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Title/Style of Cause: Joaquin Ortega, Teodoro Mejia Aguilar, Arcadio Mejia Velasquez, Efrain Ventura Cifuentes, Luis Ventura, Fidelino Raul Tobías Aparicio, Miguel Angel Rianca Sicay, Gregorio Ramírez y Ramírez, Juan Pablo Queijuy, Mateo de la Cruz, Aldo Tomas Sicaja, Francisco Alfredo Yuman, Mario Gómez Castillo, Emilio Santiago Ronquillo Peralta, Miguel Angel de Leon García, Jorge Adalberto Giron, Arturo Martínez Rodriguez, Alfredo Ubido Segura, Ricardo Alberto Ajcajibon, Juan Cristino Rodriguez, Sara Rodríguez, Mercedes Oxlaj, Dominga Rodriguez Chet, Guilgo Teodoro Zapeta Vasquez, Alberto Paron Boche, Pedro Rivera Matom, Magdalena Efranin Fray Santos, David Gutierrez Morales, Everardo Boteo Morales, Juan Orellana Chacon, Israel Chacon Aquino, Orlando Estuardo Alvarado Morales, Salvador Sosof Vasquez, Baltazar Pablo Mendoza, Pedro Chávez, Martin Quic Ratzan, Urbano Efraín Alvarado Mejía, Toribio Lopez, Tiburcio Carrillo, Arnoldo Perez Arana, Jorge Simaj Saquil, María Azurdia, Jorge Luis Simaj Azurdia, Felix Tizul Piruch, Víctor Segura, Gloria Patzay Vicente, Omar Cain Carvajal Leiva, Juana Coche Tacaxoy, José Pospoy Mendoza, Marco Tulio Collado Pardo, Oscar Aguilar Saquic, Cristobal Chico Lopez, Wenceslao Santiago Saavedra, Marvin Estuardo Castillo Saavedra, Víctor Manuel Chiquín (Chanquin), Ricardo Rivera Ovando, Pedro García Chuc, Carlos Evercio Melgar Pocon, Maria del Carmen Anabisca Secaida, Byron Estuardo Polanco, Eulogio Melendez Boteo, Pedro Melendez Galicia, Noe Melendez Galicia, Margarita Chavez, Dinora Perez Valdez, Felicito Cristobal Samayoa, Leandro Barillas, Oswaldo Luna Aceituno, Tomas Ventura Chon, Julio Quevedo Quezada and Raul Sao Villagrán v. Guatemala

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Decided by: Chairman: Helio Bicudo;
First Vice-Chairman: Claudio Grossman;
Second Vice-Chairman: Juan E. Mendez;
Commissioners: Robert K. Goldman, Peter Laurie, Julio Prado Vallejo Marta Altolaquirre, member of the Commission, of Guatemalan nationality, did not participate in the discussion or the vote on this Report, pursuant to Article 19(2) of the IACHR's Regulations.

Dated: 13 April 2000

Citation: Ortega v. Guatemala, Case 10.586, Inter-Am. C.H.R., Report No. 39/00, OEA/Ser.L/V/II.106, doc. 3 rev., (1999).

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I. SUMMARY

1. In 1990 and 1991 the Inter-American Commission on Human Rights (hereinafter "the Commission") received 46 petitions alleging that the Republic of Guatemala (hereinafter the "State" or "Guatemala") violated the human rights enshrined in the American Convention on Human Rights (hereinafter "the Convention") of the following 71 men, women, and children: Joaquín Ortega, Teodoro Mejía Aguilar, Arcadio Mejía Velásquez, Efraín Ventura Cifuentes, Luis Ventura, Fidelino Raúl Tobías Aparicio, Miguel Angel Rianca Sicay, Gregorio Ramírez y Ramírez, Juan Pablo Quiejuy, Mateo de la Cruz, Aldo Tomás Sicaja, Francisco Alfredo Yuman, Mario Gómez Castillo, Emilio Santiago Ronquillo Peralta, Miguel Angel de León García, Jorge Adalberto Girón, Arturo Martínez Rodríguez, Alfredo Ubido Segura, Ricardo Alberto Ajcajibón, Juan Cristino Rodríguez, Sara Rodríguez, Mercedes Oxlaj, Dominga Rodríguez Chet, Guilgo Teodoro Zapeta Vásquez, Alberto Paron Boche, Pedro Rivera Matom, Magdalena Efranin Fray Santos, David Gutiérrez Morales, Everardo Boteo Morales, Juan Orellana Chacón, Israel Chacón Aquino, Orlando Estuardo Alvarado Morales, Salvador Sosof Vásquez, Baltazar Pablo Mendoza, Pedro Chávez, Martín Quic Ratzán, Urbano Efraín Alvarado Mejía, Toribio López, Tiburcio Carrillo, Arnoldo Pérez Arana, Jorge Simaj Saquil, María Azurdía, Jorge Luis Simaj Azurdía, Félix Tizul Piruch, Víctor Segura, Gloria Patzay Vicente, Omar Cain Carvajal Leiva, Juana Coche Tacaxoy, José Pospoy Mendoza, Marco Tulio Collado Pardo, Oscar Aguilar Saquic, Cristóbal Chico López, Wenceslao Santiago Saavedra, Marvin Estuardo Castillo Saavedra, Víctor Manuel Chiquín (Chanquín), Ricardo Rivera Ovando, Pedro García Chuc, Carlos Evercio Melgar Pocón, María del Carmen Anabisca Secáida, Byron Estuardo Polanco, Eulogio Meléndez Boteo, Pedro Meléndez Galicia, Noé Meléndez Galicia, Margarita Chávez, Dinora Pérez Valdez, Felicito Cristóbal Samayoa, Leandro Barillas, Oswaldo Luna Aceituno, Tomás Ventura Chon, Julio Quevedo Quezada and Raúl Sao Villagrán. Specifically, in each case the petitioners allege that the victim or victims had been extrajudicially executed by members of the security forces of the Guatemalan State or persons linked to them.

2. The above-mentioned cases were opened pursuant to receipt of those complaints, and processed in accordance with the provisions of the American Convention and the Commission's Regulations. In the course of this processing, after determining that each of the cases referred to an allegation of extrajudicial execution of persons at the hands of the security forces or persons linked to them, and considering the character and time frame common to the complaints in question, the Commission decided, pursuant to Article 40 of its Regulations, to combine these cases and to proceed to resolve them together. This report examines the issue of whether the Republic of Guatemala has incurred international responsibility for the arbitrary execution of the victims that has been alleged, and the corresponding violation of the rights to life and judicial protection and guarantees, as well as the other related rights enshrined in the American Convention.

3. The State, for its part, responded to the Commission's requests for information in 41 of the 46 cases. In summary, in 29 of these 41 cases, as will be analyzed in detail below, the State answered that domestic proceedings were ongoing and that they remained in the investigative stage. Accordingly, with respect to those cases, the State argued expressly that the petition before

the Commission was inadmissible for failure to exhaust domestic remedies. In four of these 41 cases, the State asserted, based on indicia from the investigations, that the violations alleged were acts of common crime. As the facts alleged could not be attributed to the State or its forces, the State argued, they were inadmissible as falling outside the Commission's jurisdiction. In several cases, the State asserted that it required additional information to be in a position to investigate the facts alleged, or that the lack of information provided by the victims, their family members, and/or witnesses had impeded their efforts to investigate.

4. In accordance with what is established below, after examining the statements of the parties, the Commission decided to admit this case and to declare that the State bears responsibility for violations of the rights to life, and to judicial guarantees and protection of the victims identified, and for its failure to duly investigate, prosecute, and punish the perpetrators, as established in Articles 4, 8, and 25 of the American Convention, as well as, in the relevant cases, the rights to humane treatment, personal liberty, and measures of protection required for minors, established at Articles 5, 7, and 19 of the Convention. In addition, the State is responsible for failing in the duty imposed by Article 1(1) to respect and guarantee those rights. Accordingly, the Commission recommended to the State that it carry out a complete, impartial, and effective investigation to determine the circumstances of the victims' executions and to punish those responsible pursuant to the terms of internal legislation, and to ensure that the victims' family members receive fair and prompt compensation for the human rights violations set forth.

II. FACTS ALLEGED, PROCESSING BEFORE THE COMMISSION, AND POSITION OF THE STATE

1. Joaquín Ortega, Teodoro Mejía Aguilar, Arcadio Mejía Velásquez, Efraín Ventura Cifuentes, and Luis Ventura (Case 10.586)

Facts alleged

5. According to the petition dated March 24, 1990, on March 15, 1990, peasants Joaquín Ortega, Teodoro Mejía Aguilar, Arcadio Mejía Velásquez, Efraín Ventura Cifuentes, and Luis Ventura were captured by 12 armed men, allegedly linked to the State security forces. The perpetrators, aboard a truck with registration number C-14366, had intercepted the vehicle in which the victims were riding on the highway between Malacatán and Tejutla, San Marcos. Hours later, the corpses of the five victims were found at two different sites: the corpse of Joaquín Ortega was found in the village of Morazán, department of San Marcos, while the other four were found in the village of Malacatán in San Marcos. The facts alleged were reported to the National Police.

Processing before the Commission

6. On July 30, 1990, the Commission opened the case, forwarded the pertinent parts of the complaint to the Guatemalan State, and requested that it provide information on the facts alleged. The request was reiterated on January 28, 1991, and on March 9, 1994. The Guatemalan State responded on August 22, 1994, and that answer was forwarded to the petitioner on August 31, 1994 for observations. On February 20, 1996, the Commission requested that the State

provide observations on any developments in the proceedings that were initiated in this matter in the domestic jurisdiction.

7. On December 4, 1998, the Commission requested that both parties provide updated information on the case. In addition, in this last communication the Commission placed itself at the disposal of the parties for the purpose of pursuing a friendly settlement, giving each of the parties 30 days to accept its offer.

Position of the State

8. In its answer of August 22, 1994, the State indicated that, as a result of the complaint filed with the National Police by one of the relatives of the victims, a proceeding identified as case number 691-90 had been initiated in the domestic jurisdiction before the Second Court of the Criminal Court of Investigation of First Instance for the department of San Marcos. It also indicated that the Public Ministry had asked that Court to issue arrest warrants for the owner of the truck used by the criminals, and for the person who sold it to him. Those persons had been questioned and released on personal recognizance, when it was confirmed that they had acquired the vehicle in question legally.

2. Fidelino Raúl Tobías Aparicio, Miguel Angel Rianca Sicay, Gregorio Ramírez y Ramírez, and Juan Pablo Quiejuy (Case 10.609)

Facts alleged

9. According to the petition dated May 31, 1990, on May 22, 1990, Messrs. Fidelino Raúl Tobías Aparicio, Miguel Angel Rianca Sicay, Gregorio Ramírez y Ramírez, and Juan Pablo Quiejuy were captured in the villages of Xechiboy, Pamacoj, Achichoy, and Cheritaj, respectively, all in the municipality of Santiago Atitlán, department of Sololá, by armed men dressed as soldiers. Two days later, on May 24, 1990, the victims' corpses were found in the village of Cerro de Oro, also in the municipality of Santiago Atitlán, department of Sololá. The corpses bore signs of torture, strangulation, and gunshot wounds.

Processing before the Commission

10. On August 17, 1990, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State, requesting information on the facts alleged. The State responded on January 23, 1991, and that answer was forwarded to the petitioner on January 29, 1991 for observations. On March 9, 1994, the Commission asked the Guatemalan State to provide information on the progress in the proceedings opened on this case in the domestic jurisdiction. It reiterated that request on July 19, 1994. On August 23, 1994, the State answered and the information was forwarded to the petitioner on August 31, 1994 for the corresponding observations. That request was reiterated on September 26, 1995.

11. On December 4, 1998, the Commission asked both parties to provide updated information. In this last communication, the Commission made itself available to the parties to pursue a friendly settlement, giving each of the parties 30 days to accept its offer.

Position of the State

12. The State reported that domestic proceedings in this case, identified as case number 480-90, had been initiated on May 22, 1990, based on the finding of four corpses and a complaint filed by a relative before the Court of First Instance of Sololá. It noted that no one had come before the court to lodge a formal accusation, thus those proceedings remained in the investigative phase. In view of the pendency of those proceedings, the State asked that the case before the Commission be declared inadmissible for failure to exhaust domestic remedies.

3. Mateo de la Cruz (Case 10.610)

Facts alleged

13. According to the petition dated March 31, 1990, on May 27, 1990, the corpse of agricultural worker Mateo de la Cruz was found in the village of El Rincón, municipality of Amatitlán, department of Guatemala. The victim's throat had been cut and his body bore signs of torture. Days earlier, according to the complaint, Mr. de la Cruz had been captured by unidentified men, allegedly members of the State security forces.

Processing before the Commission

14. On August 17, 1990, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State, requesting information on the facts alleged. The State responded on January 23, 1991, and that answer was forwarded to the petitioner on January 29, 1991 for observations. The petitioner submitted additional information on December 18, 1992. On January 15, 1993, the Commission forwarded that additional information to the State and requested information on progress in the proceedings brought in the domestic jurisdiction. The Government of Guatemala submitted the information requested on March 18, 1993, and it was forwarded to the petitioner on March 19 for observations. This request was reiterated on September 26, 1995. On April 3, 1996, the Commission once again asked the Guatemalan State for additional information on progress in the proceedings.

15. On December 4, 1998, the Commission asked both parties to provide updated information. In this last communication, the Commission made itself available to the parties to pursue a friendly settlement, giving each of the parties 30 days to accept its offer.

Position of the State

16. The State indicated that domestic proceedings had been initiated in this matter before the Court of First Instance for Criminal Investigation of the municipality of Amatitlán, department of Guatemala, and that the case, number 1174-90, remained in the investigative phase. Accordingly, the State requested that the case before the Commission be declared inadmissible on the basis of failure to exhaust domestic remedies.

4. Aldo Tomás Sicaja and Francisco Alfredo Yuman (Case 10.611)

Facts alleged

17. Based on the petition dated May 31, 1980, on May 21, 1990, in the city of Escuintla, agricultural workers Aldo Tomás Sicaja and Francisco Alfredo Yuman were captured by armed men in civilian dress, allegedly linked to the State security forces, who placed the victims in a yellow pick-up truck and took them to an undisclosed destination. Three days later, on May 24, the peasants' bodies were found at the San Bernardo farm, kilometer 50 of the Pacific coast highway, department of Escuintla, bearing multiple bullet wounds and the coup de grâce. A complaint had been lodged with the domestic authorities based on the facts described.

Processing before the Commission

18. On August 17, 1990, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State, requesting information on the facts alleged. The Guatemalan State responded on January 23, 1991, and that answer was forwarded to the petitioner on February 8, 1991 for observations. The petitioner submitted additional information on December 18, 1992. On January 15, 1993, the Commission forwarded that additional information to the State and requested information on progress in the proceedings brought in the domestic jurisdiction. The Government submitted the information requested on March 19, 1993, and it was forwarded to the petitioner on May 5, 1993, for observations. This request was reiterated on August 26, 1995. On April 1, 1996, the Commission once again asked the Guatemalan State for additional information on any progress in the proceedings in the domestic jurisdiction.

19. On December 4, 1998, the Commission asked both parties to provide updated information. In this last communication, the Commission made itself available to the parties to pursue a friendly settlement, giving each of the parties 30 days to accept its offer.

Position of the State

20. The State indicated that domestic proceedings had been initiated in this case before the Second Court of First Instance of the department of Escuintla as case number 2664-90. Accordingly, it requested that the case before the Commission be declared inadmissible for failure to exhaust domestic remedies.

5. Mario Gómez Castillo (Case 10.612)

Facts alleged

21. According to the petition received June 8, 1990, Mr. Mario Gómez Castillo had been captured on June 2, 1990, as he and his wife were travelling along a highway in the municipality of Palín, department of Escuintla. The abduction was carried out by several armed men, allegedly members of the State security forces, who were driving a pick-up truck. One day later, on June 3, the victim's corpse was found at the María Santísima farm, also in the municipality of Palín. A complaint alleging the facts described was filed with the local authorities.

Processing before the Commission

22. On August 17, 1990, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State, requesting information on the facts alleged. The Guatemalan State responded on January 23, 1991, and that answer was forwarded to the petitioner on February 8, 1991 for observations. The petitioner submitted additional information on December 18, 1992. On January 12, 1993, the Commission forwarded that additional information to the State and also requested additional information on progress in the proceedings brought on this case in the domestic jurisdiction. On March 18, 1993, and May 11, 1994, the Government provided the information requested, which was forwarded to the petitioner on March 19, 1993, and June 7, 1994, respectively, for observations. Those requests were reiterated on September 26, 1995. On April 1, 1996, the Commission once again requested information from the Guatemalan State on progress in the proceedings.

23. On December 4, 1998, the Commission requested that both parties provide updated information. In this last communication, the Commission placed itself at the disposal of the parties to pursue a friendly settlement, giving each party 30 days to accept its offer.

Position of the State

24. The State reported that proceedings, identified as case number 2506-90, had been initiated in the domestic jurisdiction with respect to this matter before the Second Court of First Instance for Criminal Investigation of the department of Escuintla. Accordingly, it requested that the case before the Commission be declared inadmissible for failure to exhaust domestic remedies. The State later reported that case 2551-90 was before this Court by virtue of a complaint lodged on June 2, 1990 by a relative of the victim, and that the proceedings remained in the investigative stage.

6. Emilio Santiago Ronquillo Peralta (Case 10.614)

Facts alleged

25. According to the petition, on June 6, 1990, Mr. Emilio Santiago Ronquillo Peralta was captured along the highway that runs from Palín to San Vicente Pacaya by armed men in civilian dress, allegedly members of the State security forces. He was travelling with his family in a pick-up truck when those men took him by force, along with his nephew, whom they released a few kilometers down the road. The victim's corpse was located the next day at the "La Compañía" farm. The facts alleged were reported to the local authorities.

Processing before the Commission

26. On August 17, 1990, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State, requesting information on the facts alleged. On January 23, 1991, the Guatemalan State responded, and that answer was conveyed to the petitioner on February 8, 1991 for observations. That request was reiterated on June 16, 1992. On April 11,

1994, the State provided additional information, which was forwarded to the petitioner on May 6 of that same year. This request was reiterated on July 21, 1994. On April 3, 1996, the Commission requested information from the State on progress in the proceedings initiated on this case in the domestic jurisdiction.

27. On December 4, 1998, the Commission requested that both parties provide updated information. In this last communication, the Commission placed itself at the disposal of the parties to pursue a friendly settlement, giving each party 30 days to accept its offer.

Position of the State

28. The State reported that proceedings had been initiated on this matter in the domestic jurisdiction before the Second Court of First Instance for Criminal Investigation of the department of Escuintla as case number 2614-90. That case had been opened based on the complaint lodged by a relative, who indicated that the assailants had been driving a yellow Nissan van. The matter remained in the inquiry stage. In view of the pendency of that proceeding, the State requested that the case before the Commission be declared inadmissible for failure to exhaust domestic remedies.

