelevant and demeaning questions. Sister Ortiz refused to subject herself to the personal attacks. On March 25, 1993, Sister Ortiz took part in a judicial questioning proceeding before the court in which questions were offered by the prosecutor's office. Sister Ortiz refused to answer some of the questions. The prosecutors sought to have Sister Ortiz answer questions about the color of ink on the threat letters she received and similar items which could not contribute to the clarification of the facts of the case. Some of the questions asked Sister Ortiz for information which she had already provided in her written and oral statements to the court. The Commission, having before it the document reflecting the questions asked and the responses, finds that the questions were harassing and repetitive.[FN63] Sister Ortiz's response did not demonstrate a lack of cooperation on her part.

[FN63] See Questioning Proceeding of March 25, 1993.

95. The Commission finds that the responsibility for the lack of progress in the resolution of Sister Ortiz's domestic case lies with the Government rather than with Sister Ortiz. Although various judicial and investigative proceedings were conducted in relation to Sister Ortiz's case, the Government has failed to conduct investigations which would serve effectively to clarify the facts of the case. There is no indication in the record that the Guatemalan military has ever investigated the accusations against it and other security forces of the Government. In its Report of May 15, 1995, the Government indicated that the Special Investigation Group of the National Police assigned to the case had never submitted a report to the courts.[FN64]

[FN64] According to information submitted by the Government, the members of the Special Investigation Group were to testify on May 16, 1995. The Commission requested a copy of this testimony in its October 23, 1995 communication, but the Government has failed to provide that information.

96. There is no evidence in the record that the military and the National Police conducted the basic investigations which would be appropriate in this case. For example, there is no evidence of an investigation of the accusation that a clandestine detention center existed within a military installation in Guatemala City or of any inquiry into which military units were in the areas where pictures were taken of Sister Ortiz during times of military presence. The court with jurisdiction over the case sent out a request to the various branches of the security forces of Guatemala to list any North Americans that had worked with those agencies. But, there is no indication that either the military or the National Police conducted an independent investigation to determine whether a North American matching the description of "Alejandro" worked with Guatemalan security forces either covertly or overtly. Once the National Police indicated that no patrol cars contained a number "7" in the middle of the patrol car number, the Police never conducted further investigations, such as interviews with police officers assigned to patrol cars with the number "7" in any position in the patrol car number.

97. The Attorney General for Guatemala, Ramsés Cuestas Gómez, has confirmed the failure of the Guatemalan security forces to conduct proper investigations. In a sworn statement by Dianna Ortiz, she recounts statements made by Ramsés Cuestas in a meeting that she had with him.[FN65] The Attorney General indicated that the case had not progressed because the Guatemalan military did not have the political will to carry out a complete investigation to determine whether military personnel were involved in the incident. He also indicated it had been difficult to gain access to military installations and to conduct investigations into the actions of military personnel. The Attorney General noted that the judge in charge of the case had requested information from the military without success.

[FN65] Supplemental Sworn Statement of January 4, 1995.

98. The Office of the Ombudsman for Human Rights conducted some investigation into the case. However, according to Sister Ortiz's statements at the February 3, 1995 hearing before the

Commission, she has been told that her file at the Office of the Ombudsman has been lost or was taken by President Ramiro de Leon Carpio when he left that office and assumed the Presidency of Guatemala.

99. The Commission notes that the domestic judicial proceedings in the case have been handled by six different judges--two judges in Antigua, Guatemala, and four judges in Guatemala City. The Valdez Gutiérrez Report and the report of another prosecutor, Luis Fernando Mérida, indicate that at least four different prosecutors have worked on the case.[FN66]

[FN66] In its October 23, 1995 communication, the Commission asked the Government to provide specific information about the various prosecutors that had worked with the case, but the Government has failed to provide that information.

100. The Commission also finds that Special Prosecutor Linares failed to perform adequately his duties as an impartial prosecutor.[FN67] Although it was claimed that his appointment, with the assistance of Investigator West, would accelerate the investigation and resolution of the case, that result was not achieved. Linares did not receive proper authority to take the necessary actions in the case until February 2, 1992, six months after his appointment.

