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Decided by: Chairman: Professor Robert K. Goldman;
First Vice-Chairman: Dr. Helio Bicudo;
Second-Vice Chairman: Dean Claudio Grossman;
Commissioners: Prof. Carlos Ayala Corao, Dr. Alvaro Tirado Mejia.
Dated: 11 March 1999
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I. SUMMARY

1. The petition which gave rise to the present case denounced the massacre of 268 inhabitants of Plan de Sánchez, Baja Verapaz, by members of the armed forces of Guatemala on July 18, 1982. The petitioners submit that the massacre was perpetrated pursuant to a State policy "designed to defeat the insurgent movement through the strategic eradication of its civilian support base." They contend that the violations were committed on such a scale as to represent massive violations of the American Convention on Human Rights and the relevant dispositions of international humanitarian law, and constitute crimes against humanity and genocide.

2. The petitioners allege that the State is responsible for the acts of its agents in killing civilian men, women and children, in violation of Articles 4, 5, 7, 12, 13, 19, 21 and 24 of the American Convention, the failure to respond with measures of judicial protection and guarantees, in violation of Articles 8 and 25, and the failure to respect and ensure the foregoing rights of the victims in violation of Article 1(1). In particular, the petitioners complain that the State has failed to: undertake a serious investigation designed to officially establish the facts and responsibility for the crimes; prosecute and punish the material and intellectual authors; or repair the consequences.

3. The State recognizes that, during the armed conflict in Guatemala both parties committed abuses, and events such as those in Plan de Sánchez stand as testimony to that fact. It acknowledges as evident the grave consequences for the victims. The State maintains that the Commission for Historical Clarification (Comisión para el Esclarecimiento Histórico, hereinafter "CEH") established by the agreement of the parties to the conflict will address questions of institutional responsibility, and the Guatemalan judiciary has yet to establish the responsibility of

any state agents for the facts denounced. The State contends that the petition is inadmissible because the petitioners failed to exhaust domestic remedies, and because it was untimely filed.

4. As set forth in the report that follows, having examined the contentions of the parties on the question of admissibility, the Commission decided to admit the present case and proceed to an analysis of the merits.

II. PROCESSING BEFORE THE COMMISSION

5. The Commission received the petition in an English language version on October 25, 1996. The Spanish language version, required for possible submission to the State, was received on February 4, 1997. Case 11.763 was opened on July 1, 1997. By a note of that date, the Commission transmitted the pertinent parts of the petition to the State of Guatemala, with the submission of information deemed pertinent requested within 90 days.

6. Pursuant to an August 14, 1997 request of the petitioners, the Commission scheduled a hearing on the case during its 97th period of sessions, and notified both parties by means of a note of September 4, 1997.

7. The State's response to the petition, dated October 1, 1997, was received by the Commission on October 3, 1997. This information was transmitted to the petitioners on October 6, 1997, with observations requested within 45 days.

8. The hearing referred to was held on October 9, 1997, at the headquarters of the Commission, with representatives of both parties present.

9. The petitioners requested an additional hearing by means of a note of January 16, 1998. In a note of February 11, 1998, the Commission informed them that it would be unable to grant that request due to the volume of hearings already programmed for its next meeting.

10. On May 12, 1998 the petitioners provided the Commission with a copy of a letter which had been transmitted to the Presidential Coordinating Commission for Executive Policy in Human Rights Matters (COPREDEH), recounting the internal remedies which had been attempted or remained pending during the previous six months. In a note of July 15, 1998, the Commission indicated that the information would be incorporated in the case file.

III. THE POSITIONS OF THE PARTIES

A. The Position of the Petitioners

11. The petitioners characterize the area of Rabinal as predominantly inhabited by members of the Maya population, and described Plan de Sánchez as having had an entirely Maya-Achi population at the time of the events in question. The petitioners allege that the military maintained a strong presence in Rabinal in 1982, and that soldiers came to Plan de Sánchez periodically to ask about the movements of male residents, and to intimidate members of the local population, particularly those who did not participate in the Civil Self-defense Patrols

(hereinafter "PAC's").[FN1] As a consequence, they contend that there "was a climate of considerable fear in the community in the first half of 1982," and the men would sometimes leave the community to hide from the soldiers.