7. Miguel Angel de León García and Jorge Adalberto Girón (Case 10.618)

Facts alleged

29. According to the petition dated June 21, 1990, the victims were arrested by unidentified armed men, allegedly linked to the State security forces. Days later, on June 14, 1990, their corpses were located near the María Luz farm, San Rafael Pie de la Cuesta, department of San Marcos. Both corpses bore multiple gunshot wounds. The facts alleged were the subject of a complaint lodged with the local authorities.

Processing before the Commission

30. On August 17, 1990, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State, requesting information on the facts alleged. That request was reiterated on January 28, 1991. The Guatemalan State requested a 30-day extension on May 8, 1991, which was granted by the Commission on May 21, 1991. The Guatemalan State submitted its response on June 28, 1991, which was forwarded to the petitioner on July 17, 1991 for observations. On November 19, 1993, the Commission requested that the State provide information on progress in the proceedings begun in the domestic jurisdiction. The State, in a note of February 10, 1994, requested another 30-day extension to provide the information sought by the Commission. That request was granted on February 17. On March 11, 1994, the Guatemalan State provided the information requested, which was sent to the petitioner on March 23, 1994, for observations. This request was reiterated on July 20, 1994. On April 3, 1996, the Commission again asked the State for information about progress in the proceedings.

31. On December 4, 1998, the Commission requested that both parties provide updated information. In this last communication, the Commission placed itself at the disposal of the parties to pursue a friendly settlement, giving each party 30 days to accept its offer.

Position of the State

32. The State reported that proceedings, identified by number 1491-90, had been initiated in this matter in the domestic jurisdiction before the Second Court of First Instance for Criminal Investigation of the department of San Marcos, and remained in the investigative phase. Through the investigation, it had been established that both victims died as the result of bullet wounds, and the Judge had charged the Department of Criminological Investigations and the National Police with determining the classification of the firearms used by the assailants. In view of the pendency of those proceedings, the State requested that the case before the Commission be declared inadmissible for failure to exhaust domestic remedies.

8. Arturo Martínez Rodríguez and Alfredo Ubido Segura (Case 10.622)

Facts alleged

33. According to the petition received on July 2, 1990, the victims, who were riding in a pick-up truck transporting merchandise and carrying license plates P-41052, were captured in the vicinity of the Centro Universitario de Occidente by unidentified individuals, allegedly linked to the State security forces. The vehicle and merchandise were not touched by the assailants. The victims' corpses were found a few days later, on June 21, 1990, at the Cantón of Parraxquí, municipality of Nahualá, department of Sololá. The bodies bore signs of torture and strangulation. The facts described were set forth in a complaint lodged with the local authorities.

Processing before the Commission

34. On August 17, 1990, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State, requesting information on the facts alleged. This request was reiterated on January 28, 1991. The Guatemalan State responded on March 21, 1991, and that answer was forwarded to the petitioner on April 2, 1991 for observations. That request was reiterated on July 20, 1994. The State provided additional information on April 12, 1994, which was forwarded to the petitioner on May 6, 1994. On April 3, 1996, the Commission asked the State for information on progress in the proceedings initiated in this case in the domestic jurisdiction.

35. On December 4, 1998, the Commission requested that both parties provide updated information. In this last communication, the Commission placed itself at the disposal of the parties to pursue a friendly settlement, giving each party 30 days to accept its offer.

Position of the State

36. The State reported that a proceeding had been initiated in relation to this matter in the domestic jurisdiction on June 22, 1990, before the Criminal Court of First Instance for

Sololá. The case, identified as number 567-90, remained in the investigative stage. According to the medical examiner's report, the cause of death had been respiratory failure/asphyxia due to strangulation.

9. Ricardo Alberto Ajcaybón (Case 10.653)

Facts alleged

37. According to the petition received on September 20, 1990, on August 27, 1990, the victim was captured in the town of Villa Nueva, department of Guatemala, by four armed individuals, allegedly linked to the State security forces, who were dressed in civilian clothes and driving a beige rural-type truck. On August 29, the victim's corpse was found between the towns of Santa María and the municipal seat of Palín, department of Escuintla. The victim's corpse bore gunshot wounds. The facts described were set forth in a complaint lodged with the local authorities.

Processing before the Commission

38. On September 28, 1990, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State, requesting information on the facts alleged. This request was reiterated on January 28, 1991. On May 8, 1991, the State requested a 30-day extension, which was granted by the Commission on May 21. The Guatemalan State responded on June 20, 1991, and the answer was forwarded to the petitioner on June 25 for observations. The petitioner provided its observations on the State's response on March 25, 1993, and these were forwarded to the Guatemalan State on August 17, 1993, with pertinent information requested within 30 days. This request was reiterated on September 26, 1995. On November 3, 1995, the State submitted its observations to the petitioner's reply. On April 3, 1996, the Commission requested that the State provide information on any progress in the proceedings initiated within the domestic jurisdiction.

39. On December 4, 1998, the Commission requested that both parties provide updated information. In this last communication, the Commission placed itself at the disposal of the parties to pursue a friendly settlement, giving each party 30 days to accept its offer.

Position of the State

40. The Guatemalan State reported that case 2004-90 had been initiated on August 29, 1990, before the Court of First Instance for Criminal Investigation of the municipality of Amatitlán, department of Guatemala, on the basis that the victim's father had gone to the Police sub-station to report that his son had been kidnapped. On August 31, 1990, the victim's father appeared before the judge in charge of the proceedings to reiterate his report of the crime and to add that, on August 29, 1990, he had learned that his son's corpse had appeared at the morgue. The State indicated that, based on the indicia turned up in the investigation, the activity reported should be attributed to common criminals, and not to the Guatemalan State or members of its security forces; therefore, the case before the Commission should be deemed inadmissible.

10. Juan Cristino Rodríguez, Sara Rodríguez, Mercedes Oxlaj, and Dominga Rodríguez Chet (Case 10.657)

41. According to the petition received on September 20, 1990, on September 1, 1990, in the municipality of Santo Domingo, department of Suchitepéquez, armed men in civilian dress, allegedly linked to the State security forces, entered the victims' home and killed them with firearms. According to the complaint, two other people who lived there were seriously wounded. In its observations on the State's answer, the petitioner emphasized that, in the judgment of acquittal favorable to the only person accused, the judge recognized that the Identification Bureau of the National Police and local military base had refused to collaborate in collecting bullet casings and projectiles and determining the type or types of arms used. Therefore, the judge did not have adequate material or human resources for the investigation.

Processing before the Commission

42. On September 28, 1990, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State, requesting information on the facts alleged. This request was reiterated on January 28, 1991. On May 8, 1991, the State requested a 30-day extension, which was granted by the Commission on May 21. The Guatemalan State responded on July 18, 1991, and that answer was forwarded to the petitioner on May 2, 1991 for observations. On March 9, 1994, the Commission asked the Guatemalan State to provide information on advances in the proceedings initiated in the domestic jurisdiction. This request was reiterated on July 22, 1994. On August 31, 1994, the State responded to that request, and its answer was forwarded to the petitioner on October 12, 1995. The petitioners submitted additional information on November 17, 1995, which was forwarded to the State on December 4, 1995.

43. On December 4, 1998, the Commission requested that both parties provide updated information. In this last communication, the Commission placed itself at the disposal of the parties to pursue a friendly settlement, giving each party 30 days to accept its offer.

Position of the State

44. The Guatemalan State reported that case 2520-90 had been initiated in this matter before the Second Court of First Instance for Criminal Investigation for the department of Suchitepéquez. First, according to the report, it had been established that a minor child had survived the events and described what happened in detail. In addition, the State reported that it had tried a person accused by the private accuser as one of the persons responsible, who was later acquitted for lack of convincing evidence. That judgment was affirmed by the Court of Appeals.

11. Guilgo Teodoro Zapeta Vásquez (Case 10.658)

Facts alleged

45. According to the petition received September 20, 1990, on March 24, 1990, Mr. Zapeta was captured by seven armed men in civilian dress, allegedly members of the State security forces, who forced the victim into a brown pick-up truck, and took him to an undisclosed location. At least one witness saw what happened. The next day, the victim's corpse was found in the town of San Francisco El Alto, department of Totonicapán. The events described were reported to the local authorities.

Processing before the Commission

46. On September 28, 1990, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State, requesting information on the facts alleged. This request was reiterated on January 28, 1991. On May 8, 1991, the State requested a 30-day extension to submit its answer. That extension was granted by the Commission on May 21. The Guatemalan State responded on July 18, 1991, and its answer was forwarded to the petitioner on August 2, 1991. The petitioner presented its observations to the State's answer on March 25, 1993, and these were forwarded to the Government on August 17, 1993, with a request that it submit its observations. The latter request was reiterated on July 22, 1994. On August 23, 1994, the State submitted its observations, which were forwarded to the petitioners on August 3, 1994 for observations. The Commission reiterated that request on September 26, 1995. On April 3, 1996, the Commission asked the State for information on progress in the proceedings begun in the domestic jurisdiction.

47. On December 4, 1998, the Commission requested that both parties provide updated information. In this last communication, the Commission placed itself at the disposal of the parties to pursue a friendly settlement, giving each party 30 days to accept its offer.

Position of the State

48. The State asserted that proceedings had been initiated in relation to this matter in the domestic jurisdiction, identified as case 738-90, before the Court of First Instance for Criminal Matters for the department of Totonicapán, by virtue of which it asked that the case before the Commission be declared inadmissible for failure to exhaust domestic remedies. In its initial response, the State indicated that a person had been accused of responsibility in the case, and that an arrest warrant had been issued. In its later observations, the State merely reported that several witnesses had failed to come forward to offer their statements, and that the file was with the Public Ministry. Based on the existence of these domestic proceedings, the State requested that the case before the Commission be declared inadmissible for failure to exhaust domestic remedies.

12. Alberto Parón Boche (Case 10.660)

Facts alleged

49. According to the petition of September 1, 1990, on August 19, 1990, several armed men in civilian dress, allegedly linked to the State security forces, arrived in a vehicle, searched the

home of Mr. Parón, and then shot and killed him. The facts described were reported to the local authorities.

Processing before the Commission

50. Based on that complaint, on September 28, 1990, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State, requesting information on the facts alleged. This request was reiterated on January 28, 1991. On May 8, 1991, the State requested a 30-day extension, which was granted by the Commission on May 21. The Guatemalan State responded on July 18, 1991, and its answer was forwarded to the petitioner on August 2, 1991. The petitioner presented its observations to the State's answer on March 25, 1993, and these were forwarded to the Government on August 17, 1993. On August 23, 1994, the State submitted its answer to the petitioner's observations, which was forwarded to the petitioners on August 31, 1994.

51. On December 4, 1998, the Commission requested that both parties provide updated information. In this last communication, the Commission placed itself at the disposal of the parties to pursue a friendly settlement, giving each party 30 days to accept its offer.

Position of the State

52. The State indicated that proceedings, identified as case 598-90, had been initiated in the domestic jurisdiction in this matter before the First Court of First Instance for the department of El Progreso. Accordingly, it requested that the case before the Commission be declared inadmissible for failure to exhaust domestic remedies.

53. Later, the State reported that the proceedings involved one person accused by the private accuser, who was the victim's father. The accused had implicated four persons as the direct perpetrators of the assassination. An arrest warrant had been issued for those persons to have them brought before the court. According to the State's report, five accused had been arrested on August 24, 1990. Four had later been released "on the grounds that there was no evidence against them." The Public Ministry requested that in respect of the fifth accused "the provisional arrest warrant not be amended, considering that his statement in the inquiry could be characterized as an improper confession of his participation in the act." In addition, the police agents involved had noted in their statements that, while the others had accompanied the accused at the time of the event, it was the accused who bore responsibility for the death of Mr. Parón Boche. On May 10, 1991, the court had acquitted the accused. This judgment had been affirmed by the Court of Appeals, "on grounds that there is not sufficient evidence."

13. Pedro Rivera Matom (Case 10.667)

Facts alleged

54. According to the petition of September 1, 1990, Mr. Rivera was captured on August 3, 1990 by troops of the Guatemalan Army quartered at the base in Amacchel, El

Quiché. According to the petition: "The soldiers removed his eyes, cut off his ears, torturing him to the point of killing him." The facts alleged were reported to the local authorities.

Processing before the Commission

55. On September 28, 1990, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State, requesting information on the facts alleged. This request was reiterated on January 28, 1991. On June 18, the Commission requested additional information from the petitioner.

56. On December 4, 1998, the Commission asked both parties to provide updated information. In this last communication, the Commission placed itself at the disposal of the parties to pursue a friendly settlement, giving each party 30 days to accept its offer.

Position of the State

57. The State has not provided any comment or observation on this case.

14. Magdalena Efranin Fray Santos (Case 10.687)

Facts alleged

58. According to the petition of September 24, 1990, on August 30, 1990, troops from the Guatemalan Army quartered at the base in the village of Amacchel, Ixcán, El Quiché, opened fire against a group of local residents. As a result of this attack, Magdalena Efranin Fray Santos, a 12-year-old girl, was killed. The facts alleged were reported to the Office of the Ombudsman for Human Rights.

Processing before the Commission

59. On October 24, 1990, the Commission opened the case, forwarded the pertinent parts of the complaint to the Guatemalan State, and requested information on the facts alleged. This request was reiterated on January 30, 1991. On June 18, 1992, the Commission requested additional information from the petitioner.

60. On December 4, 1998, the Commission asked both parties to provide updated information. In this last communication, the Commission placed itself at the disposal of the parties to pursue a friendly settlement, giving each party 30 days to accept its offer.

Position of the State

61. The State did not provide any comment or observation on this case.

15. David Gutiérrez Morales, Everardo Boteo Morales, Juan Orellana Chacón and Israel Chacón Aquino (Case 10.692)

Facts alleged

62. According to the petition dated October 10, 1990, in May of 1990 the four victims, members of the "La Flor de la Esperanza" ("The Flower of Hope") Cooperative, were captured by men allegedly linked to the State security forces who were bearing firearms. The corpses of the four peasants were found floating in the Usumacinta river, in the municipality of La Libertad, department of El Petén. A relative filed a complaint with the Office of the Ombudsman for Human Rights.

Processing before the Commission

63. On October 24, 1990, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State, requesting information on the facts alleged. This request was reiterated on January 30, 1991. On May 8 of that year, the State requested a 30-day extension for its response, and this was granted by the Commission on May 21. The State responded on August 13, 1991, and its answer was forwarded to the petitioner on August 21, 1991 for observations. The Guatemalan State submitted additional information on May 7, 1993. The petitioner submitted its observations on the Government's answer on August 11, 1993. Those were forwarded to the State on August 20, 1993 for observations. That request was reiterated on September 26, 1995. The State submitted its reply to the petitioner's observations on May 27, 1994, and it was forwarded to the petitioner on June 6, 1995 for observations.

64. On December 4, 1998, the Commission asked both parties to provide additional information. In this last communication, the Commission placed itself at the disposal of the parties to pursue a friendly settlement, giving each party 30 days to accept its offer.

Position of the State

65. The State reported that, based on a complaint by a relative of one of the victims, case 1254-89 had been initiated before the Second Court of First Instance for Criminal Matters of the department of El Petén, and remained in the investigative phase. In its initial answer, the State indicated that "the evidence to date [not identified] leads to the presumption that the events were carried out by members of the irregular armed groups that operate in areas of the department of El Petén." In its subsequent observations, the State added that the persons allegedly responsible had been dressed in camouflage. The State reported that after the corpses had been found, they had been buried without any order from a judge with jurisdiction, under the responsibility of the local deputy mayor. Once the case had been placed before the judicial authorities, the Public Ministry had asked that a statement be taken from the deputy mayor, who, according to the report, may have participated in the facts alleged in this complaint, and that an investigation be undertaken into why the burial had been authorized without a judicial order. Finally, the State reported that the judge had ordered the exhumation of the corpses, in due course, in order to enter the respective death certificates.

16. Orlando Estuardo Alvarado Morales (Case 10.714)

Facts alleged

66. According to the petition received October 20, 1990, Professor Orlando Estuardo Alvarez Morales was captured by heavily armed men, allegedly linked to the State security forces, at Calle 16 between Avenidas 1 and 2 in Zone 1, as he returned from a mass. The assailants were in a gray, four-door vehicle, with polarized glass and registration number P-98638. They beat Professor Alvarez and forced him into the vehicle, taking him to an undisclosed destination. Local residents witnessed the events and confirmed these details, in addition to reporting that the kidnappers threatened all the witnesses.

67. The victim's family filed a writ of habeas corpus before the Supreme Court of Justice on October 22, 1990, and reported his disappearance to the Police, the Office of the Ombudsman for Human Rights, and other courts, all with no response. The victim's corpse appeared in the area known as Playa los Cushinales, municipality of Amatitlán, department of Guatemala, on November 1, 1990, bearing signs of torture and bullet wounds. The victim had been a professor of physics and mathematics, and a university leader and participant in a 1989 teachers' strike. A few years before, his brother had been disappeared and executed.

Processing before the Commission

68. On October 30, 1990, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State by telegram, requesting that it provide information on the facts alleged as soon as possible. This request was repeated on February 4, 1991. The petitioner sent additional information on November 26, 1990, and February 2, 1991. On June 17, 1992, the Commission reiterated to the Government that it should provide its answer. On October 10, 1995, the Commission requested updated information on the case from the petitioner.

69. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension in order to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that, in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

70. The State did not provide any comment or observation on this case.

17. Salvador Sosof Vásquez and Baltazar Pablo Mendoza (Case 10.725)

Facts alleged

71. According to the petition dated October 30, 1990, on October 15, 1990, six armed individuals in civilian dress, allegedly linked to the State security forces, their faces concealed by ski caps, arrived on foot and entered the victims' house, situated in the Cantón of Panul, municipality of Santiago Atitlán, department of Sololá, and shot and killed them. Relatives of the victims witnessed the facts alleged and reported them to the local authorities.

Processing before the Commission

72. On November 12, 1990, the Commission opened the case, forwarded the pertinent parts of the complaint to the Guatemalan State, and requested information on the facts alleged. This request was reiterated on February 19, 1991. On May 8, 1991, the State requested a 30-day extension, which was granted by the Commission on May 21. The Guatemalan State responded on August 23, 1991, and its answer was forwarded to the petitioner on September 10, 1991 for observations. The petitioner submitted its observations to the Government's answer on December 18, 1992, and these were forwarded to the State on January 15, 1993, with a request for information regarding any progress in the proceedings on this case begun in the domestic jurisdiction. The Guatemalan State presented the information requested on March 18, 1993, which was forwarded to the petitioner on March 19, 1993 for observations. The State provided additional information on March 2, 1994, which was forwarded to the petitioner on March 23, 1994 for observations. That request for observations was reiterated on September 26, 1995.

73. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension, to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that given the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

74. The State reported that in relation to this case, and based on the complaint filed by a relative of the victims, criminal case 985-90 had been opened before the Court of First Instance of the department of Sololá, and remained in the investigative phase. Accordingly, the State asked that the case before the Commission be declared inadmissible for failure to exhaust domestic remedies.

18. Pedro Chávez (Case 10.730)

Facts alleged

75. According to the petition dated November 8, 1990, on October 10, 1990, Guatemalan Army troops quartered at the base in the village of Amacchel shot and killed peasant Pedro Chávez. According to the petition, local residents witnessed the events, which were reported to the Office of the Ombudsman for Human Rights.