[FN67] In its October 23, 1995 communication, the Commission asked the Government to provide a copy of the report prepared by Special Prosecutor Linares. The Government has failed to provide that information.

101. The actions of the prosecutor were aimed at discrediting Sister Ortiz rather than moving the case forward. The lack of interest of Special Prosecutor Linares in fulfilling his duties to impartially investigate and prosecute the case is shown by a statement he made to the press on April 3, 1992. Linares declared that Sister Ortiz "must prove the veracity of the alleged threats, kidnapping, rape and torture, and not allow her attorney . . . to make a political question out of a case which should be strictly judicial." [FN68] Through his actions and statements such as these, Linares transferred the burden of pursuing and proving the case from the Government to Sister Ortiz. At the same time, he insinuated that her pursuit of the case might be motivated by a political agenda.

[FN68] "Monja Dianna Ortiz declarará en juzgado el próximo martes," Siglo Veintiuno, April 3, 1992.

102. On three different occasions, Special Prosecutor Linares published in the Guatemalan newspapers declarations indicating that Sister Ortiz had not participated in the investigation of the case and had not made a statement before the tribunals of Guatemala. These declarations

were published on March 1, 1992, on February 20, 1992, and on April 8, 1992 (the same day that Sister Ortiz gave her statement to the court). By the time these declarations were published, Sister Ortiz had already provided a formal statement to the courts of Guatemala by means of her response to letters rogatory.

103. Special Prosecutor Linares also announced in his published statements that Sister Ortiz had not allowed Investigator West to interview her in the United States, although Sister Ortiz had actually invited both Linares and West to interview her in the United States. No such interview ever took place as a result of the unwillingness of the prosecutor and the investigator to accept the invitation extended.[FN69]

[FN69] See December 19, 1991 Letter from Paul Soreff to Special Prosecutor Beltranena.

104. Special Prosecutor Linares repeatedly announced in interviews with the press that Sister Ortiz had failed to submit to a gynecological examination.[FN70] Linares' statements narrowly focused Sister Ortiz's case on the claim that she was raped, a sensitive and morally charged question, rather than on her overall case of kidnapping and torture which was well documented. Moreover, Linares continued to demand that Sister Ortiz undertake a gynecological examination years after the torture and rape were alleged to have occurred. An examination at that late date would have been futile if not harassment in and of itself.[FN71]

[FN70] See "American Nun Testifies to Abduction, Torture by Guatemalan Security Forces," Washington Post, April 8, 1992; "Monja Dianna Ortiz declarará en juzgado el próximo martes", Siglo Veintiuno, April 3, 1992; "Comenta la próxima visita de Diana Ortiz", Prensa Libre, April 5, 1992; Linares' Published Declarations of March 1, 1992, February 20, 1992, and April 8, 1992.

[FN71] The Commission also notes that the public statements made by Special Prosecutor Linares were prohibited by the Criminal Procedure of Guatemala which was applicable at the time. That Code provided that no government official or private person may expose "the reserve or the confidentiality of the investigative proceeding." See Guatemalan Code of Criminal Procedure, Art. 309. The Government of Guatemala has cited the confidentiality of the investigative proceeding as an argument in cases before this Commission.

105. Although both claimed to have investigated the case to the best of their abilities, neither Beltranena nor West arrived at any conclusions about the case. In 1993, Linares was appointed to the Guatemalan Congress and left his position as Special Prosecutor. The Government did not name a new Special Prosecutor. The other staff prosecutors who have worked on the case have also failed to achieve any progress.

2. Conclusions of Law

a. Article 5 - Right to Humane Treatment and the Inter-American Convention to Prevent and Punish Torture

106. Article 5(1) of the Convention states that all persons have the right to have their "physical, mental and moral integrity respected." Agents of the Government of Guatemala attacked Dianna Ortiz's physical, moral and mental integrity when they threatened her by letter and by personal confrontation, suggesting that she was going to be harmed and that she should leave the country.