[FN1] The PACs were established at the end of 1981 by the de facto military regime of General Ríos Montt, as part of its policy to exterminate the guerilla movement through the relocation of the indigenous population, and the eradication of "any community or ... person that his government was suspicious of, using methods that violated human rights." IACHR, Fourth Report on the Situation of Human Rights in Guatemala, OEA/Ser.L/V/II.83, Doc. 16 rev., June 1, 1993, at 53. The PACs were initiated in the Department of El Quiché, and expanded to other Departments. See generally, *id.* ch. VI.

12. Because Plan de Sánchez is located along a path to Rabinal, on Sunday July 18, 1982, a market day, people from neighboring villages were passing through the community. According to the petition, the victims of the massacre included residents of the communities of Chipuerta, Joya de Ramos, Raxjut, Volcanillo, Coxojabaj, Las Tunas, Las Minas, Las Ventanas, Ixchel, Chiac, Concul, Chichupac, Plan de Sánchez and the municipal center of Rabinal.

13. The petitioners allege that, early on the morning of July 18, 1982, two grenades fell to the east and west of Plan de Sánchez. A group of approximately 60 men dressed in military uniforms and armed with assault rifles, and four "judiciales" allegedly arrived in Plan de Sánchez between 2:00 and 3:00 p.m.[FN2] Those four judiciales were identified by witnesses, and the two officials in charge were identified as Lieutenants Solares and Díaz. The petitioners report that soldiers monitored points of entry into the community, while others went house to house rounding up the population. Girls and young women were held in one location, while older women, men and children were gathered in another. Approximately 20 girls between 12 and 20 years of age were taken to one house where they were raped and then killed. The rest of the population was forced into another house and the adjoining patio. The petitioners allege that, at about 5:00 p.m., soldiers threw two hand grenades into that house, and then sprayed it and the patio with sustained gunfire. Small children were hit or kicked to death. Shots were reportedly heard in another location, where four bodies were later found. The petitioners describe the soldiers as having subsequently set fire to the house where the majority of the victims had been killed before leaving the community some hours later.

[FN2] The petitioners indicate that the "judiciales" had been an investigative body of the police. They had reportedly ceased to exist as an official matter prior to the events denounced, but had continued to function as a factual matter in association with the Department of Army Intelligence. The petitioners allege that these persons were known in their communities in this capacity and were able to threaten and intimidate the population with impunity.

14. The petitioners allege that residents who had not been present or had escaped being rounded up returned early the next morning to find that house that had been burned still

smouldering and the bodies of most victims burned beyond recognition. Military commissioners who arrived at the scene hours later reportedly consulted the military base in Rabinal for instructions on how to deal with the bodies. Local PAC members and survivors were then ordered to bury the bodies quickly, or the community would be bombed. Most of the bodies were buried in 21 pits at the site of the massacre. Survivors reported that soldiers returned every few days to pillage the houses and threaten those who had returned. Fear of what had happened and of the returning soldiers drove the survivors from the community for several years.

15. The petitioners report that, in 1993, members of the community approached the Office of the Human Rights Ombudsman seeking support to denounce the massacre and request the exhumation of the bodies, in order to prompt an investigation and re-inter the bodies of their loved ones with dignity. After overcoming a series of procedural obstacles, in mid-1994, the Guatemalan Team of Forensic Anthropology (hereinafter "EAFG") exhumed 19 sites in Plan de Sánchez containing the remains of at least 84 victims. The EAFG reported their findings in March of 1995.