Processing before the Commission

76. On November 12, 1990, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State, requesting information on the facts alleged. This request was repeated on February 19, 1991. On June 19, 1992, the Commission sought additional information from the petitioner.

77. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension, to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

78. The State did not provide any comment or observation on this case.

19. Martín Quic Ratzán (Case 10.731)

Facts alleged

79. According to the petition received on November 12, 1990, on October 23, 1990, in the municipal seat of Santiago Atitlán, department of Sololá, several armed men, allegedly linked to the State security forces, killed Mr. Martín Quic Ratzán, who had been a member of the brotherhood of the Cantón of Pachichaj. The assailants arrived at the home where a meeting was being held to analyze matters related to the brotherhood, entered with violent force, and killed the victim using automatic firearms. Other members of the brotherhood witnessed the facts, which were reported to the local authorities.

Processing before the Commission

80. On November 12, 1990, the Commission opened the case, forwarded the pertinent parts of the complaint to the Guatemalan State, and requested information on the facts alleged; this

request was reiterated on February 19, 1991. On May 8, 1991, the State requested a 30-day extension, which was granted by the Commission on May 21. The Guatemalan State responded on August 28, 1991, and its answer was forwarded to the petitioner on December 20, 1991 for observations. The petitioner submitted its observations to the Government's answer on December 18, 1992, which were forwarded to the State on January 15, 1993, with a request for information regarding any progress in the proceedings on this case begun in the domestic jurisdiction. The State presented its reply to the petitioner's observations on March 19, 1993, which was forwarded to the petitioner on March 26, 1993 for observations. The request for observations was reiterated on September 26, 1995.

81. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension, to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that, in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

82. The State indicated in relation to this matter that, based on the complaint filed by a relative of the victims, criminal case 1028-90 was being pursued in the Court of First Instance of the department of Sololá, and remained in the investigative phase. Accordingly, the State asked that the case before the Commission be declared inadmissible for failure to exhaust domestic remedies.

20. Urbano Efraín Alvarado Mejía (Case 10.747)

Facts alleged

83. According to the petition dated November 12, 1990, on October 29, 1990, in the village of Gáldez, municipality of Costa Cuca, department of Quetzaltenango, Urbano Efraín Alvarado Mejía was killed with firearms by several armed men in civilian dress, allegedly linked to the State security forces, who raided his home. Relatives of the victim witnessed the alleged facts and reported them to the pertinent local authorities. The victim was the brother of Sergio Alvarado, a student at the Centro Universitario de Occidente (CUNOC) who had been killed in 1987 after having been captured by six members of the police. After an investigation advised by Harvard University with respect to the execution of Sergio Alvarado, the police agents had been convicted and sentenced; however, in August 1990, the Fourth Chamber of Appeals had acquitted them. During those proceedings, the relatives of Sergio Alvarado had been harassed and threatened.

Processing before the Commission

84. On December 19, 1990, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State, requesting information on the facts alleged. This request was repeated on April 9, 1991. On May 8, 1991, the State requested a 30-day extension, which was granted by the Commission on May 21. The Guatemalan State responded on August 28, 1991, and this answer was forwarded to the petitioner on September 20, 1991 for observations. The petitioner submitted its observations to the Government's answer on March 25, 1993, and these were forwarded to the State on August 20, 1993. The Commission asked the Government to submit its reply to those observations within 30 days. This request was reiterated on September 27, 1995, with no response received.

85. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension, to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

86. The State asserted that proceedings were underway in relation to this case before the Regional Justice of the Peace of Costa Cuca, Quetzaltenango. In relation to that process, one person had been detained and accused of having participated in the planning of the robbery and assassination of the victim, on the basis of a direct accusation by his relatives. Since the matter remained pending, the State asked that the case before the Commission be declared inadmissible for failure to exhaust domestic remedies.

21. Toribio López and Tiburcio Carrillo (Case 10.755)

Facts alleged

87. According to the petition dated December 11, 1990, on November 4, 1990, troops of the Guatemalan Army quartered at Amacchel, in the municipality of San Gaspar Chajul, El Quiché, attacked the inhabitants of the villages of Santa Clara and San Antonio, also in the department of El Quiché, with artillery fire. In that attack, the soldiers killed Toribio López and Tiburcio Carrillo, 16 and 14 years old, respectively. The soldiers then rammed a stick through their backs and left them half-buried. Local residents witnessed the alleged acts, which were reported to the corresponding authorities.

Processing before the Commission

88. On December 19, 1990, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State, asking that it provide information on the facts alleged. That request was reiterated on April 9, 1991, December 1, 1993, and September 12, 1994. In the interim, on June 19, 1992, the Commission requested additional information from the petitioner. The Guatemalan State responded on November 14, 1994, and that answer was forwarded to the petitioner on November 22, 1994 for observations. That request was repeated on March 7, 1996.

89. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension, to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

90. The State reported that no complaint had been lodged regarding the facts alleged in the courts of the department, nor was there any proceeding before the Justice of Peace. In addition, although the National Police had tried to go the village in question to investigate, "they have run up against many obstacles, for since it is a zone of conflict, access is dangerous and risky." As a result of the brevity of the information provided by the petitioners, the State indicated that it had not been possible to undertake an investigation aimed at clarifying the facts alleged.

22. Arnoldo Pérez Arana (Case 10.759)

Facts alleged

91. According to the petition received December 12, 1990, on November 16, 1990, in the hamlet of Monte Redondo, municipality of San José Atescatempa, department of Jutiapa, two armed men, allegedly linked to the State security forces, entered the victim's home and killed him with firearms. Later, they fled without taking any object of value. Relatives of the victim witnessed the facts, which were reported to the local authorities.

Processing before the Commission

92. On December 19, 1990, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State, asking that it provide information on the facts alleged. That request was reiterated on April 9, 1991. On May 8, 1991, the State requested a 30-day extension, which was granted by the Commission on May 21. The Guatemalan State answered on September 3, 1991, and its response was forwarded to the petitioner on September 20, 1991 for observations. The petitioner submitted its observations to the Government's answer on December 18, 1992, and these were forwarded to the State on January 15, 1993, whereupon the Commission also requested information on any progress in the proceedings initiated in the domestic jurisdiction. The State submitted its reply to the petitioner's observations on March 18, 1993, which was forwarded to the petitioner on March 19, 1993 for observations. On December 1, 1993, the Commission asked the State to clarify a contradiction in its communications of September 3, 1991, and March 18, 1993. This request was reiterated on September 27, 1995.

93. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension, to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

94. In its initial answer, the State asserted that case 2714-90 had been initiated in this matter before the Second Court of First Instance for the department of Jutiapa, and remained in the investigative phase. The State requested that the Commission declare the case before it inadmissible for failure to exhaust domestic remedies. However, in its subsequent observations, the State indicated that the Second Court of First Instance had reviewed the records from 1990 and had not found any proceeding in which the victim appeared as offended party, in view of which the State pointed to the need to receive more information from the petitioners in order to investigate the case.

23. Jorge Simaj Saquil, María Azurdia, and Jorge Luis Simaj Azurdia (Case 10.763)

Facts alleged

95. According to the petition received December 12, 1990, on December 3, 1990, in the Cantón of Nazareno, zone 3 of the city of Chimaltenango, armed men, allegedly linked to the State security forces, captured husband and wife Jorge Simaj Saquil and María Azurdia, and their two-year-old son, at 3 p.m. in the central park. They were taken to an undisclosed

destination. Two hours later, the victims' corpses were found, the husband and wife with their throats cut, and the child hung. The facts alleged were reported to the competent authorities.

Processing before the Commission

96. On December 19, 1990, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State, asking that it provide information on the facts alleged. That request was reiterated on April 9, 1991. On May 8, 1991, the State requested a 30-day extension, which was granted by the Commission on May 21. The Guatemalan State responded on September 3, 1991, and its answer was forwarded to the petitioner on September 20, 1991 for observations. The petitioner submitted its observations to the Government's answer on December 18, 1992, and these were forwarded to the State on January 15, 1993, whereupon the Commission also requested information on any progress in the proceedings initiated in the domestic jurisdiction. The State submitted its reply to the petitioner's observations on March 18, 1993. That reply was forwarded to the petitioner on March 19, 1993 for observations. The State provided additional information on June 13, 1994, which was forwarded to the petitioner on June 21, 1994, for observations. The Commission reiterated its request for observations from the petitioner on September 27, 1995. On April 3, 1996, the Commission once again requested that the State provide information on any progress in the domestic proceedings. The Commission received no response.

97. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension, to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

98. In its initial answer, the State reported that case 065-91 was before the Second Court of First Instance for Criminal Matters for the department of Chimaltenango, and remained in the investigative phase. Consequently, it had requested that the case before the Commission be declared inadmissible for failure to exhaust domestic remedies. In its observations, the State referred to case 2327 before the First Court of First Instance for Criminal Investigation of the department, and reported that the Public Ministry had requested that a statement be taken and that a medical examiner's report be sought.

24. Félix Tizul Piruch (Case 10.764)

Facts alleged

99. According to the petition received December 12, 1990, on November 14, 1990, in the Cantón of Santa Ana, municipality of Momostenango, department of Totonicapán, Mr. Tizul Piruch was captured at his home by several armed men in civilian dress, allegedly linked to the State security forces. Hours later, his corpse was found on the outskirts of the Cantón with gunshot wounds in the thorax and signs of having been beaten. A relative of the victim reported the alleged acts to the local authorities.

Processing before the Commission

100. On December 19, 1990, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State, requesting information on the facts alleged. That request was reiterated on April 9, 1991. On May 8, 1991, the State requested a 30-day extension, which was granted by the Commission on May 21. The Guatemalan State responded on September 3, 1991, and that answer was forwarded to the petitioner on September 20, 1991 for observations. The request was reiterated on March 5, 1992. The petitioner submitted its observations to the Government's answer on December 18, 1992, and these were forwarded to the State on January 15, 1993, whereupon the Commission also requested information on any progress in the proceedings initiated in the domestic jurisdiction. The State submitted its reply to the petitioner's observations on May 7, 1993, which was forwarded to the petitioner on May 18, 1993 for observations. The State provided additional information on September 6, 1994, which was forwarded to the petitioner on September 16, 1994 for observations. The Commission reiterated its request for observations from the petitioner on September 27, 1995. On April 24, 1996, the Commission once again requested that the State provide information on any progress in the domestic proceedings. The Commission received no response.

101. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension, to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

102. The State indicated that in respect of this matter case number 894-90 was before the Court of First Instance for the department of Totonicapán, and remained in the investigative phase. In its observations, the State reported that, pursuant to the new Code of Criminal Procedure, the proceedings had been placed before the Office of the Attorney General of the

Nation to continue the inquiry. In view of the pendency of those proceedings, the State asked that the case before the Commission be declared inadmissible for failure to exhaust domestic remedies.

25. Víctor Segura (Case 10.777)

Facts alleged

103. According to the petition received January 15, 1991, on December 11, 1990, in the village of El Chilar Dos, municipality of Flores, department of El Petén, a group of unidentified armed men, allegedly linked to the State security forces, shot and killed Mr. Víctor Segura inside his home, and in the presence of his family. The facts described were reported to the corresponding authorities.

Processing before the Commission

104. On February 7, 1991, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State, requesting that it provide information on the facts alleged. This request was reiterated on March 5, 1992. The Guatemalan State responded on May 7, 1993, and its answer was forwarded to the petitioner on May 19, 1993 for observations. On March 9, 1994, the Commission requested the State to provide information on any progress in the proceedings begun in the domestic jurisdiction. This request was reiterated on September 27, 1995, and April 24, 1996. In the interim, on September 27, 1995, the Commission reiterated its request to the petitioners for observations.

105. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension, to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

106. The State reported that, based on the complaint lodged by the victim's father, proceedings were under way before the First Court of First Instance for the department, in San Benito, Petén. The report by the medical examiner had confirmed that the victim died from gunshot wounds. According to the State's report, the proceedings remained in the investigative phase.

26. Gloria Patzay Vicente (Case 10.780)

Facts alleged

107. According to the petition dated January 28, 1991, on January 20, 1991, in the Cantón of Sicutzán, Chicacao, department of Suchitepéquez, several armed men, allegedly linked to the State security forces, captured Mrs. Gloria Patzay Vicente and took her to an undisclosed destination. Later, her corpse appeared floating in the Cutzán river, showing signs of having been beaten and tortured. The facts alleged were reported to the corresponding authorities.

Processing before the Commission

108. On February 7, 1991, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State, requesting that it provide information on the facts alleged. On May 8, 1991, the State requested a 30-day extension for providing its answer. This extension was granted by the Commission on May 21. The Guatemalan State responded on September 3, 1991, and its answer was forwarded to the petitioner on September 20, 1991 for observations. The petitioner submitted its observations to the Government's answer on December 18, 1992, and these were forwarded to the State on January 15, 1993, whereupon the Commission also requested information on any progress in the proceedings initiated in the domestic jurisdiction. The Guatemalan State submitted its reply to the petitioner's observations on May 7, 1993. That reply was forwarded to the petitioner on May 19, 1993, for observations. On December 1, 1993, the Commission once again requested that the State provide information on any progress in the proceedings begun in the domestic jurisdiction. On May 16, 1994, the State provided additional information, which was forwarded to the petitioner on June 6, 1994 for observations. On September 27, 1995, the Commission once again asked the State for information on progress in the domestic proceedings, and reiterated its request to the petitioner for observations. The State provided that information on November 6, 1995, and it was forwarded to the petitioner on November 13, 1995, for observations. That request was reiterated on March 7, 1996.

109. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension, to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

110. In its initial answer, the State indicated that case 221-91 was pending in this matter before the Court of First Instance for Criminal Investigation of Suchitepéquez, and remained in the investigative phase. The State asserted that the case before the Commission should therefore be considered inadmissible, for failure to exhaust domestic remedies. In its subsequent observations, however, the State reported that, after reviewing the records of the pertinent courts, no case file had been found related to the victim. In its additional observations, the State referred once again to case 221-91, before the Second Court of First Instance for Criminal Investigation. It added that the victim's corpse showed signs of having been beaten on different parts of the body. The victim's mother had presented a statement and named two people as being responsible for the killing "who were subpoenaed to make statements ... and as of this time they have not been located, which is why no arrest warrant has issued."

27. Omar Caín Carvajal Leiva (Case 10.782)

Facts alleged

111. According to the petition received January 29, 1991, on January 2, 1991, in Puerto Barrios, department of Izabal, several armed men, linked to the State security forces, captured Mr. Omar Caín Carvajal Leiva when he left his home in his car. His corpse was found days later along the road that leads from Puerto Barrios to Quirigua, also in the department of Izabal. The body bore bullet wounds and signs of torture. His wife lodged a complaint with the police authorities.

Processing before the Commission

112. On February 7, 1991, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State, requesting information on the facts alleged. On May 8, 1991, the State requested a 30-day extension, which was granted by the Commission on May 21. The Guatemalan State responded on September 3, 1991, and this answer was forwarded to the petitioner on September 20, 1991, for observations. The petitioner submitted its observations to the Government's answer on December 18, 1992, and these were forwarded to the State on January 15, 1993, whereupon the Commission also requested information on any progress in the proceedings initiated in the domestic jurisdiction. The Guatemalan State submitted its reply to the petitioner's observations on March 18, 1993, and this was forwarded to the petitioner on March 19, 1993 for observations. The Commission reiterated its request for observations from the petitioner on September 27, 1995. On April 24, 1996, the Commission once again requested that the State provide information on any progress in the domestic proceedings.

113. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension, to collect and present information. The

Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

114. The State indicated that case number 87-91, initiated based on the complaint lodged by the victim's wife, was pending before the Second Court of First Instance for Criminal Investigation for the department of Izabal, in the investigative phase. In view of the pendency of this domestic proceeding, the State requested that the case before the Commission be declared inadmissible for failure to exhaust domestic remedies.

28. Juana Coche Tacaxoy and José Pospoy Mendoza (Case 10.784)

Facts alleged

115. According to the petition dated January 14, 1991, on December 21, 1990, at kilometer 14 of the road that runs from Santiago Atitlán to San Lucas Tolimán, department of Sololá, armed men, allegedly linked to the State security forces, entered the home where the victims were, and killed them with firearms. According to the petition, the victims were relatives of some of the peasants who were killed by the Guatemalan Army the morning of December 2, 1990, in the village of Panabaj, municipality of Santiago Atitlán. The facts described were reported to the corresponding authorities.

Processing before the Commission

116. On February 7, 1991, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State, requesting information on the facts alleged. On May 8, 1991, the State requested a 30-day extension, which was granted by the Commission on May 21. The Guatemalan State responded on September 3, 1991, and its answer was forwarded to the petitioner on September 20, 1991 for observations. The petitioner submitted its observations to the Government's answer on December 18, 1992, and these were forwarded to the State on January 15, 1993, whereupon the Commission also requested information on any progress in the proceedings initiated in the domestic jurisdiction. The Guatemalan State submitted its reply to the petitioner's observations on March 18, 1993, and this was forwarded to the petitioner on March 19, 1993 for observations. On March 9, 1994, the Commission once again requested that the State provide information on any progress in the domestic proceedings. On November 8, 1995, the State provided that information, which was forwarded to the petitioner on November 13, 1995 for observations.

117. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-

month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension, to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

118. The State indicated that case number 1224-90 had been initiated on December 20, 1990, and was pending before the Court of First Instance for the department of Sololá in the investigative phase. Consequently, the State asked that the Commission declare the case before it inadmissible for failure to exhaust domestic remedies. In its observations, the State reported that the proceedings remained in the investigative phase, and further stated that "pursuant to the indicia produced in the initial investigation, it is of the view that the facts should be attributed to common crime, and not to the Guatemalan State or members of its security forces, which is why the case should be found inadmissible."

29. Marco Tulio Collado Pardo (Case 10.785)

Facts alleged

119. According to the petition received on January 15, 1991, on January 4, 1991, in the city of Escuintla, Mr. Marco Tulio Collado Pardo, who was mayor of Escuintla and a leader of the Christian Democracy Party (Partido Democracia Cristiana), was killed with firearms by several armed men, allegedly linked to the State security forces. These men had been in a silver-gray pick-up truck, with which they pulled alongside the vehicle in which the victim was travelling. The facts described were reported to the corresponding authorities. According to the petition, in 1980, when mayor, the victim "received death threats and later survived an assassination attempt by the security forces, in which he and others accompanying him were wounded and one member of the security staff killed." As a result, the victim went into exile in Costa Rica and Mexico. He returned and was elected mayor in 1985.

Processing before the Commission

120. On February 7, 1991, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State, requesting information on the facts alleged. The Guatemalan State responded on September 20, 1991, and its answer was forwarded to the petitioner on October 17, 1991 for observations. The petitioner submitted its observations to the Government's answer on December 18, 1992, and these were forwarded to the State on January 15, 1993, whereupon the Commission also requested information on any progress in the proceedings initiated in the domestic jurisdiction. The Government submitted its reply to the petitioner's observations on March 18, 1993, which was forwarded to the petitioner on March 19, 1993 for observations. On December 1, 1993, the Commission once again requested that the State provide information on any progress in the domestic proceedings. On September 6, 1994,

the State provided additional information, which was forwarded to the petitioner on September 16, 1994, for observations. On September 27, 1995, the Commission reiterated that request to the petitioner.

121. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension, to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that, in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

122. The State indicated that case 94-91 was pending in this matter in the investigative phase before the First Court of First Instance of Escuintla. Consequently, it asked that the case before the Commission be declared inadmissible for failure to exhaust domestic remedies. After the entry into force of the new Code of Criminal Procedure, the proceedings had been forwarded to the Office of the Attorney General, and remained pending.

30. Oscar Aguilar Saquic (Case 10.787)

Facts alleged

123. According to the petition dated January 14, 1991, on December 28, 1990, in the Cantón of Justo Rufino Barrios, Olinstepeque, department of Quetzaltenango, several armed men, allegedly linked to the State security services, captured the child Oscar Aguilar Saquic, 13 years of age, and took him to an undisclosed destination. Later, the victim's body appeared in the same Cantón Justo Rufino Barrios, with several gunshot wounds. The facts alleged were reported to the corresponding authorities.

Processing before the Commission

124. On February 7, 1991, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State, requesting information on the facts alleged. On May 8, 1991, the State requested a 30-day extension, which extension was granted by the Commission on May 21. The Guatemalan State answered on September 3, 1991. Its answer was forwarded to the petitioner on September 20, 1991 for observations. The petitioner submitted its observations to the Government's answer on March 25, 1993, and these were forwarded to the State on August 20, 1993. The Guatemalan State submitted its reply to the petitioner's observations on November 6, 1995, which was forwarded to the petitioner on November 13, 1995. On March 8, 1996, the

Commission requested that the State provide information on any progress in the domestic proceedings. The State submitted that information on May 13, 1996.

125. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension, to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

126. In its initial submission, the State reported that a case was pending in this matter before the Second Court of First Instance for Criminal Investigation for the department of Quetzaltenango. Based on the accusation made by the victim's father, the Public Ministry had requested the arrest of two people as alleged perpetrators. For this reason, the State requested that the Commission declare the petition inadmissible for failure to exhaust domestic remedies. In its later observations, the State reported that, in the course of those proceedings, the First Court had handed down a judgment of acquittal on March 12, 1992, in favor of an accused (who was not named) based on lack of evidence. That judgment had been affirmed by the Court of Appeals. The evidence, the statements made by the parents, the investigator, the accused and others, had been dismissed by both courts, in some cases ostensibly on the basis of grounds of absolute disqualification and in others on the basis of lack of personal knowledge. The State requested that the Commission dismiss the case on the basis that no State agent had been accused.

31. Cristóbal Chico López, Wenceslao Santiago Saavedra, and Marvin Estuardo Castillo Saavedra (Case 10.788)

Facts alleged

127. According to the petition, on January 15, 1991, the victims were captured by a group of armed men, allegedly linked to the State security forces. Days later, the victims' corpses were found on the grounds of the Pantaleón farm, bearing gunshot wounds and signs of torture. According to the petition, the facts described were denounced to the corresponding authorities.

Processing before the Commission

128. On February 7, 1991, the Commission opened the case and forwarded the pertinent parts of the complaint to the Guatemalan State, requesting information on the facts alleged. On May 8,

1991, the State requested a 30-day extension, which was granted by the Commission on May 21. The Guatemalan State responded on September 3, 1991, and this answer was forwarded to the petitioner on September 20, 1991 for observations. The petitioner submitted its observations to the State's answer on December 18, 1992, and these were forwarded to the State on January 15, 1993, whereupon the Commission also requested information on any progress in the proceedings initiated in the domestic jurisdiction. The Government submitted its reply to the petitioner's observations on March 18, 1993, which was forwarded to the petitioner on March 19, 1993 for observations. On December 1, 1993, the Commission once again requested that the State provide information on any progress in the domestic proceedings. On September 6, 1994, the State provided additional information, which was forwarded to the petitioner on September 16, 1994, for observations. On September 27, 1995, the Commission reiterated that request to the petitioner. On April 24, 1996, the Commission once again requested information from the State on advances in those proceedings.

129. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension, to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

130. The State indicated that case 311-91 was pending in relation to this matter before the Second Court of First Instance for Criminal Matters for the department of Escuintla, in the investigative phase. On this basis, the State requested that the case before the IACHR be declared inadmissible for failure to exhaust domestic remedies. In its subsequent observations, however, the State indicated that there was no case under that number in relation to these victims, and consequently the State considered it important to obtain further information. In later observations, the State once again referred to case 311-91 before the Second Court, which had been transferred to the Office of the Attorney General, under the new Code of Criminal Procedure, to continue the investigations.

32. Víctor Manuel Chiquín (Chanquín) (Case 10.789)

Facts alleged

131. According to the petition dated January 28, 1991, on January 13, 1991, at calle 20, in zone 5 of Guatemala City, armed men allegedly linked to the State security forces attacked Mr. Víctor Manuel Chiquín with firearms. After the attack, the victim was taken to the Hospital San

Juan de Dios, where he died as a result of the wounds. The incident was reported to the corresponding authorities.

Processing before the Commission

132. On February 13, 1991, the Commission opened the case, forwarded the pertinent parts of the complaint to the Guatemalan State, and requested information on the facts alleged. The Guatemalan State responded on September 9, 1991, and this answer was forwarded to the petitioner on September 20, 1991 for observations. The petitioner submitted those observations on December 18, 1992, and these were forwarded to the State on January 15, 1993, whereupon the Commission also requested information on any progress in the proceedings initiated in the domestic jurisdiction. The State submitted its reply to the petitioner's observations on March 18, 1993, which was forwarded to the petitioner on March 19, 1993 for observations. On December 1, 1993, the Commission once again requested that the State provide information on any progress in the domestic proceedings. That request was reiterated on October 2, 1995. That same day, the Commission reiterated its request to the petitioner for observations. On November 6, 1995, the petitioner provided additional information, which was forwarded to the State on December 4, 1995. The State submitted the information requested on February 16, 1996, and it was forwarded to the petitioner for observations on March 5, 1996.

133. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension, to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that, in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

134. The State indicated that case 191-91 was pending in this matter before the Fifth Court of First Instance for Criminal, Drug-related, and Environmental Offenses, where, according to the indicia produced in the investigation, it had been shown that the offense had been motivated by common crime, and therefore lay beyond the Commission's jurisdiction. In addition, the State asserted that this case should be deemed inadmissible for failure to exhaust domestic remedies.

33. Ricardo Rivera Ovando (Case 10.852)

Facts alleged

135. According to the petition dated April 4, 1991, on February 17, 1991, in the city of Quetzaltenango, several armed men, allegedly linked to State security forces, captured Mr. Ricardo Rivera Ovando as he was walking with his wife along 10th Avenida zone 1. On March 2 the victim's corpse was found at kilometer 185 of the road that runs from the city of Quetzaltenango to San Felipe Retalhuleu. The body bore several gunshot wounds and signs of beating and strangulation. These events were reported to the corresponding authorities.

Processing before the Commission

136. On April 10, 1991, the Commission opened the case, forwarded the pertinent parts of the complaint to the Guatemalan State, and requested information on the facts alleged. The Guatemalan State responded on September 20, 1991, and its answer was forwarded to the petitioner on October 17, 1991 for observations. The petitioner submitted those observations on December 18, 1992, and these were forwarded to the State on January 15, 1993, whereupon the Commission also requested information on any progress in the proceedings initiated in the domestic jurisdiction. The State submitted its reply to the petitioner's observations on March 18, 1993, which was forwarded to the petitioner on March 19, 1993 for observations. On December 17, 1993, the Commission asked that the State clarify a contradiction in the information contained in its last two communications. On February 10, 1994, the State requested a 30-day extension, which was granted by the Commission on February 17, 1994. On March 11, 1994, the State provided additional information, which was forwarded to the petitioner on March 23, 1994, for observations. On October 2, 1994, the Commission reiterated that request to the petitioner. On April 24, 1996, the Commission again requested information from the State on any progress in the internal proceedings on this case.

137. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension, to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

138. In its initial answer, the State reported that case 318-91 had been opened before the Second Court of First Instance for Criminal Matters for the department of Retalhuleu, and was in the investigative phase. On this basis, the State asked that the case before the Commission be declared inadmissible for failure to exhaust domestic remedies. In its subsequent observations, the State provided contradictory information to the effect that, having reviewed the Court's records, it could not find any information referring to the victim as an offended party. In later

observations, the State once again made reference to case 318-91 before the Second Court, which remained in the investigative phase. According to this investigation, the death had been caused by anoxia and asphyxia due to strangulation.

34. Pedro García Chuc (Case 10.855)

Facts alleged

139. According to the petition of April 2, 1991, on March 5, 1991, at kilometer 135 of the road to the West, in the municipality of Sololá, department of Sololá, several armed men, allegedly linked to the State security forces, captured Mr. Pedro García Chuc. Two days later, the victim's corpse was found at the same site where he was captured, bearing several gunshot wounds. The victim had been president of the San Juan Argueta R.L. Cooperative. The facts alleged were reported to the corresponding authorities.

Processing before the Commission

140. On April 10, 1991, the Commission opened the case, forwarded the pertinent parts of the complaint to the Guatemalan State, and requested information on the facts alleged. The Guatemalan State responded on December 5, 1991, and this answer was forwarded to the petitioner on the same day for observations. The petitioner submitted its observations on March 25, 1993, and these were forwarded to the State on August 31, 1993. The State submitted its reply to the petitioner's observations on November 15, 1995, which was forwarded to the petitioner on November 21, 1995 for observations. The case file also contains a copy of the report of the Ombudsman for Human Rights of Guatemala, dated August 2, 1995, in relation to the facts alleged.

141. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

142. The State indicated that a judicial proceeding was ongoing in this matter before the Court of First Instance for the department of Sololá, with respect to which, according to the indicia produced in the investigation, "two persons appear to be the alleged perpetrators." The State asserted that the case before the Commission should be deemed inadmissible for failure to

exhaust domestic remedies. In its further observations, the State reported that on March 4, 1991, a relative had reported the victim's disappearance to the Ombudsman for Human Rights, and that same day the Office of the Ombudsman had filed a writ of habeas corpus before the Court of First Instance of the department. The State asserted that "in view of the very delicate activities [the victim] was involved in ... as president of the cooperative..., based on the indicia .. in connection with the case, it is presumed that the incident has criminal implications," and therefore falls outside of the Commission's jurisdiction.

35. Carlos Evercio Melgar Pocón (Case 10.858)

Facts alleged

143. According to the petition received April 4, 1991, on March 18, 1991, six armed men, allegedly linked to the State security forces, removed Mr. Carlos Evercio Pocón from his pharmacy located at 16 avenida A and 20 calle, zone 1, in Guatemala City. Later, the victim's corpse was located in the municipality of Villa Nueva, department of Guatemala. According to the petition, a relative reported these facts to the National Police and the Office of the Ombudsman for Human Rights.

Processing before the Commission

144. On April 10, 1991, the Commission opened the case, forwarded the pertinent parts of the complaint to the Guatemalan State, and requested information on the facts alleged. This request was reiterated on March 5, 1992, and November 19, 1993. On December 14, 1993, the Guatemalan State requested a 30-day extension for providing its answer. The Commission, on January 13, 1994, agreed to grant that extension. On February 10, 1994, the Guatemalan State requested another 30-day extension. On February 17, 1994, the Commission once again granted the extension sought. The Guatemalan State answered on September 27, 1994, and that answer was forwarded to the petitioner for the corresponding observations on October 3, 1994. This request was reiterated to the petitioner on October 2, 1995.

145. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

146. The State reported that case 77-91 had been initiated in this matter in the domestic jurisdiction before the Court of First Instance for the municipality of Amatitlán. As regards the complaint lodged by a relative of the victim, the State indicated that the accusation that the crime could have been committed "by elements of the National Police was based on confusion, due to the presence of two investigators" who arrived at the pharmacy, without identifying themselves, the day of the disappearance to speak with the victim about his vehicle, which had supposedly been seen at the site of a crime. Finally, the State reported that the proceedings had been transferred to the Office of the Attorney General to continue the investigation.

36. María del Carmen Anabisca Secáida (Case 10.861)

Facts alleged

147. According to the petition dated April 2, 1991, on March 11, 1991, at the Olga María farm, municipality of Tiquisate, department of Escuintla, several members of the National Police evicted peasants who had occupied that farm to demand that lands be returned to them. During the eviction the police fired their weapons and caused the death of Mrs. María del Carmen Anabisca Secáida. According to the petition, a group of 30 National Police and 70 antiriot police came to the farm "without the proper judicial order, surrounded the peasants, and warned them to leave, which the peasants refused to do, at which point the antiriot police fired tear-gas canisters. The National Police shot at the peasants, causing [the victim's] death by one shot to the forehead, in addition to arresting many people." Local residents and international observers witnessed the incident, which was reported to the corresponding authorities.

Processing before the Commission

148. On April 10, 1991, the Commission opened the case, forwarded the pertinent parts of the complaint to the Guatemalan State, and requested information on the facts alleged. This request was reiterated on March 5, 1992, and November 19, 1993. The Guatemalan State responded on February 14, 1994, and the answer was forwarded to the petitioner on March 3, 1994 for observations. The Guatemalan State provided additional information on August 22, 1994, which was sent to the petitioner on February 20, 1995 for observations.

149. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

150. The State argued that on March 11, 1991, elements of the National Police had gone to the farm to verify the situation and to try to convince the squatters to leave the place, given that it was private property. "Even though the Police ordered them to leave by peaceful means, the squatters received them armed with sticks, machetes, and shots from firearms, resulting in gunshot wounds to three members of the National Police and ... María del Carmen Anavisca." In relation to this incident, the State indicated that case 820-92 was pending before the First Court of First Instance for Criminal Matters of Escuintla, where two Police agents stood accused in the death for the crimes of homicide and disobedience. On February 6, 1992, the Court in question had handed down a judgment of acquittal on behalf of the accused for lack of evidence, which had been affirmed by the Court of Appeals on September 6, 1992, for lack of sufficient evidence.

37. Byron Estuardo Polanco (Case 10.869)

Facts alleged

151. According to the petition, on February 26, 1991, at kilometer 119 of the Pan American Highway, in the jurisdiction of the departmental capital of Jutiapa, several armed men, allegedly members of the State security forces, captured Professor Byron Estuardo Polanco. Later, the victim's corpse was found inside a vehicle with license plates from California, United States. The body bore the coup de grâce. The facts described were reported to the corresponding authorities.

Processing before the Commission

152. On May 1, 1991, the Commission opened the case, forwarded the pertinent parts of the complaint to the Guatemalan State, and requested information on the facts alleged. The Guatemalan State responded on September 20, 1991, and this answer was forwarded to the petitioner on October 17, 1991 for observations. The petitioner submitted those observations on December 18, 1992, and these were forwarded to the State on January 15, 1993, whereupon the Commission also requested information on any progress in the proceedings initiated in the domestic jurisdiction. The State submitted its reply to the petitioner's observations on March 18, 1993, which was forwarded to the petitioner on March 19, 1993, for observations. That request was reiterated on October 2, 1995. On April 24, 1996, the Commission again requested information from the State on any progress in the internal proceedings on this case.

153. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension, to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered

on April 9, 1999, indicating that in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

154. The State reported that case 658-91 was pending in this matter before the Second Court of First Instance for Criminal Investigation of the department of Jutiapa, in the investigative phase. On this basis, the State asked that the case before the Commission be declared inadmissible for failure to exhaust domestic remedies.

38. Eulogio Meléndez Boteo, Pedro Meléndez Galicia, and Noé Meléndez Galicia (Case 10.872)

Facts alleged

155. According to the petition received April 30, 1991, on April 16, 1991, at the Las Riatas farm, La Libertad, El Petén, several armed men in uniform, allegedly linked to the State security forces, entered and searched the victims' home. They took the victims to the back yard by force, and shot and killed them. Later, they took the wife of Pedro Meléndez Galicia, Mrs. Margarita Chávez, to an undisclosed destination (see Case 10.873 *infra*). A relative witnessed these events and survived the attack. The facts described were reported to the corresponding authorities.

Processing before the Commission

156. On May 6, 1991, the Commission opened the case, forwarded the pertinent parts of the complaint to the Guatemalan State, and requested information on the facts alleged. This request was reiterated on March 5, 1992, and November 22, 1993. In addition, on November 22, 1993, the Commission requested further information from the petitioner. On April 4, 1994, the Guatemalan State requested a 30-day extension, which was granted by the Commission on April 11, 1994. The Guatemalan State answered on May 27, 1994. That answer was forwarded to the petitioner on June 6, 1994, for observations. That request for observations was reiterated on October 2, 1995.

157. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension, to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

158. The State indicated that in respect of this matter case number 601-91 was pending before the First Court of First Instance of the department of Petén, in the investigative phase. The State indicated that a relative had made a statement to the effect that the perpetrators were members of the guerrilla forces, as a result of which the Court had ordered the National Police to undertake the corresponding investigations.

39. Margarita Chávez (Case 10.873)

Facts alleged

159. According to the petition of May 7, 1991, on April 27, 1991, at the Las Riatas farm, municipality of La Libertad, department of El Petén, armed and uniformed men, allegedly linked to the State security forces, captured Margarita Chávez and took her to an undisclosed destination. Days later, the victim's corpse was found in the municipality of Sayaxché, department of El Petén. The corpse bore gunshot wounds and signs of torture. The victim's husband had been killed days earlier (see Case 10.872 supra). A relative witnessed the events, which were reported to the corresponding authorities.

Processing before the Commission

160. On May 21, 1991, the Commission opened the case, forwarded the pertinent parts of the complaint to the Guatemalan State, and requested information on the facts alleged. The Guatemalan State responded on November 21, 1991, and the answer was forwarded to the petitioner on December 5, 1991 for observations. The petitioner submitted those observations on December 18, 1992, and these were forwarded to the State on January 15, 1993, whereupon the Commission also requested information on any progress in the proceedings initiated in the domestic jurisdiction. The Guatemalan State submitted its reply to the petitioner's observations on May 7, 1993, and that was forwarded to the petitioner on May 19, 1993 for observations. The Guatemalan State provided additional information on August 22, 1994, which was sent to the petitioner on August 31, 1994, for observations. The last request to the petitioner was reiterated on October 2, 1995.

161. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension, to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

162. The State reported that case number 980-91 was pending in this matter and joined to criminal case 604-91 before the local Justice of Peace of Sayaxché, department of El Petén, where it remained in the investigative phase. On this basis, the State requested that the case before the Commission be declared inadmissible for failure to exhaust domestic remedies.

40. Dinora Pérez Valdez (Case 10.875)

Facts alleged

163. According to the petition received May 3, 1991, on April 29, 1991, at 11 calle A, 32-78, zone 7, Guatemala City, several armed men driving motorcycles, allegedly linked to the State security forces, killed Dinora Pérez Valdez with firearms. The victim had been a student leader and a political leader, and at the time of her execution was an adviser to several trade unions. The facts alleged were reported to the corresponding authorities.