107. Article 5(2) sets forth specifically that "(n)o one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person." The actions of Government agents in abducting, detaining and torturing Dianna Ortiz constitute blatant violations of Article 5(2) of the Convention.

108. The Commission also notes that the Government of Guatemala ratified the Inter-American Convention to Prevent and Punish Torture (the "Convention on Torture") on January 29, 1987. Article 2 of the Convention on Torture defines torture as:

any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

109. The inhumane treatment suffered by Sister Ortiz at the hands of agents of the Government falls within this definition of torture. Government agents inflicted physical and mental suffering upon Dianna Ortiz, presumably to punish and intimidate her as a result of her participation in certain activities and her association with certain persons and groups. The torture inflicted upon Dianna Ortiz also closely fits the description of methods used "to obliterate the personality of the victim." Sister Ortiz was kidnapped from a religious retreat, and taken from her life as a religious worker, to be hidden away in a detention center where she was tortured. Sister Ortiz has described the torture experience as the destruction of her personality and has explained how the mental and social effects of the torture have prevented her from engaging in daily activities and resuming a normal life.

b. Article 7 - Right to Personal Liberty

110. Article 7 of the American Convention provides that any deprivation of liberty must be carried out in accordance with preestablished law. Article 7(3) specifically provides that, "No one shall be subject to arbitrary arrest or imprisonment." Guatemalan Government agents violated Article 7 of the American Convention.

111. The Government has never admitted that Sister Ortiz was detained and held by Government agents. Sister Ortiz has identified the Antigua Escuela Politécnica, a military

installation, as the place where she was held. Yet, the Government has continued to deny that she was held at the Escuela Politécnica or that any detention center exists there. However, the Commission has previously found that agents of the Guatemalan Government have kidnapped persons and held them in clandestine detention centers located within military facilities even when they have denied such detention.[FN72] In the present case, the Commission finds that Sister Ortiz was detained in such a clandestine military detention center.

[FN72] See Case 10.508, Report No. 25/94, 1994 Annual Report of the Inter-American Commission on Human Rights at 51-55, OEA/Ser.L./V/II.88, Doc. 9 rev., February 17, 1995.

112. Because Government agents have consistently denied the fact of the detention or the existence of any clandestine detention center, the detention was necessarily carried out in secret and outside the boundaries of the law, in violation of Article 7. The Commission finds that the existence of clandestine detention centers in Guatemala presents a serious concern.

113. Detention in clandestine centers constitutes a particularly grave form of arbitrary deprivation of liberty. The activities of Government agents involved in such activities are completely beyond the bounds of the law and are incapable of being reviewed because of their secret nature. The Government agents involved in such cases must deny that any kidnapping occurred or that any secret place of detention exists to protect themselves and to maintain the secrecy of the detention center. The victim will generally have learned little about her place of detention or her captors and generally will not be able to identify them. Not only is it impossible for the victim to exercise legal rights while being detained, but also it is extremely difficult to challenge the detention afterwards even if the victim is released alive.

114. When a victim is kidnapped by public agents, the state also infringes the victim's right to be taken without delay before a judge and to invoke the appropriate procedures to review the legality of the arrest, all in violation of Article 7.[FN73]

[FN73] See Velásquez Rodríguez Case, Sentence of July 29, 1988, *supra*, par. 155.

c. Article 11 - Right to Privacy

115. Article 11(1) of the American Convention states that, "(e)veryone has the right to have his honor respected and his dignity recognized." Article 11(2) provides that, "(n)o one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation."

116. Government agents made Sister Ortiz the object of arbitrary and abusive interference, in violation of Article 11(2), when she was placed under surveillance and was sent threatening letters wherever she travelled in Guatemala. Government agents attacked Sister Ortiz's honor and dignity in violation of Article 11(1), when they violently abducted and tortured her.