16. The petitioners submit testimonial, circumstantial and physical evidence in support of their allegations. The petitioners also cite the September 2, 1996 report of the Ombudsman for Human Rights on the massacres of Plan de Sánchez, Chichupac and Rio Negro. The report establishes the responsibility of state agents, namely PAC's, military commissioners, members of the Army and high ranking officials, for failing to protect the local population and for attempting to cover up the crimes to ensure impunity for the material and intellectual authors. The Ombudsman's report concludes that these massacres were carried out as part of a premeditated state policy.

17. The petitioners assert that the Plan de Sánchez massacre was carried out pursuant to the "scorched earth" campaign of the State "designed to defeat the insurgent movement through the strategic eradication of its civilian support base." They indicate that this massacre was one of 42 carried out by the Army in rural Guatemala in the month of July, 1982. They assert that the crimes alleged in their petition constitute violations of Articles 4, 5, 7, 12, 13, 19, 21 and 24 of the American Convention, and that the failure of the State to investigate, prosecute or punish those responsible, or repair the consequences further violates Articles 1(1), 8 and 25. They contend that the crimes represent massive violations of the Convention and the relevant dispositions of international humanitarian law, and constitute crimes against humanity and genocide.

18. With respect to the admissibility of the case, the petitioners contend that the survivors invoked and pursued domestic remedies to the extent possible, but that it was impossible to exhaust them. Domestic remedies had been essentially unavailable because those involved were subjected to threats and intimidation, and the Law of National Reconciliation impeded the prosecution of those responsible. Further, such remedies had been ineffective because the authorities had failed to respond as required. The petitioners allege that, prior to the massacre, residents of Plan de Sánchez attempted to denounce acts of intimidation by soldiers before local judicial authorities. Instead of receiving assistance, they were fined. After the massacre, the survivors were threatened by soldiers and PAC's and driven from the area for several years. Only in 1993 were they able to initiate their search for justice. The petitioners allege that the obstacles

placed in their path by the authorities caused the first exhumation to be delayed for over a year, and the second for over two years. They report that the compelling evidence presented to the Public Ministry in March of 1995 failed to provoke a serious response. In summary, the petitioners assert that, notwithstanding the passage of time since the massacre and the efforts of the survivors to pursue justice, the remedies invoked had failed to produce any substantive results.

B. The Position of the State

19. As noted above, the State acknowledges that the massacre at Plan de Sánchez occurred and condemns the loss of Guatemalan lives. The State maintains that the killings were perpetrated in the context of an armed conflict in which abuses were committed by both sides. In the course of the negotiations effectuated to conclude that conflict, on June 23, 1994, the State and the Guatemalan National Revolutionary Unity (hereinafter "URNG") signed the "Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence that have Caused the Guatemalan Population to Suffer." The mandate of that Commission is to clarify acts of violence linked with the conflict, without prejudice to the ability of the victims to pursue criminal remedies. While the State notes that the CEH is not empowered to exercise a judicial function, it does constitute a "national instance" and would issue considerations with respect to institutional responsibility for past human rights violations.

20. The State indicates that the gravity of the harm suffered as a result of the events at Plan de Sánchez is evident. However, it maintains that it is unable to address the alleged participation of the Guatemalan military, because the Constitution of Guatemala attributes the exclusive competence to examine evidence and issue conclusions with respect to individual responsibility to the judiciary.

21. With respect to the admissibility of the case before the Commission, the State maintains that the petitioners failed to exhaust domestic remedies as required. In its response to the petition, the State reported that: the events denounced were pending before the Public Ministry in process No. 291-94; the Court of First Instance of Cobán, Alta Verapaz, was seized of processes 391-93 and 344-95; and the Public Ministry was awaiting the results of ballistics tests it had requested. The State affirms that its legal system provides for the norms and procedures that guarantee the administration of justice, and maintains that recourse to the inter-American system is therefore inappropriate in this case. It indicates that the petitioners should present their claims before the appropriate judicial authorities in order to participate actively in the domestic proceedings, which include the legal measures to challenge decisions with which they disagree. The State further alleges that the petition was filed beyond the time limit set forth in the Convention and the Regulations of the Commission.

