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Title/Style of Cause:	Ana Lucrecia Orellana Stormont v. Guatemala
Doc. Type:	Report
Decided by:	Chairman: Professor Claudio Grossman; First Vice Chairman: Ambassador John S. Donaldson; Second Vice Chairman: Professor Carlos Ayala Corao; Members: Dr. Oscar Lujan Fappiano, Professor Robert Kogod Goldman, Dr. Jean Joseph Exume, Ambassador Alvaro Tirado Mejia.
Dated:	6 December 1996
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## I. BACKGROUND

1. On June 14, 1983, the Inter-American Commission on Human Rights (the "Commission") received a communication denouncing the alleged kidnapping and disappearance of Ana Lucrecia Orellana Stormont by agents of the Guatemalan State. On June 23, 1983, the Commission received another communication containing the same allegations. Mrs. Ana Lucrecia Orellana Stormont, a 32 year-old Guatemalan citizen, was a psychology professor at the San Carlos Medical School in Guatemala City.

## II. FACTS

2. According to the complaints, on June 6, 1983, at approximately 9:00 p.m., Ana Lucrecia Orellana Stormont was abducted in the vicinity of the Hotel Plaza in Guatemala City by elements of the Guatemalan State security forces. The complaints state that after attending a meeting at the University of San Carlos, Professor Orellana Stormont went to the Plaza Hotel to have coffee with a friend. At around 8:30 p.m., she took leave of her friend and headed for her home in her private car. It was while she was en route home that agents of the Guatemalan State abducted Professor Orellana Stormont. The complaints state that since then her whereabouts are unknown and no one has any information about her car.

3. One of the communications sent to the Commission states that in addition to Professor Orellana Stormont, another thirty-four people affiliated with the University of San Carlos were also disappeared by Guatemalan State agents during the same time period.

4. In a later communication, the petitioners stated that according to information provided to them by anonymous sources, Ana Lucrecia Orellana Stormont was being held at the Matamoros Central Garrison in Zone 1 of Guatemala City and that she was last seen there on September 22, 1983. They further stated that Professor Orellana Stormont was tortured. One of the torture methods used was to cover her head with a hood sprayed with insecticide dust, knowing that as an asthmatic, this torture method would bring on asthmatic attacks. She almost died in one of these attacks.

5. The complaints also contend that Ana Lucrecia Orellana Stormont is still disappeared, and that the Guatemalan State has neither investigated nor clarified the facts. On June 8, 1983, the family of Professor Orellana Stormont filed a criminal complaint with the National Police for her abduction and disappearance. However, the complaint was never processed in the sense of conducting an effective investigation to solve the case.

### III. PROCESSING WITH THE COMMISSION

6. The Commission began its processing of this complaint on June 14, 1983, and registered it as case 9120.

7. That same day, pursuant to the provisions of Article 48.1.a of the American Convention, the Commission forwarded to the Guatemalan Government the pertinent parts of the complaint, requesting that it provide information on the subject matter of the communication, under the terms of Article 34 of its Regulations (then Article 31).

8. When no reply from the Guatemalan Government was received, the Commission reiterated its request on June 22, 1983.

9. On July 27, 1983, having received no information from the Guatemalan Government, the Commission requested information on the case once again, and also sent the pertinent parts of a communication received from the petitioners dated June 23, 1983.

10. On September 29, 1983, the petitioners supplied additional information on the case. On November 2 of that year, the Commission forwarded to the Guatemalan Government the pertinent parts of that information and repeated its previous requests. It gave the Government thirty days in which to reply, while indicating the possibility of application of Article 42 (then Article 39) of the Regulations of the Commission, whereby the facts denounced are presumed true if no reply is received.

11. When no information was received from the Guatemalan Government, on June 19, 1984, the Commission once again requested information on the case, invoking Article 48.a of the American Convention. It gave the Government thirty days in which to reply and again reminded it of the possible application of Article 42 of the Regulations.

12. On August 1, 1985, given the fact that the Guatemalan Government never replied, the Commission repeated its request and warned the Government once again of the application of

Article 42 of its Regulations. Again, the Commission never received any response from the Guatemalan Government with regard to this case.

13. To date, the Government of Guatemala has provided none of the information requested by the Commission.

#### IV. CONSIDERATIONS

##### a. Admissibility

14. From the background information examined here, it is clear that this Commission is competent to entertain the complaints filed in the instant case, since they allege facts that would constitute violations of the rights of Ana Lucrecia Orellana Stormont, recognized in Articles 1, 3, 4, 5, 7, 8 and 25 of the American Convention on Human Rights.