117. High Government officials further violated Article 11(1) when they engaged in repeated unwarranted attacks on Dianna Ortiz's honor and reputation, declaring that her accusations against the Government were fabricated, that she had staged her own kidnapping and that she was working with groups who wished to embarrass the country of Guatemala. Particularly serious, are statements by Government officials that Sister Ortiz had received her injuries as the result of a romantic, possibly lesbian, encounter. The statements caused great harm to Sister Ortiz's honor and reputation, which were largely based on her work as a Catholic nun who had come to Guatemala to improve the lives of poor indigenous persons.

d. Articles 12 and 16 - Freedom of Conscience and Religion and Freedom of Association

118. Article 12 of the American Convention provides for the rights to freedom of conscience and freedom of religion. Article 16 of the Convention states that, "(e)veryone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes."

119. Government agents violated Articles 12 and 16. It is likely that the attacks against Sister Ortiz were intended to punish and suppress her religious activities as a Church missionary and her work with the indigenous people of Huehuetenango, as well as her association with members of GAM. In addition, because of the surveillance, threats, kidnapping, torture and rape which Sister Ortiz experienced, she returned to the United States to escape her captors and the violence against her in Guatemala and has been unable to return because of her fear. As a result, she has been denied her right to exercise her right to freedom of conscience and religion by working as a foreign missionary in Guatemala for the Catholic Church. She has also been denied her right to associate with the people of Huehuetenango, the Church in Guatemala and the GAM.

e. Articles 8 and 25 - Right to a Fair Trial and Right to Judicial Protection

120. Articles 8 and 25 of the American Convention provide individuals with the right to access to tribunals, the right to pursue and be heard in judicial proceedings and the right to a decision by the appropriate legal authority. Article 25(1) of the American Convention sets forth that:

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.

Article 8(1) of the American Convention provides that every person has the right to be heard "with due guarantees" by a competent and independent tribunal. Article 25(2) requires governments to ensure that any person pursuing legal recourse "shall have his rights determined by the competent authority."

121. In the instant case, the Government of Guatemala has failed to honor its obligation to provide simple, swift and effective legal recourse to Sister Ortiz. Sister Ortiz's attempts to be heard by competent and impartial tribunals in Guatemala and to obtain a resolution of her case in those courts have been consistently blocked and have been punished by repeated and unjust

criticisms of Sister Ortiz. Rather than properly investigating and pursuing the claims brought before the appropriate tribunals in Guatemala by Dianna Ortiz, the Government has attempted to place the burden on Sister Ortiz to investigate and prove her allegations against Government agents and has blamed Sister Ortiz for the lack of results in her case.

122. More than six years after Sister Ortiz was kidnapped and tortured, her criminal case in the domestic courts of Guatemala has not succeeded in bringing to justice the individuals responsible for the attacks against her. Despite the fact that absolutely no resolution of the domestic judicial proceeding has been obtained and no results have been achieved, the Government suggested in its February 15 Response that it may seek to close the case. Such action would definitively preclude any possibility for Sister Ortiz to obtain a resolution of her case in the domestic system.

f. Article 1(1) - Obligation to Respect Rights

123. The violations at issue in the instant case demonstrate that the State of Guatemala has failed to uphold the undertaking set forth in 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."

124. The first obligation of any State party to the American Convention is to respect the rights and freedoms set forth therein.

Whenever a State organ, official or public entity violates . . . rights (named in the Convention), this constitutes a failure of the duty to respect the rights and freedoms set forth in the Convention . . . the State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even if they are acting outside the sphere of their authority or in violation of internal law."[FN74]

[FN74] Velásquez Rodríguez, *supra*, pars. 166, 170.

125. In the instant case, agents of the Government, under color of their official authority, engaged in surveillance and threats against Sister Ortiz. Government agents, including a uniformed policeman, then kidnapped Sister Ortiz, took her to a detention center in a military installation and tortured her. These actions constitute clear violations of the American Convention imputable to the Government of Guatemala. Additional state agents engaged in violations refusing to adequately investigate and prosecute the crimes. The Government of Guatemala is thus responsible for a violation of Article 1(1) of the American Convention.