Processing before the Commission

164. On May 6, 1991, the Commission opened the case, forwarded the pertinent parts of the petition to the Guatemalan State, and requested additional information on the facts alleged. This request was reiterated on March 5, 1992, and November 22, 1993. The State answered on February 17, 1994. This answer was forwarded to the petitioner on March 3, 1994 for observations. That request for observations was reiterated on October 2, 1995. On February 20, 1996, the Commission requested information from the State on any progress in the proceedings brought in the domestic jurisdiction. The State submitted the information requested on May 21, 1996.

165. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

166. The State reported that proceedings in this matter, identified as case 986-91, had been brought in the domestic jurisdiction before the Seventh Court of First Instance for Criminal Investigation, and remained in the investigative phase.

41. Felicito Cristóbal Samayoa (Case 10.891)

Facts alleged

167. According to the petition dated May 28, 1991, on May 17, 1991, in the municipal seat of La Libertad, department of El Petén, several armed men, allegedly linked to the State security forces, captured Mr. Felicito Cristóbal Samayoa and took him to an undisclosed destination. The victim's corpse was found three days later, bearing signs of torture. Local residents witnessed the incident, which was reported to the corresponding authorities.

Processing before the Commission

168. On June 11, 1991, the Commission opened the case, forwarded the pertinent parts of the complaint to the Guatemalan State, and requested information on the facts alleged. The Guatemalan State responded on November 20, 1991, and that answer was forwarded to the petitioner on December 5, 1991 for observations. The request to the petitioner was reiterated on March 5, 1992. The petitioner submitted its observations on December 18, 1992, and these were forwarded to the State on January 15, 1993, whereupon the Commission also requested information on any progress in the proceedings initiated in the domestic jurisdiction. The State submitted its reply to the petitioner's observations on September 21, 1995, and that was forwarded to the petitioner on November 7, 1995, for observations.

169. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

170. The State indicated that case number 941-91 was pending in this matter before the Court of First Instance for Criminal, Drug-related, and Environmental Offenses of the department of El Petén, in the investigative phase. On this basis, the State requested that the case before the Commission be considered inadmissible for failure to exhaust domestic remedies.

42. Leandro Barillas (Case 10.903)

Facts alleged

171. According to the petition dated June 17, 1991, on June 11, 1991, in San Lucas Tolimán, department of Sololá, a soldier from the Guatemalan Army identified as Osman Orantes Martínez shot and killed Mr. Leandro Barillas. Mr. Barillas had been a community leader in that municipality. Local residents witnessed the facts described, which were reported to the corresponding authorities.

Processing before the Commission

172. On June 20, 1991, the Commission opened the case, forwarded the pertinent parts of the complaint to the Guatemalan State, and requested information on the facts alleged. The Guatemalan State responded on November 20, 1991, and that answer was forwarded to the petitioner on December 5, 1991 for observations. The petitioner submitted its observations to the Government's answer on March 25, 1993, and these were forwarded to the State on August 31, 1993. On November 15, 1993, the Commission requested that the Guatemalan State provide information on any progress in the proceedings initiated in the domestic jurisdiction. The State submitted the information requested on March 11, 1994, and it was forwarded to the petitioner on March 23, 1994 for observations. This last request was reiterated to the petitioner on October 2, 1995.

173. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

174. The State reported that in respect of this matter, and based on a complaint lodged by a relative, case 637-91 was pending before the Court of First Instance of the department of Sololá, in the investigative phase. It added that the National Police station in the municipality had been accused, but that no particular individual had been charged. Based on this information, the State requested that the case before the Commission be declared inadmissible for failure to exhaust domestic remedies.

43. Oswaldo Luna Aceituno (Case 10.920)

Facts alleged

175. According to the petition dated July 12, 1991, on June 26, 1991, in Guatemala City, several armed men travelling in a white van, allegedly linked to the State security forces, shot and killed Mr. Oswaldo Luna Aceituno. He had been a leader of the Workers' Union of the University of San Carlos of Guatemala (USAC), and had recently participated in a movement, organized by the union, seeking a wage hike. Several witnesses observed the incident, which was reported to the corresponding authorities.

Processing before the Commission

176. On July 22, 1991, the Commission opened the case, forwarded the pertinent parts of the complaint to the Guatemalan State, and requested information on the facts alleged. This request was reiterated on March 5, 1992, and November 15, 1993. In addition, on November 15, 1993, the Commission asked that the petitioner provide further information. The Guatemalan State responded on January 26, 1994, and its reply was forwarded to the petitioner on January 31, 1994 for observations.

177. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

178. The State reported that case 994-91 was pending in this matter before the Sixth Court of First Instance for Criminal Matters, in the investigative phase.

44. Tomás Ventura Chon (Case 10.922)

Facts alleged

179. According to the petition dated July 13, 1991, in the hamlet of Quiejel, municipality of Chichicastenango, department of El Quiché, several armed men, allegedly linked to the State security forces, killed Mr. Tomás Ventura Chon, who was a member of the Council of Ethnic Communities Runujel Junam (CERJ: Consejo de Comunidades Etnicas Runujel Junam) using a

sharp instrument. Local residents witnessed the incident, which was reported to the corresponding authorities.

Processing before the Commission

180. On July 22, 1991, the Commission opened the case, forwarded the pertinent parts of the complaint to the Guatemalan State, and requested information on the facts alleged. This request was reiterated on March 5, 1992, and November 16, 1993. In addition, on November 16, 1993, the Commission asked the petitioner to provide additional information. On April 4, 1994, the State requested a 30-day extension, which was granted by the Commission on April 11. The Guatemalan State submitted its answer on April 12, 1994, and this was forwarded to the petitioner on May 6, 1994 for observations. That request was reiterated on October 2, 1995.

181. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

182. The State reported that there was no record whatsoever in which the victim's name appeared as either perpetrator or victim of a crime, thus additional information was needed to continue the investigation.

45. Julio Quevedo Quezada (Case 10.935)

Facts alleged

183. According to the petition dated July 30, 1991, on July 15, 1991, in the departmental capital of Santa Cruz de El Quiché, several armed men in civilian dress, allegedly linked to the State security forces, killed Mr. Julio Quevedo Quezada with firearms as he was walking in the streets of Santa Cruz with his family. It happened four blocks from the National Police station in Santa Cruz. The victim had been in charge of the Social Pastoral office of the Catholic Church of El Quiché. Several residents witnessed the incident, which was reported to the Office of the Ombudsman for Human Rights and other authorities.

Processing before the Commission

184. On August 23, 1991, the Commission opened the case, forwarded the pertinent parts of the complaint to the Guatemalan State, and requested information on the facts alleged. This request was reiterated on March 5, 1992, and November 17, 1993. In addition, on November 17, 1993, the Commission asked the petitioner to provide further information. The Guatemalan State submitted its answer on January 25, 1994, and this was forwarded to the petitioner on January 28, 1994 for observations. That request was reiterated on October 2, 1995.

185. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

186. The State reported that, in relation to the attack, it was presumed that the victim had received several death threats by a group that identified itself as the Fundación para la Justicia, apparently with reference to his work to improve the standard of living of peasants affected by the consequences of the internal conflict. The State noted that case 884-91 was pending in this matter before the Second Court of First Instance for Criminal Investigation of the department of El Quiché, in the investigative phase.

46. Raúl Sao Villagrán (Case 10.936)

Facts alleged

187. According to the petition dated July 29, 1991, on July 8, 1991, in zone 11 of Guatemala City, several armed men, allegedly linked to the State security forces, captured Mr. Raúl Sao Villagrán and took him to an undisclosed destination. Two days later, the victim's corpse was found at the place known as the "body dump," El Campanero, municipality of Mixco, department of Guatemala. The body bore signs of torture and beating. The victim had been president of a Court of Appeals in the city of Antigua, department of Sacatepéquez. Several family members witnessed the victim being captured, and filed a writ of habeas corpus on his behalf in Antigua and in Guatemala City, and reported the incident to other authorities.

Processing before the Commission

188. On August 23, 1991, the Commission opened the case, forwarded the pertinent parts of the complaint to the Guatemalan State, and requested information on the facts alleged. This

request was reiterated on March 5, 1992, and November 17, 1993. In addition, on December 2, 1993, the Commission asked the petitioner to provide additional information.

189. On December 4, 1998, the Commission requested updated information on the case from both the State and the petitioners. In addition, it made itself available to the parties for the purpose of facilitating a friendly settlement, pursuant to Article 48(1)(f) of the American Convention, if the parties wanted to make use of that procedure. The parties were asked to respond to both inquiries within 30 days. On December 17, 1998, the State requested a one-month extension to submit the corresponding information. By note of December 28, 1998, the Commission granted an extension that expired on January 30, 1999. On January 20, 1999, the State requested an additional 60-day extension to collect and present information. The Commission replied by note of January 27, 1999, and granted a 60-day extension. By note of March 30, 1999, the State requested an additional 60-day extension. The Commission answered on April 9, 1999, indicating that in view of the extensions already granted, as well as its work program, it was not possible to grant another extension.

Position of the State

190. The State provided no comment or observation on this case.

Accumulation of the cases

191. As indicated in Section I, as a procedural matter the Commission decided, pursuant to Article 40 of its Regulations, to combine these cases and treat them in a single report. In the course of processing these cases, the Commission was able to determine that each related to an alleged extrajudicial execution at the hands of members of or persons linked to the security forces. Therefore the allegations referred to facts similar in nature, in a common time frame.

III. ANALYSIS OF ADMISSIBILITY

A. Competence of the Commission

192. According to its mandate, the Commission has jurisdiction to examine the subject matter of this complaint, which refers to alleged violations of rights set forth in Articles 1, 4, 5, 7, 8, 19, and 25 of the American Convention. Guatemala is a State party to this Convention as of the date of its ratification--May 25, 1978--and this treaty entered into force for all the parties on July 18, 1978. The complaints in question refer to facts after those dates. The petitioners have standing to appear, pursuant to Article 44 of the Convention. In their submissions the petitioners have set forth certain complaints which, if they meet other requirements and are shown to be true, may provide the basis for proving the violation of a right protected by the American Convention.

B. Requirements to admit a petition

193. As the Commission has jurisdiction to hear these cases, i.e. the petitions under study meet the basic conditions to invoke its international function of pronouncing judgment on alleged

violations of human rights, the Commission will now determine whether the conditions set forth in Articles 46 and 47 of the Convention have been met.

194. The petitions include the information required in Article 32 of the Commission's Regulations and meet the conditions established in Article 46(1)(c) of the American Convention and Article 39 of the Commission's Regulations, since according to the record the subject matter is not pending resolution in any other intergovernmental procedure, nor do they essentially duplicate a petition or petitions pending or previously considered by the Commission.

Exhaustion of domestic remedies

195. Article 46 of the American Convention provides that in order for a case may be admitted, it must meet the following requirement:"that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." At the same time, this Article sets forth a series of exceptions to this requirement that are applied when domestic remedies are not available de facto or de jure.[FN3]

[FN3] See Inter-American Court of Human Rights, Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a), and 46(2)(b) of the American Convention on Human Rights), Advisory Opinion OC-11/90 of August 10, 1990, Ser. A, No. 11 para. 17.

196. To validly oppose the admissibility of a complaint, the State must invoke the rule of non-exhaustion of domestic remedies expressly and in timely fashion before the Commission. According to generally accepted principles of international law, the rule of prior exhaustion "is a prerequisite that is established in favor of the State, which may waive its right, even tacitly, and this occurs, inter alia, when it is not timely invoked." [FN4] As the Inter-American Court of Human Rights has explained, the failure of a State to raise the objection of inadmissibility on this ground or to offer information to respond to a complaint has final effect.

[FN4] Inter-American Court of Human Rights, Case of Fairén Garbí and Solís Corrales, Merits, Judgment of March 15, 1989, Ser. C No. 6, para. 109. See also Case of Viviana Gallardo et al., Judgment of November 13, 1981, No. 101/81, Ser. A, para. 26; Case of Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987, Ser. C No. 1, para. 88; Case of Fairén Garbí and Solís Corrales, Preliminary Objections, Judgment of June 26, 1987, Ser. C No. 6, para. 87; Case of Godínez Cruz, Preliminary Objections, Judgment of June 26, 1987, Ser. C No. 3, para. 90; Case of Gangaram Panday, Preliminary Objections, Judgment of December 4, 1991, Ser. C No. 12, para. 38; Case of Neira Alegría et al., Preliminary Objections, Judgment of December 11, 1991, Ser. C, No. 13, para. 30, among others.

197. In five of the 46 cases under study, the Commission received no response from the State to its requests for information.[FN5] In 12 additional cases, the State submitted no express argument with respect to the non-exhaustion of remedies.[FN6] Accordingly, the Commission

concludes that the State waived any argument with respect to the requirements of Article 46 concerning these 17 cases.

[FN5] Cases 10.667, 10.687, 10.714, 10.730, and 10.936.

[FN6] Cases 10.622, 10.657, 10.755, 10.777, 10.858, 10.861, 10.860, 10.872, 10.875, 10.920, 10.922, and 10.935.

198. With respect to each of the remaining 29 cases, the State expressly argued that its authorities were properly seized of the matters raised, and that, as judicial procedures remained pending, domestic remedies had not been exhausted as required. The record with respect to these cases reflects that none has resulted in the issuance of a final decision resolving the claims raised and the corresponding responsibility. As it is evident that internal remedies have not been exhausted, the admissibility analysis must turn to whether these cases fall within one of the grounds excusing compliance with this requirement set forth in Article 46.

199. Article 46(2) of the Convention establishes that this objection applies if, in a country's domestic legislation, there is no due process of law for protecting the right or rights which, according to the allegations, have been violated; if the person injured is denied access to domestic remedies; or if there has been an unwarranted delay in the adoption of a final decision. Consequently, when a complaint argues that for reasons of law or of fact a petitioner has not had access to domestic remedies, Article 37 of the Commission's Regulations places the burden of showing what domestic remedies remain to be exhausted, and of offering an effective remedy to make reparations for the alleged damage, on the State.[FN7]

[FN7] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Merits, Judgment of July 29, 1988, Ser. C No. 4, para. 59 (citing the decision on preliminary objections in the same case, para. 88).

200. With respect to these 29 cases, the State rested its arguments on the pendency and presumed efficacy of the judicial processes seeking to establish criminal responsibility in relation to the deaths of these victims. In an alleged case of extrajudicial execution, a criminal investigation and judicial process would normally constitute an applicable and appropriate remedy, and the State has presented no argument to the effect that other remedies should have been or remain to be invoked.

201. What the record in these 29 cases indicates as an objective matter is that from eight to nine years have passed since criminal proceedings were initiated, and that in no case has a final decision clarifying the alleged facts and corresponding responsibility been issued. With this passage of time since these criminal proceedings were initiated, the question of undue delay necessarily arises under the terms of Article 46(2). While a full criminal investigation necessarily has its own requirements: "The rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the defenseless [alleged] victim

ineffective." [FN8] As a general rule, a criminal investigation must be carried out promptly, not only to protect the interests of the victim, but to safeguard the rights of all persons who, in the context of the investigation, are considered suspects. The Commission considers that the extended pendency of these proceedings, which has neither been explained nor justified by the State in any way, is a sufficient basis for these 29 cases to fall within the exception set forth in Article 46 for undue delay.

[FN8] Inter-American Court of Human Rights, Case of Velázquez Rodríguez, Preliminary Objections, *supra*, para. 93; Case of Fairén Garbi and Solís Corrales, Preliminary Objections, *supra*, para. 92; Case of Godínez Cruz, Preliminary Objections, *supra*, para. 95.

202. In addition, the Commission must bear in mind the conditions prevailing with respect to the availability and efficacy of judicial remedies for addressing alleged extrajudicial executions during the period in question. In its Annual Reports for 1990-91 and 1991, the Commission expressed serious concern over the phenomenon of extrajudicial executions and torture in Guatemala and the inability of the judiciary to respond. [FN9] The Commission reported that judicial procedures with respect to those violations were "not accompanied by an exhaustive investigation that seeks to identify and penalize the guilty parties in accordance with the gravity of the acts." [FN10] The UN Independent Expert for Guatemala characterized the response of the police and judiciary to violations of the right to life during the period as "highly unsatisfactory." [FN11] In most cases, these entities failed to identify the culprits. In the few cases where a presumed perpetrator was identified, no judicial sanction was imposed, thus encouraging the persistence of impunity. [FN12] The Commission for Historical Clarification made a similar finding when it indicated that judicial investigations on cases of human rights violations were deficient from 1986 to 1996 [FN13], and that: "The country's judicial system, due either to induced or deliberate ineffectiveness, failed to guarantee the application of the law, tolerating, and even facilitating, violence...." [FN14]

[FN9] See, e.g., IACHR, Annual Report of the IACHR 1990-91, OEA/Ser.L/V/II.79 rev. 1, Doc. 12, February 22, 1991, Chapter IV, "Guatemala," pp. 444 et seq.; Annual Report of the IACHR 1991, OEA/Ser.L/V/II.81, Doc. 6 rev. 1, February 14, 1992, Chapter IV, "Guatemala," pp. 204 et seq.

[FN10] IACHR, Annual Report 1991, *supra*, p. 210.

[FN11] "Report of the Independent Expert, Mr. Christian Tomuschat, on the human rights situation in Guatemala" [hereinafter "1992 Tomuschat Report"], E/CN.4/1992/5, January 21, 1992, para. 189.

[FN12] *Id.*, para. 140.

[FN13] Comisión para el Esclarecimiento Histórico, Guatemala, Memoria del Silencio [hereinafter "Report CEH"], "Denial of Justice," Ch. II, Vol. III, para. 434. According to the commitments of the "Agreement on the establishment of the commission for the historical clarification of the human rights violations and acts of violence that have caused suffering to the Guatemalan population" (Oslo, June 23, 1994), the Commission for Historical Clarification was established with the mandate to: "clarify with full objectivity, equity, and impartiality the human

rights violations and acts of violence connected with the armed confrontation that caused suffering among the Guatemalan people;" to issue a report on its investigations and conclusions; and "to make specific recommendations aimed at furthering peace and national concord in Guatemala...."

[FN14] Report CEH, "Conclusions and Recommendations," para. 10.

203. In addition, as this Commission has already reported, and as has been confirmed by other reliable sources, at that time there was generalized fear not only on the part of the population affected by human rights violations, but also on the part of judges and other judicial officers who effectively rendered null access to domestic remedies for the affected persons or their representatives. In this regard, the Commission stated in its report for 1989-1990: "The judges of this system simply do not conduct thorough investigations because they have been terrorized by what has happened to others who have performed investigations and acted bravely against terrorism. As a result, these judges have become victims...."[FN15] Similarly, the Commission for Historical Clarification stated in this regard that various persons who were involved in the judicial process suffered threats and attacks, which provoked a climate of intimidation and "an increase in the inaction of the courts and impunity." [FN16] In many cases, given the lack of security, relatives and colleagues of the victims were afraid to investigate the facts, and "in the few cases in which an investigation was initiated, many witnesses and lawyers refused to participate in proceedings against members of the Army or any other State institution." [FN17] In addition, "many judges were forced to compromise their independence as a first step to avoid assassination." [FN18]

[FN15] IACHR, Annual Report of the IACHR 1989-1990, OEA/Ser.L/V/II.77 rev. 1, Doc. 7, May 17, 1990, p. 157.

[FN16] Report CEH, "Arbitrary Executions," Ch. II, Vol. 2, para. 356.