15. The Commission considers that there are no grounds to allege that the complaint is manifestly groundless or obviously out of order nor that it is substantially the same as one previously studied by the Commission or pending settlement in another international organization. (Articles 46.1.c and 47.c,d of the American Convention).

16. As for exhaustion of domestic remedies, the Guatemalan Government has never replied to any of the requests made by the Commission in its efforts to obtain information on this issue. The purpose of the rule requiring exhaustion of domestic remedies is to give the state the opportunity to correct the problem in accordance with its domestic laws, before being confronted with an international proceeding.[FN1] Therefore, given the Government's silence, the Commission assumes that the State has, by implication, waived its right to invoke this rule of exhaustion of domestic remedies.[FN2]

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[FN1] See Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 61.

[FN2] See Inter-American Court of Human Rights Cases: Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987, par. 88; Fairén Garbi and Solís Corrales, Preliminary Objections, Judgment of June 26, 1987, par. 87; Godínez Cruz, Preliminary Objections, Judgment of June 26, 1987, par. 90.

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17. Apart from this waiver of the requirement stipulated in Article 46.1.a, the Commission considers that in the case of Ana Lucrecia Orellana Stormont, the remedies available under domestic law were ineffective, did not provide the guarantees of due process and have unjustifiably failed to render any decision in respect of her person. These factual situations are contemplated in Article 46.2 of the Convention as exceptions to the requirement of exhaustion of domestic remedies set forth in Article 46.1.a.

18. In effect, from the notes that the petitioners sent to the Commission, it is clear that Guatemala's internal remedies have been unsuccessful in solving the disappearance of Ana

Lucrecia Orellana Stormont. On June 8, 1982, relatives of Professor Orellana Stormont filed a criminal complaint with the National Police to have the facts investigated and her whereabouts determined. However, no action was ever taken on this complaint in the sense of conducting an investigation to clarify the facts and determine the whereabouts of Ana Lucrecia Orellana Stormont.

19. In the hope of finding Professor Orellana Stormont alive, on June 20, 1983, the petitioners published an appeal in a newspaper called the "Prensa Libre" seeking information about Professor Orellana Stormont. The University of San Carlos arranged for a similar published appeal, which came out on June 23 of that year. Neither of these steps yielded any result.

20. The steps taken by the family of Professor Orellana Stormont Lemus García did not succeed in securing protection of the rights violated. The Guatemalan State did not take action on the criminal complaint in the sense of conducting an efficient and adequate investigation based on due process, to determine the whereabouts of Professor Orellana Stormont and the identity of those responsible for her disappearance. This fits a general pattern of ineffective legal remedies which the Commission detected in Guatemala at the time the events in question occurred.[FN3]

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[FN3] See Annual Report of the Inter-American Commission on Human Rights 1983-1984, OEA/Ser.L/V/II.63, doc. 10, 24 September 1984, p. 107-08.  
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b. Merits

21. The Guatemalan Government has never disputed the information reporting the abduction and disappearance of Professor Orellana Stormont, nor the fact that these actions were committed by State agents. Indeed, since the time the pertinent parts of the complaint were forwarded to the Government and despite repeated requests, the Government has never provided any information in connection with the case, and has thereby failed to honor its international obligation under Article 48 of the American Convention. Therefore, the Commission believes that the presumption of truth provided for under Article 42 of its Regulations applies in the instant case. Article 42 of the Commission's Regulations provides that the facts reported in the petition whose pertinent parts have been transmitted to the Government in reference shall be presumed to be true if, during the time period set by the Commission, the Government has not provided the pertinent information requested, as long as other evidence does not lead to a different conclusion.[FN4] In this case, the information which exists does not contradict the version of the facts alleged in the complaint but rather supports that version of events.

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[FN4] The Inter-American Court of Human Rights has confirmed that, "the silence of the accused or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations, so long as the contrary is not indicated by the record or is not compelled as a matter of law." Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 138.  
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22. Persons associated with the university world at the time the events occurred were subjected to constant harassment by agents of the State,[FN5] and there exists evidence in the record that Professor Orellana Stormont was one of a group of thirty-four persons affiliated with the University of San Carlos who were disappeared by agents of the State during the same time period. Given these facts, the conclusion is that Ana Lucrecia Orellana Stormont was abducted and disappeared by elements of the Guatemalan State. The description of the detention center in which she was held as a military installation is further proof that Professor Orellana Stormont was abducted by State agents.