126. The second obligation of the State is to "guarantee" the free and full exercise of the rights recognized by the Convention. The Commission reiterates 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 ensuring 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 of human rights.[FN75]

[FN75] Id.

127. The Government has not fulfilled its obligations to guarantee Sister Ortiz's human rights. The structures of public power and government in Guatemala in the 1980s permitted the attacks against Sister Ortiz to occur. Since that time, the authorities have continually denied that Sister Ortiz was threatened, followed, kidnapped, detained and tortured and have denied that agents of the Guatemalan Government played a role in any attacks which did occur. The State has failed to adequately investigate the crimes against her, has failed to advance the judicial proceedings so as to hold those responsible accountable for their crimes and has failed to provide any compensation to Sister Ortiz. The ultimate result of the Government's investigations and judicial proceedings has been the denial of justice to Dianna Ortiz and impunity for the perpetrators.

128. The Government's violations of Article 1(1) have been particularly severe in the instant case. In relation to Article 1(1), the Inter-American Court of Human Rights has made clear that the duty to investigate:

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.[FN76]

[FN76] Id. at par. 177.

129. The Government has not complied with these requirements of the Court. Soon after Sister Ortiz reappeared, it became clear that the Government had determined that it would deny the facts alleged by Sister Ortiz and deny Government involvement. Later investigative efforts, when taken, were directed towards supporting those denials. The Government never provided any indication that it would carry out an effective investigation.

130. The Special Prosecutor assigned to the case failed to conduct an impartial and objective investigation. Instead, he blamed Sister Ortiz for the lack of progress in the case. The Special Prosecutor also sought to focus attention away from the Government's duty to investigate the crimes against Sister Ortiz by focusing on her claim that she was raped. The Government's attacks on the victim and the proof she has offered, through the Special Prosecutor, do not relieve the Government of its responsibility to pursue the case as a whole, because the duty to investigate is irrenounceable and nondelegable.

131. The Government, through various officials, has repeatedly claimed that Sister Ortiz has failed to cooperate in the proceedings as a means of deflecting attention away from its failure to properly investigate Dianna Ortiz's case and to achieve justice. This argument of the Government must fail for two reasons. First, the Commission's findings of fact demonstrate that the accusations against Sister Ortiz are entirely unfounded. Second, as the Court made clear in *Velásquez Rodríguez*, the responsibility to investigate human rights violations and carry out an effective judicial process against those who violate human rights lies firmly with the state.[FN77] The State of Guatemala continues to bear the obligation to investigate and fully clarify the circumstances of the kidnapping and torture of Sister Ortiz and to submit to prosecution the individuals responsible without reference to the participation and cooperation of the victim.

[FN77] See *id.*

III. PROCEEDINGS AFTER COMMISSION ADOPTION OF THE ARTICLE 50 REPORT

132. Pursuant to Article 50 of the Convention, the Commission during its 91^o Regular Session, approved Report 9/96 concerning the present case. That report and the recommendations contained therein were transmitted to the Government of Guatemala by communication of April 11, 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. The Article 50 report included the decision of the Commission to the effect that the case would be presented to the Inter-American Court on Human Rights if the Government did not put into practice the recommendations of the Commission within the 60-day period.

133. On May 31, 1996, the Government directed a letter to the Commission asking that the processing of this case be suspended. On June 3, 1996, the Government sent a further note clarifying its request. The Government specifically requested a two-month extension of time to respond to Report 9/96 and a suspension of the three-month period for submission of the case to the Court provided for in Article 51 of the Convention.

134. On June 10, 1996, the Commission decided to grant the two-month extension and to accept the request for suspension of the three-month period for submission to the Court. This decision was communicated in writing to the Government on June 14, 1996. In that note, the Commission made clear that the period for responding to the Article 50 report would expire on August 10, 1996.

135. On July 26, 1996, the Government directed a letter to the Commission requesting an additional 60-day extension of time to respond to the Commission's Article 50 report. The Government based this request on the fact that the prosecutor assigned to the case in the domestic arena had asked to interview Sister Dianna Ortiz in order to carry out further investigations in compliance with the recommendations of the Commission set forth in the Article 50 report.