[FN17] *Id.*, paras. 356-57.

[FN18] *Id.*, para. 357.

204. The rule of prior exhaustion of domestic remedies does not require pursuing a remedy when that does not offer any chance of success or when that might endanger the physical integrity of the petitioner. [FN19] In this context, the Commission finds that there were factual reasons in Guatemala that impeded the access of the injured parties or their representatives to domestic remedies, and, therefore, it was not necessary to exhaust them. For this reason, and also bearing in mind that the domestic remedies initiated had been subject to unwarranted delay, the Commission concludes that the exception to the prior exhaustion requirement set forth in Article 46 of the Convention applies.

[FN19] See, Inter-American Court of Human Rights, OC-11/90, *supra*, paras. 34-35; see, e.g., IACHR, 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., February 11, 1994, pp. 181, 185-86.

Timeliness

205. Pursuant to Article 46(1)(b) of the Convention, petitions must be submitted in timely fashion, i.e. within six months from the date on which a person whose rights have allegedly been violated has been notified of the final decision in the domestic system. This provision guarantees certainty and juridical stability once a decision has been adopted. When there is not a final judgment, as in the cases under study, Article 46(2) indicates that, to the extent that this may be attributed to the lack of due process, denial of access to remedies, or unjustified delay, the six-months rule does not apply. In that case, Article 38 of the Commission's Regulations establishes that the time frame for submission "shall be within a reasonable period of time, in the Commission's judgment, from the date on which the alleged violation of rights has occurred, considering the circumstances of each specific case."

206. The complaints set forth in these 46 cases were submitted to the Commission promptly--within a period of several weeks to several months from the date of the extrajudicial executions alleged--and the State presented no objection whatsoever in this respect. The petitioners stated that they had pursued domestic remedies, the availability and effectiveness of which are analyzed above. Although the Guatemalan state had the obligation to investigate the proceedings begun and to process the corresponding cases, more than eight or nine years have elapsed with no final disposition. In those circumstances, the Commission considers that the requirement of timely submission was met.

The nature of the claims alleged

207. Article 47 of the American Convention prohibits the admission of any petition which fails to meet the requirements set forth in Article 46, or which either (1) fails to state facts tending to establish a violation or (2) is demonstrated to be manifestly groundless. Each of the 46 cases under study involves the alleged extrajudicial execution of one or more persons at the hands of members of or persons linked to the security forces of the State. With respect to four of these cases, [FN20] the State expressly opposed their admissibility on the basis that the results of its initial investigations indicated that those killings had been perpetrated by non-State actors, thereby placing the subject matter beyond the competence of the Commission. As noted in the section recounting the proceedings before the Commission, the State sustained that the killings at issue in cases 10.653, 10.784, 10.789 and 10.855 were the result of common crime, and therefore not imputable to the State or members of its security forces.

[FN20] In a fifth instance, case 10.692, the State initially contended that the victims had been killed by members of an irregular armed group, although it neither cited any specific basis nor provided any proof for that assertion. The State subsequently reported that its investigations had led the Public Ministry to request that the declaration of a named State agent be taken, on the ground that the declaration of a family member had implicated him in the crime. Although the State submitted no further information as to whether that agent's declaration was ever taken, or his alleged involvement investigated, the Commission cannot but conclude that this later information modifies the initial argument.

208. In the first place, the Commission observes that the State provided little, if any information, and no evidence whatsoever in support of this position. With respect to case 10.653, the State indicated that, in the initial investigation, family members had attributed the killing of the victim to personal vengeance. The State added that a "probable witness" to the crime had himself been killed when about to reveal the names of those involved. The State did not specify which family members gave this information, nor how, when, or to whom it was given. Nor did it report any steps to investigate it, or to investigate the killing of the "probable witness." With respect to case 10.784, the State reported only one specific action within the judicial process: the taking of declarations from four named persons who were reportedly unable to provide information as to the motive or identity of those responsible. The State then affirmed, without citing any basis, that the initial investigation pointed to common crime as the motive for the killings. In relation to case 10.789, the State again affirmed that the initial investigation pointed to common crime as the motive for the killing, without citing any basis for its assertion. Finally, in relation to case 10.855, the State contended that the killing of the victim was linked to criminal activity, an assertion which it based solely on the nature of his "very delicate activities" as president of a cooperative.

209. Further, the State's contention that these cases are inadmissible for failing to state a cognizable claim is based exclusively on its assertion that the killings were not imputable to State agents. Even putting that question aside, these four cases raise further issues relating to, inter alia, judicial protection and guarantees, and the full scope of the State's duties pursuant to Article 1(1) of the Convention. The State's contentions about the nature of the underlying crimes have no bearing on the admissibility of these additional claims.

210. The determination of the actual involvement of State agents or persons linked to such agents is not an issue to be decided at the admissibility stage. The Commission will proceed to draw its conclusions concerning any State responsibility, either direct or imputed, in the analysis of the merits which follows. At this stage of its analysis, the Commission finds that the conclusory arguments of the State do not provide a sufficient basis in fact or law to show that these four cases are inadmissible. The petitions state facts which, if consistent with other requirements and shown to be true, could establish a violation of the Convention, and the State has not shown these claims to be out of order or manifestly groundless pursuant to Article 47 of the Convention.

IV. FRIENDLY SETTLEMENT

211. Pursuant to Article 48(1)(f) of the Convention, in each of the cases analyzed, the Commission placed itself at the disposal of the interested parties with a view to trying to reach a friendly settlement grounded in respect for the human rights recognized in the Convention. None of them expressed such interest within the time frame they were given. Accordingly, as the parties were given the opportunity to avail themselves of the procedure and effectively rejected it, the Commission moves on to analyze the merits of the matter before it.

V. ANALYSIS OF THE MERITS

A. Initial considerations

212. As established earlier, the Commission agreed to combine the cases under study, considering that the facts alleged by the petitioners address a series of alleged extrajudicial executions committed by agents of the Guatemalan State or persons linked to such agents, carried out with similar characteristics and in a common time frame. The analysis which follows therefore examines these cases taking into account these common factors. Further, this analysis cannot divorce itself from the overall context of the observance of the right to life in Guatemala during the period under study.

213. In Guatemala, the years 1990 and 1991 were marked by systematic violations of the right to life in the form of extrajudicial executions and disappearances carried out by State agents. The present section will provide an overview of extrajudicial executions during the period, including an analysis of the characteristics of the practice, and the nature of those persons targeted as victims.

The characteristics of extrajudicial executions in Guatemala in 1990-1991

214. Extrajudicial executions were employed throughout the period of the armed conflict in Guatemala:

Through the systematic practice of arbitrary execution, State agents physically eliminated their opponents, seeking at the same time to repress, silence, and control the population as a whole, through terror, in both urban and rural areas.[FN21]

[FN21] Report CEH, "Arbitrary Executions," Ch. II, Vol. 2, para. 223.

As will be described, such executions were carried out with regular frequency during 1990 and 1991, following procedures with common, identifiable characteristics.

215. Reports from this period reflect the precariousness of the right to life. In its Annual Report for 1989-90, the Commission highlighted that the period covered by the report had witnessed "the most serious increase in violence and human rights violations during the term of President Cerezo." [FN22] The Commission referred both to the many complaints it had received and to the number of reports of kidnappings, disappearances, and extrajudicial executions, almost daily, and in certain cases with multiple victims. [FN23] Once again in its Annual Report 1990-91, the Commission reported that the human rights situation in the country had deteriorated, [FN24] and that the majority of cases opened in relation to Guatemala involved allegations of extrajudicial executions, disappearances, and unlawful detentions. [FN25] At the national level, the Ombudsman for Human Rights reported processing 556 complaints concerning extrajudicial deaths in 1990, and 432 such complaints in 1991. [FN26] The statistics on extrajudicial executions reported by nongovernmental organizations were either consistent with these figures or substantially higher. [FN27]

[FN22] IACHR, Annual Report of the IACHR 1989-90, *supra*, p. 161.

[FN23] *Id.*, pp. 155-56.

[FN24] IACHR, Annual Report of the IACHR 1990-91, *supra*, p. 444.

[FN25] *Id.*, pp. 445.

[FN26] Procurador de los Derechos Humanos, *Los Derechos Humanos: Un Compromiso por la Justicia y la Paz* (1992), p. 24.

[FN27] See IACHR, Annual Report of the IACHR 1990-91, *supra*, p. 445; Annual Report of the IACHR 1991, p. 206.

216. While some executions were perpetrated indiscriminately, without regard to the sex, age, ethnicity, political opinion or other distinction pertaining to the victim, "in the period from 1990 to 1996, the tendency noted in the late 1980s persisted, i.e., the practice of selective arbitrary executions...."[FN28]The selective executions occurred "... when the victim was defined or chosen clearly and specifically ... it could be an individual, a community, or a sector...."[FN29]The report *Guatemala: Nunca Más* spells out certain characteristics:"The executions have constituted a common criminal practice for eliminating pre-selected individuals....The commandos that carried them out were made up of teams of five to eight individuals ... and the vehicles and weapons they used had no registration that would suggest the origin of the operation."[FN30]On many occasions, the execution involved "a discreet surveillance plan ... that entailed establishing habitual points of reference in the victim's movements, for example his or her home or place of work ... and an investigation of his or her close and likely circle of relationships...."[FN31]

[FN28] Report CEH, "Arbitrary Executions," Ch. II, Vol. 2, para. 127, 155.

[FN29] *Id.*, para. 127.

[FN30] Office of Human Rights of the Archdiocese of Guatemala, *Informe Proyecto Interdiocesano de Recuperación de la Memoria Histórica, Guatemala Nunca Más* [hereinafter "ODHAG, *Guatemala Nunca Más*"], Tome II, pp. 189-90.

[FN31] *Id.*, p. 190.

217. The cases and reports of this period reflect a common *modus operandi* in violations of the right to life:

they are carried out openly at any time of day or night, in any place of Guatemala, and without any concern for eyewitnesses. The kidnappers use cars or trucks without license plates or with stolen plates. Nobody, and even less the police, does anything to prevent such acts. The investigations do not lead anywhere and the responsible organs blame each other for the failure of the investigations.[FN32]

[FN32] IACHR, Report of the IACHR 1989-90, *supra*, p. 153-54.

"The corpses found were located in different parts of the country, the majority with bullet or knife wounds, some with signs of torture...."[FN33]

[FN33] IACHR, Annual Report of the IACHR 1990-1991, supra, p. 445.

218. In urban areas, the finding of these bodies, usually bearing signs of torture or mutilation, was publicized through the press."The dissemination of these images consolidated a constant reminder of violence even for those who were not directly involved in the political struggle.In the urban area, it was common for corpses to appear in ravines, streets, and highways, discovered by workers or local residents."[FN34]The practice of abandoning bodies along roads, thoroughfares and other places where they would be discovered by local residents was equally common in rural areas.[FN35]The perpetrators not only intended to heighten the terror of those who saw the bodies or learned of the torture, but also to further degrade the dignity and humanity of the victims.

[FN34] Report CEH, "Arbitrary Executions," Ch. II, Vol. 2, para. 238.

[FN35] Id., para. 242.

219. Extrajudicial executions were generally carried out in one of two ways.In some cases, a group of unidentified armed men, either in civilian clothing or occasionally in uniform, would approach the victim in his or her home, workplace or in a public street, often in the presence of witnesses, and carry out the attack on the spot.Alternatively, the victim would be captured from such a place, again, often in the presence of witnesses, and the body would be discovered within hours or days, in many cases bearing signs of torture. As described by the UN Independent Expert for Guatemala, "summary or arbitrary execution is generally the final result of a process that begins with the violent kidnapping or forced disappearance of the victim, who is taken to a secret detention center, subjected to interrogation under severe torture, and finally executed and his or her body left in a public place with clear signs of physical torture...."[FN36]In addition, as the CEH reported, "most of the arbitrary executions committed by State agents were supplemented by other acts and maneuvers aimed at avoiding or thwarting investigations of judges, thereby intensifying the climate of impunity."[FN37]

[FN36] "Report of the Independent Expert, Mr. Christian Tomuschat, on the human rights situation in Guatemala" [hereinafter "1991 Tomuschat Report"], E/CN.4/1991/5, January 11, 1991, para. 115.

[FN37] Report CEH, "Arbitrary Executions," para. 264.

2. The involvement of state agents

220. Notwithstanding the failure of the judiciary to respond to these violations as required, the participation of State agents in this practice has been firmly established through the characteristics of the executions and how they were carried out, the denunciations and declarations of witnesses, numerous testimonies collected and analyzed pursuant to the signing of the firm and lasting peace in December of 1996 (including those of victimizers), and reliable fact-finding reports issued at the time and subsequently. In assessing the nature and extent of State responsibility for this practice during the conflict, the Commission for Historical Clarification concluded that "the Guatemalan State repeatedly and systematically violated the right to life ... aggravated in numerous cases by the application of extreme ruthlessness, as occurred, for example, in situations in which bodies were abandoned with clear signs of torture, mutilation, multiple gunshot wounds or burns." Overall, according to the data, "the Army was responsible for 86% of all arbitrary executions." [FN38] "The PAC's were responsible for 21%, and the military commissioners 11%..." of the total, in many cases in collaboration with the Army, and "other State security forces (National Police, Treasury Guard, and others), for 4%." [FN39] (This percentage is based on all arbitrary executions, without assessing whether the act was individual or in collaboration with another actor).

[FN38] Report CEH, "Arbitrary Executions," Ch. II, Vol. 2, para. 161; see, generally, paras. 171-191 (describing the different kinds of executions perpetrated by the Army).

[FN39] Id., paras. 161-62; see, generally, paras. 192-210 (describing types of executions perpetrated by the PACs and military commissioners); paras. 211-16 (detailing nature of executions at hands of National Police and Treasury Guard); and paras. 217-222 (describing executions at the hands of death squads linked to the Army and Police).

221. These general conclusions are consistent with the characteristics of the executions and reports for the specific period under study. For example, the Ombudsman for Human Rights reported in July 1990 that "... the majority of the complaints presented to his office involved accusations against the Army, the National Police, and the Civil Patrols." [FN40] In its Annual Report for 1991, the Commission expressed its concern over the number of complaints received concerning violations of the right to life at the hands of the Army, and the inability of the pertinent authorities to control or punish members of the security forces, which appear to have had direct involvement in a number of human rights violations. [FN41] The UN Independent Expert reported that, because those responsible for violations of the right to life--presumed to pertain or be linked to the security forces-- escaped all sanction, they were able to act with virtually total impunity. [FN42]

[FN40] IACHR, Annual Report of the IACHR 1990-91, supra, p. 445.

[FN41] IACHR, Annual Report of the IACHR 1991, supra, p. 205.

[FN42] 1991 Tomuschat Report, para. 126; see also, 1992 Tomuschat Report, para. 105 (observing the incidence of torture in the violent deaths reported and the existence of evidence, in a series of cases, of the security forces' participation).

222. An essential aspect of this practice, and one which encouraged its perpetuation, was the lack of ability or will on the part of the pertinent authorities to respond to the executions as required by law. During this period, the Commission noted that with respect to human rights violations, the organs of the administration of justice called on to investigate and punish such incidents did not act, making clear their ineffectiveness in preventing or responding to such violations.[FN43] The judicial investigations initiated by reason of the repeated reports of summary executions "have not yielded positive results in practice, in that in most cases the courts or security agencies do not determine the identity of the perpetrators of such violent acts." [FN44] The few individuals who have been brought before the courts accused of participating in violations of the right to life were not punished, "sometimes for lack of political will, other times due to deficiencies in the administration of justice." [FN45]

[FN43] *Id.*, pp. 163 and 167; see, generally, "Conclusions and Recommendations," Conclusions, paras. 10, 56, 94, and 95; "Denial of Justice," para. 434.

[FN44] 1991 Tomuschat Report, para. 122.

[FN45] *Id.*, para. 126; see also, 1992 Tomuschat Report, para. 140-41.

3. The targeting of victims

223. Many of the selective extrajudicial executions during 1990-91 were carried out against victims who were targeted for their involvement in social and political organizations.[FN46] The Commission and other sources reported during this period on the persistence of campaigns of violence and intimidation against: human rights defenders,[FN47] particularly members of the CERJ;[FN48] members of trade and labor organizations;[FN49] members of university communities;[FN50] the indigenous population, especially in rural areas;[FN51] the campesino population;[FN52] the press;[FN53] members of political parties and persons otherwise involved in the political life of the country;[FN54] members of community service and religious organizations;[FN55] and judicial personnel.[FN56] In many cases, those killed and/or persons close to them had been subjected to prior threats.[FN57] Notwithstanding precautions, such as periods of exile in a number of cases, those threats were eventually realized.[FN58]

[FN46] See, generally, Report CEH, "Arbitrary Executions," Ch. II, Vol. 2, para. 155; 1991 Tomuschat Report, paras. 117-20.

[FN47] See IACHR, Annual Report of the IACHR 1989-90, *supra*, p. 150; Annual Report of the IACHR 1990-91, *supra*, p. 449; Annual Report of the IACHR 1991, *supra*, p. 209; 1991 Tomuschat Report, para. 120.

[FN48] See IACHR, Annual Report 1990-91, pp. 447-49; Annual Report 1991, pp. 208; 1992 Tomuschat Report, para. 90.

[FN49] See IACHR, Annual Report 1989-90, p. 150; Annual Report 1991, pp. 208; Report CEH, "Arbitrary Executions," Ch. II, Vol. 2, para. 308; 1992 Tomuschat Report, para. 91; 1991 Tomuschat Report, para. 117.

[FN50] See IACHR, Annual Report 1989-90, p. 151; Report CEH, "Arbitrary Executions," Ch. II, Vol. 2, para. 308; 1992 Tomuschat Report, para. 92; 1991 Tomuschat Report, para. 117.

[FN51] See IACHR, Annual Report 1991, pp. 208.

[FN52] Report CEH, "Arbitrary Executions," Ch. II, Vol. 2, para. 308; 1992 Tomuschat Report, para. 94; 1991 Tomuschat Report, para. 117.

[FN53] See IACHR, Annual Report 1989-90, pp. 156-57; Annual Report 1991, pp. 208.

[FN54] See IACHR, Annual Report 1990-91, pp. 451-52; Report CEH, "Arbitrary Executions," para. 308; 1991 Tomuschat Report, paras. 117, 119.

[FN55] See IACHR, Annual Report 1991, pp. 208, 210; Report CEH, "Arbitrary Executions," para. 308; 1992 Tomuschat Report, para. 93.

[FN56] See CEH Report, "Arbitrary Executions," paras. 356-360.

[FN57] See, generally, *id.*, paras. 224-36.

[FN58] See *id.*, para. 235.

224. Such targeting was part of the larger policy aimed at spreading terror among the population. As the Commission for Historical Clarification reported with respect to the more urban areas of the country:

It would appear that state terrorism has held among its most valued criteria, for liquidating a person, that he or she be well-known [and] respected.... This has been done for the simple reason that it generates more fear.... By assassinating or disappearing leaders, in one way or another the greatest sense of lack of protection, lack of direction, and, of course, disorganization can be generated. [FN59]

[FN59] *Id.*, para. 236 (citing Carlos Figueroa Ibarra, *El Recurso del Miedo: Ensayo sobre el Estado y el terror en Guatemala*, Programa Centroamericano de Investigaciones, first ed., San José).

