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Title/Style of Cause:	Francisco Jose Antonio Pratdesaba Barillas 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
Citation:	Pratdesaba Barillas v. Guatemala, Case 8074, Inter-Am. C.H.R., Report No. 53/96, OEA/Ser.L/V/II.95, doc. 7 rev. (1996)
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## I. BACKGROUND INFORMATION

1. On September 24, 1982, the Inter-American Commission on Human Rights (the "Commission") received a communication denouncing the alleged abduction and disappearance of Dr. Francisco José Antonio Pratdesaba Barillas by Guatemalan State agents. Dr. Pratdesaba Barillas, a Guatemalan citizen, was a surgeon and Director of the San Marcos National Hospital and of a private sanitarium he owned and from whence, the complaint stated, he was abducted.

## II. FACTS

2. According to the complaint, on October 1, 1981, at 1:00 p.m., Dr. Francisco José Antonio Pratdesaba Barillas was abducted by members of the Guatemalan National Army at the facilities of the private sanitarium he headed. He was taken away by the abductors in his own vehicle, a light yellow 1982 Ford Fairmont. The complaint states that Dr. Pratdesaba Barillas was confined at the military base at Quetzaltenango; he was later taken to a military outpost in San Rafael Pie de la Cuesta, Department of San Marcos; he was then held at the headquarters of the Military Police on the Berlín de Coatepeque Ranch, Department of Quetzaltenango. The last place the petitioners learned he was being held was the Rafael Carrera Military Base in Zacapa, Department of Zacapa. He was later seen by witnesses in December of 1981, in Guatemala City, in a private vehicle, in the custody of armed men. The petitioners state that eyewitnesses saw Dr. Pratdesaba Barilla's car in the possession of persons from the Fifth Military Zone.

3. The complaint contends that Dr. Francisco José Antonio Pratdesaba Barillas is still disappeared, and that the Guatemalan State has neither investigated nor clarified the facts. A criminal complaint of kidnapping was filed by Dr. Pratdesaba Barillas's next-of-kin on October

5, 1981, to ascertain his whereabouts, but the action taken on the complaint was flawed and ineffective.

### III. PROCESSING BEFORE THE COMMISSION

4. The Commission began its processing of this complaint on October 7, 1982, and registered it as case 8074.

5. That same day, in accordance with 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 supply information on the facts denounced therein, under the terms of Article 34 of its Regulations (then Article 31).

6. Having received no response from the Guatemalan Government, the Commission repeated its request for information on May 17, 1984 and gave the Government another thirty days to reply, indicating the possibility of the application of Article 42 (then Article 39) of the Commission's Regulations whereby, in the absence of any response, the facts denounced are presumed to be true.

7. On February 19, 1985, having received no information from the Guatemalan Government, the Commission once again requested information on the case, and gave the Government another thirty days, reminding it again of the possible application of Article 42 of the Commission's Regulations. Again, the Commission received no response from the Guatemalan Government regarding this case.

8. Thus far, the Government of Guatemala has supplied none of the information requested by the Commission.

### IV. CONSIDERATIONS

#### a. Admissibility

9. The conclusion drawn from the background information examined is that the Commission is competent to entertain the complaint filed in the instant case, since it alleges facts that would constitute violations of the rights of Dr. Francisco José Antonio Pratdesaba Barillas recognized in Articles 1, 3, 4, 5, 7, 8 and 25 of the American Convention on Human Rights.

10. The Commission is persuaded that there is no reason to contend that the complaint is manifestly groundless or out of order, or that it substantially duplicates a petition already examined or one that is the subject of a petition or communication pending in another international proceeding for settlement. (Articles 46.1.c and 47.c,d of the Convention).

11. As for exhaustion of domestic remedies, the Government of Guatemala has never replied to any of the Commission's requests for information on this matter. The purpose of the rule requiring exhaustion of domestic remedies is to give the State an opportunity to resolve the problem under its internal law before being confronted with an international proceeding.[FN1]

Therefore, given the Government's silence, the Commission reasonably presumes that it is, by implication, waiving its right to invoke the 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; and Godínez Cruz, Preliminary Objections, Judgment of June 26, 1987, par. 90.

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12. Apart from the implied waiver of the requirement of exhaustion under Article 46.1.a, the Commission believes that in the case of Dr. Francisco José Antonio Pratdesaba Barillas, the remedies of domestic jurisdiction were ineffective, did not provide the guarantees of due process and unjustifiably failed to provide any ruling with respect to his person. In addition, the petitioners were prevented from gaining full access to those remedies. 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.

13. In effect, the conclusion drawn from the notes that the petitioners sent to the Commission is that Guatemala's domestic remedies have been unsuccessful in solving the disappearance of Dr. Francisco José Antonio Pratdesaba Barillas. On October 5, 1981, Dr. Pratdesaba Barillas' next-of-kin filed a criminal complaint seeking an investigation of the crime of abduction and a determination of his whereabouts. On October 28, 1982, the presiding judge certified that the proceedings were still in the examining phase. The petitioners allege that the complaint filed was never properly processed for an effective investigation that would shed light on the facts denounced.