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[FN5] See *idem*, p. 106-07.

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23. Furthermore, from the manner and characteristics of Professor Orellana Stormont's abduction, the Commission can reasonably infer that the detention was the work of agents of the Guatemalan State, since those were the very same methods used in other abductions and unlawful detentions in which State security agents were involved. By the time the events in question occurred, the Commission had confirmed the existence of an "extraordinary number" of cases like that of Professor Orellana Stormont, involving illegal acts committed by security agents.[FN6] The abductions and unlawful detentions were generally perpetrated by groups of heavily armed individuals who seized their victims on public streets, and informed no one of either the reasons for the alleged arrest or the detention facility to which the victim was to be taken. The kidnappers worked in plain view and generally traveled in private vehicles.[FN7] Ana Lucrecia Orellana Stormont was abducted in precisely this manner.

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[FN6] See Report on the Situation of Human Rights in the Republic of Guatemala, OEA/Ser.L/V/II.53, doc. 21 rev. 2, 13 October 1981, p. 34.

[FN7] See Report on the Situation of Human Rights in Guatemala, OEA/Ser.L/V/II.61, Doc. 47 rev. 1, October 5, 1983, p. 76.

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24. Based on the foregoing, the Commission concludes that on June 6, 1983, Ana Lucrecia Orellana Stormont was abducted by elements of the Guatemalan State security forces. Since then her whereabouts are unknown. The Commission further concludes that Ana Lucrecia Orellana Stormont was held in a military installation where she was tortured.

c. Conclusions on points of law

25. The fate suffered by Ana Lucrecia Orellana Stormont on June 6, 1983, fits the definition of "forced disappearance" which has been developed by the jurisprudence of the Commission and the Inter-American Court of Human Rights and which was incorporated into Article II of the Inter-American Convention on Forced Disappearance of Persons.[FN8]

[FN8] See Annual Report of the Inter-American Commission on Human Rights 1985-86, OEA/Ser.L/V/II.68, Doc. 8 rev. 1, 26 September 1986, p. 37-38; Annual Report of the Inter-American Commission on Human Rights 1982-83, OEA/Ser.L/V/II.61, doc. 22 rev. 1, 27 September 1983, p. 46-48; Annual Report of the Inter-American Commission on Human Rights 1980-81, OEA/Ser.L/V/II.54, doc. 9 rev. 1, 16 October 1981, p. 113-14; Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 147; Inter-American Convention on Forced Disappearance of Persons, Article II. The Inter-American Convention on Human Rights entered into force on March 28, 1996, after Argentina and Panama deposited their instruments of ratification with the General Secretariat of the OAS on February 28, 1996. Guatemala has signed but not ratified this convention.

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26. The Inter-American Court of Human Rights (the "Court" or the "Inter-American Court") has held that "the forced disappearance of human beings is a multiple and continuous violation of many rights under the Convention that the States Parties are obligated to respect and guarantee." [FN9] The preamble to the Inter-American Convention on Forced Disappearance of Persons reaffirms that the forced disappearance of persons "violates numerous non-derogable and essential human rights enshrined in the American Convention on Human Rights, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights." [FN10]

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[FN9] See Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 155. The Court's holding in this respect is supported by the declarations of other international organs which confirm that the forced disappearance of persons constitutes a multiple violation of rights recognized internationally. See, e.g., Declaration on the Protection of All Persons from Enforced Disappearance, United Nations General Assembly Resolution 47/133, December 18, 1992, art. 1.1.

[FN10] Inter-American Convention on Forced Disappearance of Persons, third paragraph of the preamble.

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27. Based on these principles, the Commission examines the human rights that were violated as a result of the forced disappearance of Ana Lucrecia Orellana Stormont.

#### The right to juridical personality

28. The disappearance of Ana Lucrecia Orellana Stormont constitutes a violation of her right to recognition as a person before the law protected by Article 3 of the American Convention on Human Rights. When Professor Orellana Stormont was disappeared by agents of the Government, she was necessarily placed outside of and excluded from the juridical and institutional order of the State. This exclusion had the effect of denying recognition of the very existence of Professor Orellana Stormont as a human being entitled to be recognized as such before the law. [FN11]

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[FN11] See Declaration on the Protection of All Persons from Enforced Disappearance, Art. 1.2, characterizing forced disappearance as "a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law." United Nations General Assembly Resolution 47/133, December 18, 1992.