The same terror tactics were used in rural areas. "In the interior of the country, the systematic elimination of traditional leaders, catechists, and cooperative members left sequelae of the dismantling of community structures, lack of protection, and disorganization within the community." [FN60]

[FN60] *Id.*, para. 240.

225. In other cases, these violations were less selective insofar as the victims included men, women, the elderly and children. [FN61] The vast majority of those executed during the course of the conflict, approximately 86.56% of the victims, were members of the Mayan population. [FN62] A large percentage of the victims were members of rural communities, including agricultural workers and subsistence farmers. [FN63] Over the course of the armed conflict, thousands of persons were summarily executed on the basis of accusations that they had

some connection with the guerrillas, without the accusation ever having been clarified.[FN64]Victims were not always targeted in relation to their own presumed activities; in some cases, they were selected in connection with the political or social activities of their relatives, or simply because they were present when unknown armed men showed up at a home or workplace looking for a relative.[FN65]Conversely, in some cases individuals were targeted precisely because they had never participated in any kind of political activity.This was also a way of sowing terror, by provoking the reaction that, if they kill such a person, "who can't they kill." [FN66]

[FN61] See, generally, *id.*, para. 295.

[FN62] See *id.*, para. 293, and graph 19.

[FN63] See *id.*, para. 308; 1992 Tomuschat Report, para. 94.

[FN64] See Report CEH, "Arbitrary Executions," paras. 173-78; 205-08.

[FN65] See, generally, *id.*, para. 299.

[FN66] *Id.*, para. 237.

B. The facts established with respect to the 46 cases at issue

1. The weighing of the evidence

226. In weighing the evidence and establishing the facts, the Commission has taken into account the totality of the information offered by the parties, particularly references to the statements of witnesses and family members and to any investigations initiated, as well as the foregoing information with respect to the practice of extrajudicial executions in Guatemala at the time of the facts.As the Inter-American Court has established:"direct evidence, whether testimonial or documentary, is not the only type of evidence that may be legitimately considered...Circumstantial evidence, indicia, and presumptions may be considered, so long as they lead to conclusions consistent with the facts." [FN67]

[FN67] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Merits, *supra*, paras. 127-30; Case of Godínez Cruz, Merits, Judgment of January 20, 1989, Ser. C. No. 5, paras. 133-36; Case of Fairén Garbi and Solís Corrales, Merits, Judgment of March 15, 1989, Ser. C No. 6, paras. 103-33; Case of Gangaram Panday, Merits, Judgment of January 21, 1994, para. 49.

227. Circumstantial elements of proof may be of particular importance when addressing a violation or set of violations which were carried out in such a way as to impede any establishment of responsibility.[FN68]As stated above with respect to the practice of extrajudicial executions generally, "they were complemented by other acts and maneuvers aimed at avoiding or thwarting the investigation of judges, intensifying the climate of impunity," [FN69] and the judiciary proved unwilling and unable to discharge its role in identifying, prosecuting and punishing those responsible.Where such a practice, attributable to the State or with respect to

which it acquiesced, can be established, and the particular case can be linked to that practice, that linkage further defines the nature and scope of the claims raised,[FN70] and aids in establishing the veracity of the facts alleged.[FN71]

[FN68] See, generally, Case of Velásquez Rodríguez, Merits, supra, paras. 134, 172-73.

[FN69] Report CEH, para. 264.

[FN70] See, IACHR, Report 5/97 (admissibility), case 11.227, Colombia, published in Annual Report of the IACHR 1996, OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997, paras. 26-38.

[FN71] In this regard, the Inter-American Court established with respect to the crime of forced disappearance that, where it is shown that a State carried out or acquiesced in such a practice, and that the particular case is linked with that practice, the facts denounced in relation to that case shall be presumed to be true as long as the elements of proof with respect to both points meet the applicable standard. See, generally, Case of Velásquez Rodríguez, Merits, supra, para. 126; Case of Godínez Cruz, Merits, supra, para. 132; Case of Fairén Garbi and Solís Corrales, Merits, supra, para. 129.

228. The starting point for evaluating the evidence and establishing the facts in the cases under study--and which is not in dispute--is that the 71 men, women and children named as victims in the 46 cases under study were violently killed. The petitioners alleged that the victims' bodies respectively bore bullet wounds, knife wounds, marks of strangulation, and, in 13 cases, signs of torture. The State never controverted those allegations; in several cases, the information it submitted confirmed the cause of death alleged.

2. The facts presented and their relationship to the pattern of extrajudicial executions

229. As described above, during 1990 and 1991, hundreds of persons were extrajudicially executed in Guatemala. The executions followed a similar pattern, and were carried out in a systematic manner, with the victims usually having been targeted for their social or political activities. It was known that they were perpetrated by members of the security forces or persons acting at their behest or with their acquiescence. Further, the legal remedies in existence at the time were not effective in guaranteeing either the right to life or related fundamental rights such as the right to liberty.

230. The extrajudicial executions alleged in the 46 cases under study were perpetrated following the two basic patterns prevalent at the time. In both instances, several individuals committed the unlawful act, they were in civilian dress in most of the cases, and invariably they were heavily armed and acted with apparent impunity. In 20 of these cases, the modus operandi that the persons responsible for the extrajudicial executions followed was to go to the place where the victim was, even when the victim was accompanied by other persons, and to execute him or her immediately.[FN72]

[FN72] Cases 10.657, 10.660, 10.687, 10.725, 10.730, 10.731, 10.747, 10.755, 10.759, 10.777, 10.784, 10.785, 10.789, 10.861, 10.872, 10.875, 10.903, 10.920, 10.922 and 10.935.

231. In 26 cases, the modus operandi was to first capture the victim, and take him or her to an undisclosed location. Hours or days later the corpses were found near the place where the victim had been captured, or in a public place.[FN73] In 13 of those 26 cases, the bodies bore clear signs of having been tortured prior to being killed.[FN74] To the extent the marks are described, for example, those indicating that the victims had been beaten, they are consistent with the forms of torture practiced and reported during the period in question.

[FN73] Cases 10.586, 10.609, 10.610, 10.611, 10.612, 10.614, 10.618, 10.622, 10.653, 10.658, 10.667, 10.692, 10.714, 10.763, 10.764, 10.780, 10.782, 10.787, 10.788, 10.852, 10.855, 10.858, 10.869, 10.873, 10.891 and 10.936.

[FN74] Cases 10.609, 10.610, 10.622, 10.667, 10.714, 10.764, 10.780, 10.782, 10.788, 10.852, 10.873, 10.891, and 10.936.

232. In each of the 46 cases, the petitioners alleged the participation of agents of the State security forces or persons linked with such forces. The State expressly disputed that claim in four cases, and argued more generally that grounds for State responsibility had not been established in 29 cases. With respect to the four cases, 10.653, 10.784, 10.789 and 10.855,[FN75] the State expressly argued that the petitions were inadmissible because the killings were attributable to common crime and not to its agents. As detailed in the admissibility analysis above, however, the State provided no specific bases or evidence in support of that position. In 29 cases, the State expressly argued that the cases were inadmissible because its authorities were engaged in judicial processes designed to clarify the facts of and responsibility for the killings. In five cases, the State submitted no answer, and in the remainder offered no arguments on the specific question of State responsibility.

[FN75] As noted in the admissibility analysis above, in a fifth instance, case 10.692, the State had initially contended that the victims had been killed by members of an irregular armed group, although it cited no basis or proof for that assertion. The State subsequently reported that, because a family member had implicated his participation in the crime, the prosecutor had requested that the declaration of a named State agent be taken. Although the State submitted no further information as to whether his presumed involvement was investigated, the Commission concluded that this later information modified the State's prior position.

233. With respect to indicators of the involvement of State agents arising in the record of these cases, the Commission notes that in seven cases, the petitioners expressly described the perpetrators as having been members of a security force, usually the Army. Four of these seven cases, 10.667, 10.687, 10.730 and 10.755, share the common factor that the perpetrators were described as Army soldiers quartered in the village of Amacchel in El Quiché. Case 10.667 concerns allegations that soldiers captured the victim, and tortured him to death. Case 10.687 involved claims that soldiers fired on a group of local inhabitants, killing the minor victim. Case

10.730 involves allegations that soldiers shot and killed the victim. Case 10.755 concerns claims that soldiers attacked two villages with artillery fire, executing two minor victims, whose bodies they then mutilated. With respect to the three remaining cases, the killing in case 10.789 reportedly involved members of the security forces, while the shooting death of the victim in case 10.861 allegedly involved members of the National Police attempting to evict people from a farm they were occupying. The killing in case 10.903 reportedly involved a named soldier of the Guatemala Army. In three additional cases, 10.609, 10.872 and 10.873, the petitioners indicated that witnesses described the perpetrators as having been dressed in military clothing or "uniformed." In the remaining cases, the petitioners alleged the participation of persons linked to the security forces. The Commission understands this to refer to members of such forces, or persons acting at their behest or with their acquiescence.

234. As the Inter-American Court has established, in order to establish that there has been a violation of the rights enshrined in the Convention, it is not necessary to determine the culpability of the perpetrators or their intentions, nor is it necessary to identify the agents to whom the violative act is attributed. In such cases, it is sufficient to show that there was been support or tolerance by the authorities in the infraction of the rights recognized in the Convention, or failure to adopt the measures needed to identify and punish the perpetrators of those violations.[FN76]

[FN76] Inter-American Court of Human Rights, Case of Paniagua Morales et al., Merits, Judgment of March 8, 1998, Ser. C No. 37, para. 91.

235. Further, these 46 cases are consistent with the pattern of extrajudicial executions during 1990-91 by reason of the organizational, social and political affiliations of many of the victims. For example, the victims in cases 10.855 and 10.692, Pedro García Chuc, and David Gutiérrez Morales, Everardo Boteo Morales, Juan Orellana Chacón and Israel Chacón Aquino, had been members and the president of local cooperatives, respectively. Case 10.936 involved the killing of Raúl Sao Villagrán, the president of a local court of appeals. The victims in cases 10.714 and 10.869, Orlando Estuardo Alvarado Morales and Byron Estuardo Polanco, had been members of university communities. Cases 10.875 and 10.920 involved the killing of members of the labor movement, Dinora Pérez Valdez and Oswaldo Luna Aceituna. Case 10.785 arose pursuant to the killing of a political leader and former mayor, Marco Tulio Collado Pardo, and case 10.903 concerned the killing of Leandro Barillas, a community leader. Tomás Ventura Chon, the victim in case 10.922, had been a member of the CERJ. The victims in cases 10.731 and 10.935, Martín Quic Ratzán and Julio Quevedo Quezada, had been members of religious organizations. A number of the victims were members of rural communities in which indigenous groups, and agricultural workers and subsistence farmers were targeted for acts of violence.

236. Additionally, in a number of cases, the victims and/or their families had been threatened prior to these executions. For example, the victim in case 10.747, Urbano Efraín Alvarado Mejía, was killed three years after his brother, a student, had reportedly been killed. Although a number of Police agents were brought to trial with respect to that earlier execution and sentenced, all were subsequently acquitted on appeal. During that process, the family was reportedly

threatened. Similarly, in the case of Orlando Estuardo Alvarado Morales (case 10.714), it was reported that, some years earlier, his brother had been forcibly disappeared and executed. In the case of Marco Tulio Collado Pardo (Case 10.785), the victim had reportedly received death threats and suffered an attempt against his life in 1980. After a period in exile, he had returned to Guatemala in 1985 and reentered political life.

237. According to the record before the Commission, judicial processes were opened concerning at least 44 of the 46 cases, pursuant to the filing of a denunciation by a family member and/or the finding of the body of the victim(s). In no case, however, has the Commission received information as to the issuance of a final decision disposing of the issues raised. To date, no one has been held judicially accountable for these executions. This too is consistent with the systematic failure of the judiciary to respond with the required investigation, prosecution and punishment of human rights violations during the period in question.

238. These 46 cases form part of the practice of extrajudicial executions carried out in Guatemala in 1990 and 1991, executions perpetrated by State agents or persons working at their behest or with their acquiescence. This practice further involved the participation of the State agents who perpetuated it by failing to investigate, prosecute and punish those responsible. On the basis of the direct and circumstantial indicia set forth, the Commission concludes that the State bears responsibility for the facts denounced in these 46 cases, and will proceed to detail the specific nature and consequences of that responsibility.

C. Considerations of law

The right to life

239. Article 4(1) of the American Convention on Human Rights declares: "Every person has the right to have his life respected.... No one shall be arbitrarily deprived of his life." International human rights law, both treaty-based and customary, and the Guatemalan Constitution of 1985, guarantee the right to life. Similarly, Article I of the American Declaration of the Rights and Duties of Man and Article 3 of the Universal Declaration of Human Rights provide "Every human being has the right to life, liberty and the security of his person"; and Article 3 of the 1985 Guatemalan Constitution reads: "Right to life. The State guarantees and shall protect human life from its conception, as well as the integrity and security of the person."

240. The right to life is of special importance because it is the essential precondition for the realization of all other rights. The right to life is of paramount importance within the system of Convention guarantees; accordingly, its provisions must be strictly construed. Protection for this right is two-fold: on the one hand, it presupposes that no one may be arbitrarily deprived of life, and on the other, it requires that States take all necessary measures to ensure it.

241. The duty of the State is to guarantee to all persons subject to its jurisdiction the inviolability of life and the right to not be arbitrarily deprived of it, which implies reasonably preventing situations that may result in the suppression of this right. Due diligence imposes on the State the duty of reasonable prevention in those situations that could lead, by omission, to the suppression of the inviolability of life. The facts of these cases demonstrate that the State failed to

protect these victims against the arbitrary killings perpetrated by its agents, or those working at their behest or with their acquiescence. The practice of extrajudicial executions then in existence and posing a dire threat to this right was allowed, and, in some respects, encouraged to persist due to the lack of will or ability on the part of the authorities to respond to it.

242. The right to life gives rise to duties on the part of the State that are both preventive and corrective. In this case, the procedures of the State have provided neither. The system of legal guarantees, which should have been set in motion to control the actions of the State agents implicated, was bypassed. Nor did it provide the required response to the violations.

243. The object and purpose of Article 4 requires that it be applied so as to ensure the efficacy of its guarantees. Read in conjunction with Article 1(1), duty of the State to respect and ensure the rights of the Convention, this requires that any case suggesting the arbitrary deprivation of that right be subjected to an effective investigation. [FN77] As will be further analyzed below, the reports submitted by the State with respect to the cases under study fail to demonstrate the pursuit of effective investigations designed to clarify the facts or the corresponding responsibility for these killings. [FN78] Specifically, international and inter-American human rights law have established that any violation of the right to life requires that the State undertake a judicial investigation, under a criminal court, designed to "prosecute criminally, try and punish those held responsible for such violations." [FN79] Therefore, in certain cases in which a state has failed to duly investigate reports of arbitrary killings, it has been held internationally responsible for having violated the right to life, even though the circumstances of the deaths have not been fully clarified. [FN80] As will be further analyzed below, the reports submitted by the State with respect to the cases under study fail to demonstrate the pursuit of effective investigations designed to clarify the facts or the corresponding responsibility for these killings.

[FN77] See, European Court of Human Rights, *Kaya v. Turkey*, 158/1996/777/978, para. 86.

[FN78] Report of the UN Special Rapporteur on Summary or Arbitrary Executions, E/CN.4/1986/21, para. 209.

[FN79] Human Rights Committee, *Bautista v. Colombia*, Decision of October 27, 1995, para. 8.6; see IACHR, Reports No. 28/92 (Argentina) and No. 29/92 (Uruguay), published in Annual Report of the IACHR 1992-93, OEA/Ser.L/V/II.83, doc. 14, corr., March 1, 1993, pp. 41, 154.

[FN80] See, e.g., European Court of Human Rights, *Kaya v. Turkey*, *supra* (posing the problem of determining whether the death of a civilian at the hands of members of the security forces was deliberate); Human Rights Committee, *Dermit Barbato v. Uruguay*, No. 34/1981, para. 9.2 (posing the problem of determining whether a death in custody was an assassination or a suicide, as the State claims).

244. The Commission considers that in all of the cases included in this report the victims were extrajudicially executed, some immediately, with no prior capture, others hours or days after their capture, by State agents or private persons acting with their tolerance or consent, in the context of the practice of extrajudicial executions previously identified by this Commission. The State failed to take the measures required to address and stem the practice of extrajudicial executions prevalent at the time, and failed to respond to these specific executions with the due

diligence required. Therefore, the Commission concludes that the Guatemalan State violated Article 4 of the American Convention to the detriment of the victims identified in the cases that are the subject of this report.

The right to personal liberty

245. Any lawful deprivation of liberty must be ordered and executed by a competent authority and must be carried out in accordance with the substantive and procedural requirements of domestic law and of the American Convention. Article 7(2) of the American Convention establishes: "No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto." Article 7(3) provides: "No one shall be subject to arbitrary arrest or imprisonment."

246. In the 26 cases under study in this respect, 10.586, 10.609, 10.610, 10.611, 10.612, 10.614, 10.618, 10.622, 10.653, 10.658, 10.667, 10.692, 10.714, 10.763, 10.764, 10.780, 10.782, 10.787, 10.788, 10.852, 10.855, 10.858, 10.869, 10.873, 10.891, and 10.936, it is alleged that the victims were illegally captured and clandestinely detained before being killed. These victims were reportedly held for periods ranging from an hour or so to as long as several days.

247. There is no allegation or information on record suggesting that any of these victims were deprived of their liberty pursuant to the order of a competent authority or pursuant to law. Rather, the events described follow the modus operandi of many extrajudicial executions of the period, including the fact that in 13 of the 26 cases, the bodies of the victims were found bearing signs of torture. This graphically illustrates the potential for a person deprived of liberty, absent access to judicial protection, to be subjected to other fundamental human rights violations.

248. "The kidnapping of a person is an arbitrary deprivation of liberty, an infringement of a detainee's right to be taken without delay before a judge and to invoke the appropriate procedures to review the legality of the arrest...."[FN81] The right to petition for a determination as to the legality of an arrest is the fundamental guarantee of the constitutional and human rights of a detainee when deprived of liberty by state agents. "Here habeas corpus performs a vital role in ensuring that a person's life and physical integrity are respected, in preventing his disappearance or the keeping of his whereabouts secret and in protecting him against torture or other cruel, inhumane, or degrading punishment or treatment." [FN82] Accordingly, the Commission concludes that the State bears responsibility for the acts of its agents, or persons working at their behest or with their acquiescence, in illegally depriving the victims in these 26 cases of their liberty and preventing them from seeking access to judicial protection through habeas corpus.

[FN81] Velásquez Rodríguez, Merits, *supra*, para. 155.

[FN82] Inter-American Court of Human Rights, Advisory Opinion OC-8/87 of January 30, 1987, Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) of the American Convention on Human Rights), Ser. A No. 8, para. 35. "If those in charge of the detention facilities not need produce the prisoner posthaste they can use brutal methods with impunity, for

purposes of either interrogation or intimidation." IACHR, Report on the Situation of Human Rights in Bolivia, OEA/Ser.L/V/II.53, doc. 6, July 1, 1981, p. 41.