14. A special petition was sent to the Minister of Government, who on May 13, 1982, ordered the Office of the Director General of the National Police, through the Department of Technical Investigations, to conduct the appropriate inquiries as quickly as possible. This order to investigate was never carried out.

15. On March 23, 1981, Dr. Pratdesaba Barillas' next-of-kin filed a written request for a meeting with then President of the Republic, Efraín Ríos Montt, who informed that the request for a meeting would not be granted.

16. From then on, the next-of-kin of Dr. Pratdesaba Barillas began to receive threats that they should desist from all efforts to find Dr. Pratdesaba Barillas. This made it impossible for Dr. Pratdesaba Barillas' family to file any other legal remedies for clarification of the facts.

17. None of the actions filed by the family of Dr. Pratdesaba Barillas was effective in securing protection of the rights which were violated. The Guatemalan Government did not take action on the criminal complaint filed, seeking an efficient and adequate investigation based on due process, that would ascertain the whereabouts of Dr. Pratdesaba Barillas and the identity of

those responsible for his disappearance. This failure is consistent with a pattern of ineffective legal remedies that the Commission found in Guatemala at the time the events denounced 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

18. The Government of Guatemala never disputed the abduction and disappearance of Dr. Pratdesaba Barillas, or the fact that the abduction and disappearance were perpetrated by agents of the State. In fact, since the time the pertinent parts of the complaint were first forwarded to the Government, and after repeated requests, it has never supplied any information on the case, violating its international obligation under Article 48 of the American Convention. Therefore, the Commission considers that the presumption allowed under Article 42 of its Regulations is in order. 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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19. The fact that subsequent to the kidnapping, eyewitnesses saw Dr. Pratdesaba Barillas' private car in the possession of members of the Fifth Military Zone and the exact description of the various military installations in which he was confined constitute important information which allow a reasonable presumption that Dr. Pratdesaba Barillas was abducted by agents of the State. Moreover, from the manner and circumstances of Dr. Francisco José Antonio Pratdesaba Barillas' abduction, the Commission can reasonably infer that his abduction was the work of agents of the Guatemalan State, since the very same methods were used in other abductions and unlawful detentions in which State security agents were involved. By the time the events denounced occurred, the Commission had confirmed an "extraordinary number" of cases like that of Dr. Pratdesaba Barillas, committed by security agents.[FN5] The abductions and unlawful detentions were generally done by groups of heavily armed individuals who took their victims from their places of work or their homes, and told no one of the reasons for the alleged arrests, or where the victim would be taken. The abductors operated in plain view and generally traveled in private cars.[FN6] Dr. Francisco José Antonio Pratdesaba Barillas was abducted in precisely that fashion.

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[FN5] 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.

[FN6] 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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20. Considering the foregoing, the Commission considers that it has been established that on October 1, 1981, Dr. Francisco José Antonio Pratdesaba Barillas was abducted by elements of the Guatemalan National Army and was held in irregular detention in various military and police detention centers. His whereabouts have remained unknown since the time of his kidnapping.

c. Conclusions on points of law

21. The description of what happened to Dr. Francisco José Antonio Pratdesaba Barillas on October 1, 1981, which forms the basis for this case, 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.[FN7]

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[FN7] See Annual Report of the Inter-American Commission on Human Rights 1985-1986, 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 Forced Disappearance of Persons 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 yet ratified, that convention.  
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22. 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 State Parties are obligated to respect and guarantee." [FN8] 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." [FN9]

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[FN8] 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.

[FN9] Inter-American Convention on the Forced Disappearance of Persons, third paragraph of the preamble.

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23. Based on these principles, the Commission examines the human rights that were violated as a result of the forced disappearance of Dr. Francisco José Antonio Pratdesaba Barillas.

#### The right to juridical personality

24. The disappearance of Dr. Francisco José Antonio Pratdesaba Barillas constitutes a violation of his right to recognition as a person before the law protected by Article 3 of the American Convention on Human Rights. When Dr. Pratdesaba was disappeared by agents of the Government, he 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 Mr. Pratdesaba as a human being entitled to be recognized as such before the law.[FN10]

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[FN10] 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

25. Dr. Francisco José Antonio Pratdesaba Barillas is still a disappeared person. The Inter-American Court has stated that: "[t]he 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, recognized in Article 4 of the Convention." [FN11] Moreover, the context in which the disappearance occurred and the fact that fourteen years later Dr. Pratdesaba Barillas is still disappeared are grounds for the Commission to reasonably presume that Dr. Pratdesaba Barillas was killed.[FN12]

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[FN11] Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 157.

[FN12] Idem, par. 188.