IV. ANALYSIS

A. Competence of the Commission

22. In accordance with its mandate, the Commission is competent to examine the subject matter of this complaint, as it concerns alleged violations of Articles 1, 4, 5, 7, 8, 12, 13, 19, 21,

24 and 25 of the American Convention. The State of Guatemala has been a party to that Convention since its ratification of May 25, 1978, and the allegations at issue concern alleged events subsequent to that date. The Convention entered into force for all parties on July 18, 1978. The petitioners have locus standi to appear pursuant to the terms of Article 44 of the Convention. In their submissions, the petitioners have stated claims which, if consistent with other requirements and shown to be true, could tend to establish the violation of a right protected by the American Convention.

B. Requirements to Admit a Petition

23. The petition includes the information required by Article 32 of the Commission's Regulations, and meets the conditions set forth in Article 46(1)(c) of the American Convention and Article 39 of the Commission's Regulations, as it is neither pending settlement in another international inter-governmental proceeding, nor essentially duplicative of a petition pending or previously considered by the Commission.[FN3]

[FN3] This norm concerns proceedings of an international governmental nature. The work conducted by the CEH does not implicate this provision, nor have the parties alleged that it does. The CEH is an independent institution created by the Guatemalan Peace Accords to investigate and report on the human rights violations and acts of violence committed in connection with the armed conflict. The CEH recently issued a final report on the results of its investigations and the causes which gave rise to the conflict, as well as recommendations aimed at ensuring the non-repetition of such violations.

Exhaustion of Domestic Remedies

24. Article 46 of the American Convention specifies that, in order for a case to be admitted, "remedies under domestic law [must] have been pursued and exhausted in accordance with generally recognized principles of international law." This requirement exists to ensure the state concerned the opportunity to resolve disputes within its own legal framework. When domestic remedies are unavailable as a matter of fact or law, however, the requirement that they be exhausted is excused.[FN4] Article 46(2) of the Convention specifies that this exception applies: if the legislation of the state concerned fails to afford due process for the protection of the right allegedly violated; if the party alleging violation has been hindered in his or her access to domestic remedies; or if there has been unwarranted delay in the issuance of a final judgment. Consequently, when a petitioner alleges that he or she is unable to prove exhaustion, Article 37 of the Commission's Regulations establishes that the burden then shifts to the Government to demonstrate which specific domestic remedies remain to be exhausted and offer effective relief for the harm alleged.

[FN4] See IACtHR, Exceptions to the Exhaustion of Domestic Remedies (Art. 46.1, 46.2.a and 46.2.b American Convention on Human Rights), Advisory Opinion OC-11/90 of August 10, 1990, Ser. A No. 11, para. 17.

25. As set forth above, in the instant case the petitioners argue that they invoked the remedies provided for under law, but that it has been impossible to exhaust them. They invoke each of the three exceptions set forth in Article 46(2) of the Convention. First, with respect to the availability of due process within the domestic legal system, the petitioners allege that the Law of National Reconciliation constitutes a potential impediment to the prosecution of the perpetrators.[FN5] As the petitioners have not demonstrated that the application of this Law has actually been sought, or how it has otherwise affected the specific case under study, this allegation need not be further addressed at this stage. Second, with respect to the question of access to domestic remedies, the petitioners allege that acts of intimidation before, during and subsequent to the massacre prevented those affected from seeking judicial protection or recourse. Further, they allege that when some of the victims sought judicial protection against threats by soldiers in the period prior to the massacre they were fined and turned away. The petitioners argue that the denunciations initiated by the survivors in 1993 have not been met with the measures of investigation required, and that the pertinent authorities have hindered and delayed the measures they have invoked, such as the exhumations, and requests for ballistics and other evidence. Third, the petitioners allege that there has been an unwarranted delay in the issuance of a final judgment by the Guatemalan judiciary.