136. On August 2, 1996, Sister Dianna Ortiz communicated to the Commission, through her attorney, that she would not agree to an oral interview with the prosecutor. The letter sent by Sister Ortiz's attorney stated that, "[t]he Government already has all the information that Sister Ortiz can provide about what happened to her in Guatemala on November 2, 1989. . . . However, if the Government legitimately has some new questions that are not answered by Sister Ortiz's prior testimony, the Government is welcome to submit such questions to Sister Ortiz in writing." Based on this decision by Sister Ortiz not to carry out an oral interview with the prosecutor, the Commission communicated to the Government on August 6, 1996 that it considered that the grant of an extension of time to the Government was not necessary.

137. The Government never responded to Article 50 Report 9/96 and thus failed to demonstrate compliance with the recommendations of the Commission. Accordingly, the task of the Commission was to decide how to proceed with the case, on the basis of the "alternative that would be most favorable for the protection of the rights established in the Convention." [FN78]

[FN78] Advisory Opinion OC-13/93 of July 16, 1993, Certain Attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 46, 47, 50 and 51 of the American Convention on Human Rights), par. 50.

138. Sister Dianna Ortiz, through her attorney, communicated to the Commission, by note of August 27, 1996, her wishes that this case not be presented to the Court. Later, Dianna Ortiz signed a letter confirming that the statements made by her lawyer had been authorized by her and that they accurately represented her decision. Specifically, the August 27 letter stated that:

Sister Ortiz wants, as she has always wanted, the Government of Guatemala to be held responsible and accountable for the human rights abuses which it has inflicted on her. On the other hand, the effort to obtain such justice has taken, and continues to take, an enormous personal toll on Sister Ortiz. As Sister Ortiz has previously explained . . . , for Sister Ortiz to testify about her abduction and torture is a tremendously painful--even terrifying--ordeal for her. There have been occasions when Sister Ortiz has felt that her emotional and psychological wounds have finally begun to heal, only to have that sense of healing destroyed by the renewed trauma of reliving her abduction and torture during the course of giving testimony.

The letter indicated that, for these reasons, Sister Ortiz had decided that she did not wish the case to be sent to the Court.

139. Pursuant to the Convention, the decision of the Commission to submit a case to the jurisdiction of the Court belongs exclusively to the Commission.[FN79] The Commission decided on September 6, 1996 that the alternative most favorable for the protection of human rights would be not to send this case to the Court. The Commission reached this decision, not on the grounds that the case did not merit presentation to the Court, but rather on the basis of an analysis of the request of the victim Sister Dianna Ortiz, the consequences for her of sending the case to the Court and the special circumstances of the case. The Commission decided instead to

continue to examine the matter and to prepare this Article 51 report for transmittal to the Government with a view to publication if the Government again fails to demonstrate compliance with the recommendations of the Commission.

[FN79] See Convention, Art. 61; see also Convention, Art. 57.

Based on the foregoing,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

CONCLUDES:

140. In light of the information and observations provided above, that the State of Guatemala is responsible for violations of the human rights of Dianna Ortiz to humane treatment, personal liberty, a fair trial, privacy, freedom of conscience and religion, freedom of association and judicial protection, all protected in Articles 5, 7, 8, 11, 12, 16 and 25 of the American Convention, and has failed to uphold its obligation established in Article 1.

RECOMMENDS:

141. The Commission recommends to the State of Guatemala that it:

- a. Undertake a prompt, impartial and effective investigation of the facts denounced so that the circumstances of and the responsibility for the violations found may be fully detailed in an officially sanctioned account of the crimes committed against Sister Ortiz.
- b. Undertake the measures to submit the individuals responsible for the violations in the instant case to the appropriate judicial processes.
- c. Redress the consequences of the violation of the rights enunciated, including the payment of an adequate and fair compensation for the harm caused to Sister Ortiz.

142. 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.