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26. For these reasons, the Commission concludes that the facts denounced have violated Dr. Francisco José Antonio Pratdesaba Barillas' right to life, recognized in Article 4 of the American Convention on Human Rights.

The right to humane treatment

27. 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 Dr. Francisco José Antonio Pratdesaba Barillas' right to humane treatment.

28. The Inter-American Court has found 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 any 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

29. As for the violation of this right, the Inter-American Court has stated that, "[t]he kidnapping of a person is an arbitrary deprivation of liberty, an infringement of the detainee'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 of the Convention which recognizes the right to personal liberty." [FN14]

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[FN14] Idem, par. 155.  
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30. The abduction and disappearance of Dr. Francisco José Antonio Pratdesaba Barillas, which the Commission has established, constitute a violation of his right to personal liberty, recognized in Article 7 of the American Convention.

The right to due process of law and to judicial protection

31. Under Articles 8 and 25 of the American Convention every person has the right to recourse to a competent court or tribunal for protection against acts that violate his rights and the State has the obligation to provide the minimum guarantees for the determination of those rights. The domestic remedies of the Guatemalan State have not provided what is essential to ensure these rights, thereby violating the American Convention.

32. Article 25.1 introduces the principle recognized in the international law of human rights whereby the instruments or procedural means to guarantee those rights must be effective. It is not sufficient that a State's legal system formally recognizes the remedy in question; instead, it must develop the possibilities of an effective remedy, 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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33. The domestic remedies of the Guatemalan State have not provided an adequate and effective remedy that provides the minimum guarantees and a decision as to the rights of Dr. Francisco José Antonio Pratdesaba Barillas, his whereabouts, and the identity and responsibility of the authors of the abduction.

34. This failure of the domestic remedies in the instant case not only justifies a finding to the effect that the petitioners are not required to file and exhaust such remedies, but also implicates the Guatemalan State in a violation of the rights to judicial protection and to due process of law, recognized in Articles 25 and 8 of the American Convention.[FN16]

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[FN16] Idem.

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#### Obligation to respect and ensure rights

35. The Guatemalan State has failed to honor 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, the violations of the rights recognized in Articles 3, 4, 5, 7, 8 and 25 are imputable to it.

36. Under Article 1.1, the first obligation of the States Parties of the American Convention is "to respect the rights and freedoms recognized" therein.

37. Determining what manner of exercise of public power violates the obligation to respect rights under Article 1.1, the Inter-American Court has held 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 further stated 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] See Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 170, 172.

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38. The Commission has concluded that the abduction of Dr. Francisco José Antonio Pratdesaba Barillas on October 1, 1981, his disappearance, and the subsequent denial of justice in his case, which were violations 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, by the Court's definition, the Guatemalan State has violated its obligation under Article 1.1 to respect the rights of Dr. Francisco José Antonio Pratdesaba Barillas that are recognized in the American Convention.

39. The second obligation emanating from Article 1.1 is to ensure the free and full exercise of the rights and freedoms recognized in the Convention. "This obligation implies the duty of the State 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"[FN18]

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[FN18] *Idem*, par. 166.

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40. The Commission has concluded that exercise of the domestic remedies of the Guatemalan State has failed to bring about an investigation into the violation of rights of which Dr. Pratdesaba Barillas was victim; those responsible have not been punished, and the consequences of the violations have not been redressed. Therefore, the Commission concludes that the Guatemalan State also violated Article 1.1 because it failed to ensure to Dr. Francisco José Antonio Pratdesaba Barillas and his family the exercise of their rights.

## V. TRANSMISSION OF REPORT 17/96 TO THE GOVERNMENT

41. Confidential Report 17/96 was approved by the Commission on April 30, 1996, during its 92nd Regular Session, and was transmitted to the Government of Guatemala on May 13, 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 indicated that it placed itself at the disposition of the parties 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.

42. The Government's response, dated May 31, 1996, noted that the facts concerned had occurred over a decade earlier, indicated that the current Government did not have the information requested by the Commission at hand, and requested that the Commission provide it with additional information so that it could initiate an investigation. The Government also requested that the processing of the case be suspended until that information was provided.

43. On June 18, 1996, the Commission provided the Government of Guatemala with a copy of the pertinent information contained in the case file, and granted it an extension of 70 days to provide information on the measures adopted to resolve the situation dealt with in Report 17/96. The Government of Guatemala has provided no further information with respect to this case.

## VI. FINDINGS

44. In light of the information and observations provided above, the Commission concludes that the Guatemalan State has violated Dr. Francisco José Antonio Pratdesaba Barillas' rights to life, humane treatment, personal liberty, due process of law and judicial protection, rights 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.

45. 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

46. 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 Dr. Francisco José Antonio Pratdesaba Barillas, that establishes the identity of the authors of his 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 Dr. Francisco José Antonio Pratdesaba Barillas; making the arrangements necessary to facilitate the wishes of his family as to an appropriate final resting place; and compensating his family members.

47. 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.