[FN5] The Law of National Reconciliation provides that the extinction of criminal responsibility may be applied to: political crimes against the State, the institutional order and public administration; common crimes "directly, objectively, intentionally and causally" linked to political crimes; and common crimes perpetrated with the aim of preventing, impeding or pursuing political and related common crimes. The Law establishes that amnesty shall not apply to the crimes of genocide, torture, forced disappearance, and those with respect to which there is no statute of limitations or for which amnesty is prohibited under internal law or Guatemala's international treaty obligation.

26. The State maintains, first, that its authorities are seized of the matter in the form of process 291-94 before the Public Ministry, and processes 391-93 and 344-95 before the Court of First Instance of Cobán, Alta Verapaz. Second, the State asserts that the CEH is playing an important role in the investigation of past abuses and attribution of institutional responsibility. With respect to the questions of access to remedies and delay in obtaining a final determination raised by the petitioners, the State has not expressly responded to their assertion that victims seeking judicial protection against threats prior to the massacre were turned away. Nor has it challenged their allegations that the survivors were driven from the area of Plan de Sánchez by fear, and that this same fear prevented them from seeking judicial recourse for eleven years. Further, the State has provided no information as to why the criminal investigation first invoked in 1993 remains in its initial stage.

27. The Commission finds that the survivors and family members of the victims were prevented from invoking domestic remedies for a period of years due to the fear which affected them and the general community. The rule of exhaustion of domestic remedies does not require

the invocation of remedies where this would place the physical integrity of the petitioner at risk, or where this offers no possibility of success.[FN6] In addition to the information in the record, Commission reports from the period under study document the vulnerability of populations in rural areas to human rights abuses, and the resulting climate of insecurity, and further indicate that, at the time of the events denounced, the judiciary "had been stripped of its independence, autonomy and impartiality." [FN7] Even once the survivors felt able to seek judicial recourse, the record in the case demonstrates that the criminal investigation underway for over five years has yet to advance beyond the most initial stage, leading the Commission to conclude that remedies have been subject to undue delay. The State has invoked the pendency of judicial proceedings as the basis for its argument that domestic remedies have not been exhausted as required, without having addressed the deficiencies alleged by the petitioners. The formal existence of legal remedies is not, in and of itself, sufficient to show that they offer the available and effective relief required under the terms of Article 46(1)(a).[FN8] Accordingly, the State has failed to discharge the burden of proof set forth in Article 37 of the Commission's Regulations.

[FN6] See, OC-11/90, *supra*, para. 33; see, e.g., Report 6/94, Case 10.772, El Salvador, published in, Annual Report of the IACHR 1993, OEA/Ser.L/V/II.85, Doc. 9 rev., Feb. 11, 1994, p. 181, 185.

[FN7] IACHR, Report on the Situation of Human Rights in Guatemala, OEA/Ser.L/V/II.61, Doc. 47 rev. 1, Oct. 5, 1983, at p. 132; see generally, Third Report on the Situation of Human Rights in Guatemala, OEA/Ser.L/V/II.66, Doc. 16, 3 Oct. 1985.

[FN8] See IACtHR, Velásquez Rodríguez Case, Merits, Judgment of July 29, 1988, Ser. C No. 4, para 63; Godínez Cruz Case, Merits, Judgment of Jan. 20, 1989, Ser. C No. 5, para. 65; Fairén Garbí and Solís Corrales Case, Merits, Judgment of Mar. 15, 1989, Ser. C No. 6, para. 86.

28. While the State has also invoked the work being carried out by the CEH as a means of clarifying past violations and establishing institutional responsibility, it has acknowledged that the functions of the latter in no way substitute for those of its judiciary. The mandate of the CEH specifically states that it shall not attribute responsibility to any individual, nor shall its report and recommendations have any judicial effect.[FN9] Given that the "remedies under domestic law" referred to in Article 46 of the Convention are judicial remedies effectuated in accordance with the principles of due process,[FN10] the vital work done by the CEH presents no bar to the admissibility of the present case before this Commission.[FN11]

[FN9] Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence that Have Caused the Guatemalan Population to Suffer, "Operation," para. III.