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#### The right to life

29. Professor Orellana Stormont is still a disappeared person. The Inter-American Court of Human Rights has ruled the following: "The practice of disappearances often involves secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible. This is a flagrant violation of the right to life." [FN12] Moreover, the context in which the disappearance occurred and the fact that thirteen years later the victim is still a disappeared person allow one to reasonably conclude that Ana Lucrecia Orellana Stormont was killed.

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[FN12] Velásquez Rodríguez Case, par. 157.

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30. For these reasons, the Commission concludes that the facts denounced constitute a violation of her right to life, recognized in Article 4 of the American Convention on Human Rights.

#### The right to humane treatment

31. Under Article 5 of the American Convention, every person has the right to have his physical, mental and moral integrity respected. The facts denounced in the instant case constitute a violation of Ana Lucrecia Orellana Stormont's right to humane treatment.

32. In effect, the Commission has concluded that Professor Orellana Stormont was tortured and that one of the torture methods used was to cover her head with a hood sprayed with insecticide, knowing that because she was an asthmatic, this would bring on asthmatic attacks. On one occasion, one such attack almost killed her. This treatment constitutes a violation of Ana Lucrecia Orellana Stormont's right to humane treatment.

33. Moreover, the Inter-American Court has stated that, "prolonged isolation and deprivation of communication are in themselves cruel and inhumane treatment, harmful to the psychological and moral integrity of the person and a violation of the right of every detainee to respect for his inherent dignity as a human being. Such treatment, therefore, violates Article 5 of the Convention, which recognizes the right to the integrity of the person." [FN13]

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[FN13] Idem, par. 156.

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## The right to personal liberty

34. The Inter-American Court has held the following with regard to violations of this right: "The kidnapping of a person is an arbitrary deprivation of liberty, and an infringement of the detainee's right to be taken without delay before a judge and to invoke the proper procedures to review the legality of the arrest, all in violation of Article 7 of the Convention which recognizes the right to personal liberty." [FN14]

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[FN14] *Idem*, par. 155.

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35. The kidnapping and disappearance of Ana Lucrecia Orellana Stormont, which the Commission has confirmed, constitute a violation of the right to personal liberty, recognized in Article 7 of the American Convention.

## The right to a fair trial and the right to judicial protection

36. Articles 8 and 25 of the American Convention establish that everyone has the right to recourse to a competent court or tribunal for protection against acts that violate his fundamental rights and that the state has the duty to provide the minimum guarantees for the determination of one's rights. The domestic remedies of the Guatemalan State have not provided what is necessary to fulfill these rights and are therefore in violation of the American Convention.

37. Article 25.1 embodies the principle recognized in the international law of human rights whereby the instruments or procedural means intended to safeguard those rights must be effective. It is not sufficient that a state's legal system formally recognize the remedy in question; instead, it has an obligation to provide effective judicial remedies, remedies that must be substantiated in accordance with the rules of due process of law. [FN15]

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[FN15] See Inter-American Court of Human Rights Cases: Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987, par. 91; Fairén Garbi and Solís Corrales, Preliminary Objections, Judgment of June 26, 1987, par. 90; and Godínez Cruz, Preliminary Objections, Judgment of June 26, 1987, par. 93.

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38. The internal remedies of the Guatemalan State have not provided adequate and effective recourse that would fulfill the minimum guarantees and render a decision regarding the rights of Ana Lucrecia Orellana Stormont, establishing her whereabouts and determining the identity and the responsibility of the authors of her kidnapping.

39. The failure of the domestic remedies in the instant case not only justifies a finding that the petitioners are not required to file and exhaust those remedies; it also implicates the Guatemalan State in a violation of the rights to a fair trial and judicial protection, recognized in Articles 8 and 25 of the American Convention. [FN16]



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[FN16] Idem.

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#### Obligation to respect and ensure rights

40. The Guatemalan State has not complied with its obligation under Article 1.1 of the American Convention to "respect the rights and freedoms recognized [t]herein and to ensure to all persons subject to [its] jurisdiction the free and full exercise of those rights and freedoms." Therefore, it is responsible for violations of the rights upheld in Articles 3, 4, 5, 7, 8 and 25 of said Convention.

41. Under Article 1.1 the first obligation of a State Party to the American Convention is to respect the rights and freedoms recognized therein.

42. To determine what manner of the exercise of public power violates the obligation to respect rights, stipulated in Article 1.1, the Inter-American Court has ruled that, "under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law." It has further held that, "any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State." [FN17]

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[FN17] Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 170, 172.