[FN10] See IACtHR, Velásquez Rodríguez, Preliminary Exceptions, *supra*, para. 91; Velásquez Rodríguez, Merits, *supra*, para. 66; Godínez Cruz Case, Merits, *supra*, para. 69.

[FN11] The Commission has affirmed that, notwithstanding the importance and value of the work of commissions designed to establish the truth about past human rights violations, their functions do not substitute for an adequate judicial process, and they do not replace the obligation of the State to investigate violations committed within its jurisdiction in order to

identify those responsible, impose the appropriate sanctions, and provide reparation to the victim. See, e.g., IACHR, Report 1/99, Case 10.480, El Salvador, app'd for publication Jan. 27, 1999; Report 36/96, Case 10.843, Chile, published in, Annual Report of the IACHR 1996, OEA/Ser.L/V/II.95, Doc. 7 rev., Mar. 14, 1997, at p. 156, 175-76, paras. 74-77; Report 28/92, Cases 10.147 et al., Argentina, published in, Annual Report of the IACHR 1992-93, OEA/Ser.L/V/II.83, Doc. 14, corr. 1, March 12, 1993, at p. 41, 50-51; and Report on the Situation of Human Rights in El Salvador, OEA/Ser.L/V/II.85, Doc. 28 rev., Feb. 11, 1994, at p. 71.

Timeliness

29. In its response of October 1, 1997, the State indicated that the present petition had been filed beyond the time limit specified in the Convention, as "recognized by the petitioner." The Commission has reviewed the record in detail with respect to the question of timeliness, and has encountered no such acknowledgment. In accordance with Article 46(1)(b) of the Convention, a petition must be presented in a timely manner to be admitted, namely, within six months from the date on which the complaining party was notified of the final judgment at the domestic level. The six months rule ensures legal certainty and stability once a decision has been taken. The rule does not apply when it has been impossible to exhaust internal remedies due to a lack of due process, denial of access to remedies, or unwarranted delay in issuing a final decision. In such a case, Article 38 of the Commission's Regulations establishes that the deadline for presentation shall be "within a reasonable period of time, in the Commission's judgment, as from the date on which the alleged violation of rights has occurred, considering the circumstances of each specific case." Nor does this rule apply where the allegations concern a continuing situation--where the rights of the victim are allegedly affected on an ongoing basis.

30. Given the absence of a final judgment in the present case, the findings set forth in the preceding section concerning domestic remedies, and the petitioners' allegations that the case involves an ongoing denial of justice, the Commission is required to establish whether the petition was filed within a reasonable time under the specific circumstances. The massacre is alleged to have taken place in 1982. The petitioners maintain that the survivors were unable to denounce the crimes before the Guatemalan authorities prior to 1993 due to the acts of intimidation and violence to which they had been subjected and their resulting fear. The State has not expressly controverted these allegations. The petitioners allege that the survivors did everything possible to exhaust the remedies they had invoked prior to filing their petition with the Commission in October of 1996 (in English), and February of 1997 (in Spanish). Pursuant to the foregoing analysis, and under the specific circumstances, the Commission finds that the petitioners invoked domestic remedies when it was possible for them to do so, and the rule of timely presentation provides no bar to the admissibility of the petition.

V. CONCLUSIONS

31. The Commission concludes that it has the competence to examine this case and that the petition is admissible, in accordance with Articles 46 and 47 of the American Convention.

32. On the basis of the findings of fact and law set forth above, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible.
2. To transmit this report to the parties.
3. To continue with the analysis of the merits of the case.
4. To place itself at the disposal of the parties for the purpose of reaching a friendly settlement on the basis of respect for the human rights protected in the American Convention, and to invite the parties to indicate their response as to this possibility.
5. To make this report public, and publish it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights (IACHR), in the city of Washington, D.C., on the 11th day of the month of March in the year 1999. (Signed): Robert K. Goldman, President; Hélio Bicudo, First Vice President; Claudio Grossman, Second Vice President; Commissioners Alvaro Tirado Mejía and Carlos Ayala.