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43. The Commission has concluded that the abduction of Ana Lucrecia Orellana Stormont on June 6, 1983, her disappearance, and the subsequent denial of justice, all in violation of rights recognized in Articles 3, 4, 5, 7, 8 and 25 of the Convention, were perpetrated by Government agents using their position of authority. Therefore, the Guatemalan State has violated its obligation under Article 1.1 to respect the rights of Ana Lucrecia Orellana Stormont recognized in the American Convention.

44. The second obligation emanating from Article 1.1 is to "ensure" the full and free exercise of the rights and freedoms recognized by the Convention. "This obligation implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structure 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." [FN18]

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[FN18] Idem, par. 166.

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45. The Commission has concluded that the Guatemalan State's domestic remedies have failed to investigate the violations to Professor Orellana Stormont's rights, those responsible have not been punished, and the consequences of those violations have not been redressed. Therefore, the Commission concludes that the Guatemalan State also violated Article 1.1 because it failed to ensure to Ana Lucrecia Orellana Stormont and her family the free and full exercise of their rights.

#### V. TRANSMISSION OF REPORT 20/96 TO THE GOVERNMENT

46. Confidential Report 20/96 was approved by the Commission on April 30, 1996, during its 92nd Regular Session, and was transmitted to the Government of Guatemala on May 31, 1996, with a request that it provide information as to the measures that had been taken to resolve the situation denounced within a period of 60 days. At the same time, the Commission informed the parties that it placed itself at their disposal for a friendly settlement, based on respect for the human rights set forth in the American Convention, and set a period of 30 days for the parties to advise whether they were willing to participate in such a procedure. As of the date of this report, the Commission has received no response to its offer to facilitate a friendly settlement, and thus considers that this proposal was not accepted.

47. By means of a note dated July 22, 1996, the Government of Guatemala requested that the period within which it was to provide its response to the Commission be extended by 60 days, given that various State institutions were in the process of gathering relevant information. In a note of July 31, 1996, the Commission informed the Government that it had been granted an additional 70 days to provide information as to the measures it had taken. The Commission also transmitted to the Government copies of pertinent documents from the case file for its information.

48. The Government's response, dated October 11, 1996, stated with respect to the question of State responsibility:

that the nature of the present case reviews special characteristics of the social conditions and prevailing policies during the time period during which the facts occurred. While the identification of the person or persons responsible has not been judicially determined, the State of Guatemala is prevented from accepting responsibility.

The Government further indicated that it had requested, through the Presidential Coordinating Commission of Executive Policy in Human Rights Matters, that the Attorney General's Office carry out an appropriate investigation of the facts denounced, the results of which would be communicated "immediately" to the Commission. Finally, the response noted with respect to the question of reparation that:

Locating Miss Orellana Stormont is of fundamental interest to the State, for reasons of humanity, as well as for the proof destined to resolve the case. However, any pronouncement or decision in that respect, should be the result of the work of the organs of the State with competence in these matters....

49. The Government has provided no further information with respect to this case.

## VI. FINDINGS

50. Clearly, the fact that the individuals responsible for the disappearance have not been identified through a judicial process in no way vitiates the responsibility of the State of Guatemala. To the contrary, as the foregoing analysis indicates, the State is responsible both for having failed to respect the rights of the victim, as well as for having failed to adequately and effectively respond to the violations at issue.

51. In light of the information and observations provided above, the Commission finds that the Guatemalan State has violated Ana Lucrecia Orellana Stormont's rights to life, to humane treatment, to personal liberty, to due process of law and to judicial protection, recognized, respectively, in Articles 3, 4, 5, 7, 8 and 25 of the American Convention on Human Rights, in relation to Article 1.1 thereof.

52. Article 1 of the American Convention sets forth the undertaking of States Parties first, to respect the rights and freedoms recognized, and second, to ensure the free and full exercise of those rights. The latter obligation refers to the state's duty to prevent, investigate and punish human rights violations. The consequence of this duty is the continuing responsibility of the state to "attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation of human rights." (Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 166.)

## VII. RECOMMENDATIONS

53. In accordance with the foregoing analysis, the Commission recommends to the State of Guatemala that:

a. It conduct an impartial and effective investigation of the facts denounced that determines the fate of Ana Lucrecia Orellana Stormont, that establishes the identity of the authors of her disappearance, and that leads to the submission of those responsible to the appropriate judicial processes.

b. It adopt measures to make full reparation for the proven violations, including taking steps to locate the remains of Ana Lucrecia Orellana Stormont; making the arrangements necessary to facilitate the wishes of her family as to an appropriate final resting place; and compensating her family members.

54. 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.