The right to humane treatment

249. Article 5 of the American Convention on Human Rights indicates, in paragraphs 1 and 2: "1. Every person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment...."

250. In the 26 cases in the foregoing section, 10.586, 10.609, 10.610, 10.611, 10.612, 10.614, 10.618, 10.622, 10.653, 10.658, 10.667, 10.692, 10.714, 10.763, 10.764, 10.780, 10.782, 10.787, 10.788, 10.852, 10.855, 10.858, 10.869, 10.873, 10.891, and 10.936, the victims were held clandestinely, cut off from contact with any form of aid or protection, for periods from one hour to as long as several days. The deprivation of liberty under such conditions in itself produces great anxiety and suffering.

251. In 13 of these 26 cases, 10.609, 10.610, 10.622, 10.667, 10.714, 10.764, 10.780, 10.782, 10.788, 10.852, 10.873, 10.891 and 10.936, the bodies of the victims manifested marks of torture. In at least four of these cases, 10.764, 10.780, 10.852 and 10.936, the marks indicated that the victims had been beaten. In case 10.667, the victim was reportedly tortured to death: "The soldiers removed his eyes, cut off his ears, torturing him until causing his death." As noted above with respect to the facts established, the State never controverted the petitioners' descriptions of the marks on the bodies and claims of torture.

252. The way in which these victims were tortured and the marks on their bodies did not reveal any intent to hide the facts, but rather to make them clear to whoever found the corpses, and to the family members and all others who might see the bodies. As noted in the section concerning the characteristics of executions during the period, the objectives of such torture included not only causing the victim to suffer, but also defiling his or her human dignity before family members and the community, and heightening the fear of all who learned of it. [FN83]

[FN83] See, generally, ODHAG, Guatemala Nunca Más, Tome II, pp. 50-54.

253. As with the right to life, the effective observance of the prohibition of torture requires that any allegation of inhuman treatment be subjected to effective investigation. [FN84] In this regard, the Commission further observes that Guatemala was bound by the Inter-American Convention to Prevent and Punish Torture at the time of these facts. Guatemala deposited its instrument of ratification on January 29, 1987, and the Convention entered into force for all parties on February 28, 1987. Pursuant to the terms of Articles 1 and 6, Guatemala undertook to prevent and punish torture occurring within its jurisdiction. Further, Article 8 provides:

The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case.

Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.

[FN84] When an individual raises an “arguable claim” of torture at the hands of State agents, the State’s obligations to refrain from torture and to respect and ensure the rights of all subject to its jurisdiction require an investigation:

capable of leading to the identification and punishment of those responsible. If this is not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance, would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity.

Eur. Ct. H.R., *Assenov and others v. Bulgaria* (90/1997/874/1086), para. 102.

254. The circumstances of these cases and general descriptions of the marks on the victims’ bodies are consistent with the treatment accorded to victims who were first detained and then extrajudicially executed during that period. While the State did not controvert that the victims had been tortured, neither did it submit information or evidence to show that those claims had been effectively investigated as required pursuant to its obligations under the American Convention and the Inter-American Convention to Prevent and Punish Torture. Accordingly, while the precise nature of and responsibility for the torture alleged in these 13 cases has not been established at the domestic level, the Commission finds sufficient indicia to conclude that the State bears responsibility for the acts of its agents or persons working with their tolerance or acquiescence in violating the right of Fidelino Raúl Tobías Aparicio, Miguel Angel Rianca Sicay, Gregorio Ramírez y Ramírez, and Juan Pablo Quiejuy; Mateo de la Cruz; Arturo Martínez Rodríguez and Alfredo Ubido Segura; Pedro Rivera Matom; Orlando Estuardo Alvarado Morales; Félix Tizul Piruch; Gloria Patzay Vicente; Omar Cain Carvajal Leiva; Cristóbal Chico López, Wenceslao Santiago Saavedra and Marvin Estuardo Castillo Saavedra; Ricardo Rivera Ovando; Margarita Chávez; Felicito Cristóbal Samayoa; and Raúl Sao Villagrán to physical integrity and to be free from torture pursuant to Article 5 of the American Convention and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

Rights of the Child

255. Article 19 of the American Convention on Human Rights provides: “Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.” Of the 46 cases under study, four deal with violations committed against minor victims. Case 10.687 concerns the killing of Magdalena Efranin Fray Santos, then twelve years old, by soldiers who opened fire against a group of local inhabitants. Case 10.755 concerns the killing of Toribio López and Tiburcio Carrillo, 16 and 14 years of age, pursuant to an artillery attack by soldiers against two villages. According to the petition, the soldiers rammed a stick through their backs and left them semi-buried. In case 10.763, persons linked to the

security forces captured a couple and their two year old child, Jorge Luis Simaj Azurdia. When the bodies were located, the husband and wife had their throats slit, and the child had been hung. Case 10.787 concerns the capture and killing of Oscar Aguilar Saquic, the 13-year-old, by persons linked to the security forces.

256. Respect for the human rights of children is of the utmost importance for all States. This is why Article 19 provides for special measures of protection for children, considering their vulnerability as minors.^[FN85] The present cases illustrate the circumstances pursuant to which children became victims of the practice of extrajudicial executions, and how the State failed to comply with the guarantees established in Article 19 of the American Convention.

[FN85] Guatemala signed the United Nations Convention on the Rights of the Child on January 26, 1990, and ratified it on June 6, 1990, and in taking that initiative indicated its intent to comply with the purposes and provisions thereof. The Convention on the Rights of the Child entered into force for all the parties on September 2, 1990, and has since governed the State's obligation to respect its provisions. Cases 10.755 and 10.787 occurred subsequent to Guatemala's ratification, but prior to that entry into force, so that Guatemala was obliged under general principles of treaty law to refrain from frustrating that Convention's object and purpose. The terms of that Convention, particularly Article 37 concerning the right to liberty and humane treatment in the context of this case, further define what is required to ensure that children receive the measures of protection to which they are entitled.

The right to judicial protection and guarantees

257. Article 25(1) of the American Convention provides: "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 25(1) incorporates the principle of the effectiveness of procedural instruments or means. It is not sufficient for the legal order of the State to accord formal recognition to the remedy in question; rather, it is necessary for the State to develop the possibilities of an effective remedy, and that it be substantiated in keeping with the rules of due process of law.

258. Article 8(1) provides:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature ... for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

As the Court has explained, Articles 25, 8, and 1(1) are mutually reinforcing:

Article 25, read in conjunction with Article 1(1) of the American Convention, requires the State to guarantee to all persons access to the administration of justice and, in particular, to prompt and

simple recourse for, among other results, having the persons responsible for human rights violations judged, and to obtain reparations for the harm suffered....Article 25 "is one of the basic pillars, not only of the American Convention, but of the very rule of law in a democratic society..."That article is directly related to Article 8(1) ... which enshrines the right of all persons to be heard with due guarantees ... for the determination of their rights, whatever their nature.[FN86]

[FN86] Case of Loayza Tamayo, Reparations, Judgment of November 27, 1998, para. 169 (citations omitted). See also the Cases of Velásquez Rodríguez, Fairén Garbi and Solís Corrales, and Godínez Cruz, Preliminary Objections, supra, paras 91, 90, and 93, respectively.

The corresponding duties of the State must be fulfilled, not through formal measures, but through substantive measures. Therefore, the remedies offered by the State must be "truly effective in establishing whether there has been a violation of human rights and in providing redress." [FN87] Accordingly, the State's response to these 46 cases must be analyzed in relation to whether the State has established if the victims' human rights have been violated, and whether it has provided the corresponding redress.

[FN87] Inter-American Court of Human Rights, Advisory Opinion OC-9/87 of October 6, 1987, Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 of the American Convention on Human Rights), Ser A No. 9, para. 24.

259. In this regard, the petitioners reported having denounced the situations complained of in the present cases before the pertinent authorities. With respect to all but two of these, cases 10.755 and 10.922, the State either reported the pendency of judicial processes or failed to answer. With respect to cases 10.755 and 10.922, the petitioners reported that the violations alleged had been denounced to local authorities, while the State responded that it had no record of any related denunciations or judicial processes.

260. While the guarantees of Articles 25 and 8 are distinct, common core deficiencies in the administration of justice prevented the application of both during the period under study. As has been referred to above, the administration of justice at that time was deficient to the point of inoperability. [FN88] In the majority of cases, the investigating forces or judiciary failed to identify perpetrators, and in the few cases where they were identified, they were not subjected to prosecution and punishment. In the few cases where convictions were handed down at first instance, they were invariably quashed on appeal. [FN89] "[I]n cases having a political background, almost no conviction ... is upheld on appeal and becomes final. Clearly, with such results, the population has little faith in the proper administration of justice." [FN90] Complainants and witnesses to human rights violations were afraid to participate in judicial processes due to threats, or intimidation, or the fate of others who had done so. Judges declined to investigate human rights violations for fear of what had befallen those who had. [FN91] The lack of will and ability on the part of the State to respond to grave violations was

further manifested in and exacerbated by profound structural deficiencies in the administration of justice.[FN92]

[FN88] See IACHR, Annual Report of the IACHR 1989-90, p. 163; Annual Report of the IACHR 1990-91, p. 481; Annual Report of the IACHR 1991, p. 221.

[FN89] 1992 Tomuschat Report, para. 141.

[FN90] Id.

[FN91] IACHR, Annual Report of the IACHR 1989-90, p. 157.

[FN92] Report CEH, "Denial of Justice," paras. 287-88, 422-23; see also 1991 Tomuschat Report, para. 123.

261. As the Commission for Historical Clarification concluded generally:

The failure of the administration of justice to protect human rights during the internal armed confrontation has been clearly and fully established, by the thousands of violations ... that were not investigated, tried, or punished by the Guatemalan State....In general, the Judiciary neglected to address basic procedural remedies to control the authorities, in view of the grave abuses against personal liberty and security...Moreover, on numerous occasions the courts of justice were directly subordinated to the Executive branch....This whole situation made the population totally defenseless in the face of the abuses of the authorities, and has led the Judiciary to be seen as an instrument for defending and protecting the powerful, that has repressed or refused to protect fundamental rights, especially of those who have been victims of grave human rights violations.

Persons seeking judicial protection concerning human rights violations under the then-prevailing conditions did not have access to the simple, prompt effective judicial protection required under the American Convention.While formally remaining in existence, such remedies were illusory in terms of producing the results for which they were theoretically designed.

262. Under the American Convention, in case of an infringement of a right or freedom protected, "[t]he State has a legal duty ... to use the means at its disposal ... to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation."[FN93] At the same time, the victim or the victims' family has the right to seek judicial protection and redress.The victim and/or his or her family members have the right to a judicial investigation by a criminal court to determine who was responsible for the human rights violations and to punish them.[FN94] The investigation "must be undertaken in a serious manner and not as a mere formality preordained to be ineffective.An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of ... [the victim's] family ... without an effective search for the truth by the government."[FN95]

[FN93] Inter-American Court of Human Rights, Velásquez Rodríguez, Merits, supra, para. 174.

[FN94] See, generally, Reports 28/92 (Argentina) and 29/92 (Uruguay) in the Annual Report of the IACHR 1992-93, OEA/Ser.L/V/II.83, doc. 14 corr. 1, March 12, 1993, pp. 49-51, 161-65.

[FN95] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Merits, supra, para. 177.

263. As the Commission has noted in other cases, the "Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions," adopted by the Economic and Social Council of the United Nations by Resolution 1989/65, explain what is required in the case of a suspicious death.[FN96] In this respect, the purpose of the investigation should be to determine the cause, form, and moment of the death, the person responsible, and the procedure or practice that may have provoked it. In addition, one must perform an adequate autopsy, compile and analyze all the material and documentary proof, and take the statements of witnesses. The investigation should distinguish among death by natural causes, death by accident, suicide, and homicide.

[FN96] See, generally, Report N° 10/95, Case 10.580, Ecuador, Annual Report of the IACHR 1995, OEA/Ser.L/V/II.91, Doc. 7, rev. 3, April 3, 1996, paras. 32-34; Report N° 55/97, Case 11.137, Argentina, paras. 413-24 and Report N° 48/97, Case 11.411, Mexico, paras. 109-112, Annual Report of the IACHR 1997, OEA/Ser.L/V/II.98, Doc. 7 rev., April 13, 1998.

264. With respect to the specific cases under study, while the State reported on the pendency of judicial processes, it reported few if any specific measures of investigation, and even fewer results. The State submitted virtually no documentary evidence with respect to the processes it cited. In a handful of cases it indicated that prosecutors or judges had requested that certain measures be carried out without reporting whether they were ever effectuated, and if so, with what results. In the vast majority of the cases, the record before the Commission indicates simply that a judicial process had been initiated and remained in the investigation stage.

265. In four cases, 10.658, 10.747, 10.782 and 10.903, the State reported that a specific individual or individuals had been accused of responsibility. In three of those cases, the accusations were brought by private accusers, while in the fourth the source is unclear. No specific steps to investigate the alleged participation of those accused were reported, nor any concrete steps to effectuate prosecution or punishment. The investigations were simply reported to remain pending.

266. In four other cases, 10.657, 10.667, 10.787 and 10.861, the State reported that specific individuals had been charged with responsibility for the crimes, tried, and absolved due to lack of proof. Each of those sentences had been confirmed on appeal. The case files provide no basis for the Commission to determine whether those accused and acquitted were innocent or guilty, nor is that determination germane to the present analysis. What is relevant is that the files disclose a complete absence of information as to what measures of investigation, if any, had been taken to provide the necessary factual and legal foundation for those prosecutions. Further, not one of

these files discloses a single step aimed at the investigation or identification of alternative suspects.

267. According to the record before the Commission, none of the other judicial processes resulted in the prosecution, or even the identification of any suspect. None of these judicial processes has led to the issuance of a final decision disposing of the claims raised, nor has anyone been found responsible for or punished in connection with the killing of the 71 victims in these cases. The Commission has clarified that the duty to investigate is not breached merely because no one has been convicted in the case, or because, despite the efforts made, it is impossible to clearly establish the facts. Nonetheless, to establish convincingly and credibly that this result has not been the product of running mechanically through certain procedural formalities without the State effectively seeking the truth, the State must show that it has carried out an immediate, exhaustive, serious, and impartial investigation.[FN97] In the present cases, the State has failed to meet that burden of proof.

[FN97] IACHR, Report N° 55/97, Case 11.137, Juan Carlos Abella, Argentina, Annual Report of the IACHR 1997, OEA/Ser.L/V/II.98, Doc. 6 rev., April 13, 1998, para. 412.

268. The victim's families had the right to know the truth about what happened to their loved ones.[FN98] In addition, as the victims' successors, they had and continue to have the right to use that information to exercise the right to redress from the State. "The rights of victims or their families to receive adequate compensation is both a recognition of the State's responsibility for the acts committed by its personnel and an expression of respect for the human being." [FN99]

[FN98] See, e.g., IACHR, Annual Report of the IACHR 1985-1986, OEA/Ser.L/V/II.68 doc. 8 rev. 1, September 26, 1986, "Areas in which steps need to be taken...", p. 193.

[FN99] Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mr. Bacre Waly Ndiaye, E/CN.4/1997/60, December 24, 1996, para. 47.

269. On the basis of the considerations reviewed above concerning the lack of will and ability of the judiciary to act on human rights violations during the period, as well as with respect to the particular cases under study, the Commission concludes that the judicial processes initiated with respect to these cases were not dealt with by independent and impartial courts.[FN100] Given the passage of over eight or nine years since those processes were initiated, and the fact that they have yet to be brought to any effective conclusion, the Commission considers that the reasonable time provided for in the Convention has been greatly exceeded. Further, given the lack of effective investigation and resulting absence of the foundation necessary to try these cases, combined with the other deficiencies in the management of these processes such as delay, the Commission concludes that the family members did not enjoy the guarantees necessary to ensure due process in the determination of their rights.

[FN100] See, e.g., paras. 261-62, *supra*.

270. Impunity is the result of the “failure to investigate, prosecute, take into custody, try and convict those responsible.”[FN101]Pursuant to the inter-related guarantees established at Articles 25, 8, and 1(1) of the American Convention, the State has the duty to use “all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations and total defenselessness of victims and their relatives.”[FN102]As the UN Special Rapporteur on Executions has emphasized, “impunity continues to be the principal cause of the perpetuation and encouragement of violations of human rights, and particularly extrajudicial, summary or arbitrary executions.”[FN103]With respect to the present cases, the record clearly reflects that the State failed to utilize the means at its disposal to carry out the effective investigation required to provide the foundation for the prosecution and punishment of those responsible.As a consequence, the State bears responsibility for the fact that these violations remain cloaked in impunity.

[FN101] Inter-American Court of Human Rights, Case of Loayza, Reparations, *supra*, para. 170.

[FN102] *Id.*, citing Case of Paniagua Morales et al., Merits, *supra*, para. 173.

[FN103] Report of the Special Rapporteur, Mr. Bacre Waly Ndiaye, *supra*, paras. 46, 94.

The State's obligation to respect and guarantee individual rights

271. In the cases included in this report, the analysis shows that the Guatemalan State has failed to carry out its obligation under 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,” for having violated the rights set forth at Articles 4, 5, 7, 8, 19, and 25 of this Convention, as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

272. Thus, the first obligation of the States, emerging from Article 1(1) of the Convention, is to respect the rights and freedoms of all individuals within their respective jurisdiction.In relation to this obligation, the Court has stated that “under international law a State is responsible for the acts of its agents ... and for their omissions, even when those agents act outside the sphere of their authority or violate internal law.”[FN104]Similarly, “in principle, 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 attributable to the State.”In addition, “[a]n illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.”[FN105]

[FN104] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, *supra*, para. 170.

[FN105] Id., para. 172.

273. Based on the foregoing analysis, the Commission concludes that the extrajudicial executions of the victims included in the cases that are the subject of this report were perpetrated by agents of the Guatemalan State or by private persons acting with their tolerance or consent, in the framework of a State practice of extrajudicial executions. In 26 of the cases under study, those responsible first held their victims in clandestine detention. In 13 of those cases, the bodies of the victims bore the signs of torture practiced by those captors. The acts and omissions of those agents, as well as those of police and judicial personnel that had the effect of impeding or preventing the right of family members to know the truth about what had happened and to seek judicial recourse are attributable to the State.

274. The second obligation provided for in Article 1(1) is to guarantee the free and full exercise of the rights and freedoms recognized in the Convention. In this respect, the States parties have the duty "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 ... the States must prevent, investigate and punish any violation of the rights recognized by the Convention." [FN106]

[FN106] Id., para. 166.

275. The State, in the face of an alleged extrajudicial execution, has the duty to clarify the facts, and to identify and punish the persons responsible. In the cases addressed in this report, those essential obligations have not been met, especially as it has been shown that the State itself used its structure to implement a practice of extrajudicial executions during the period in question. Therefore, the Commission concludes that the Guatemalan State has violated Article 1(1) of the Convention because it failed to guarantee the exercise of the rights and guarantees of the victims identified in the cases included in this report.

VI. CONSIDERATIONS ON THE STATE'S OBSERVATIONS

276. At its 104th session, the Commission adopted Report N° 125/99 on this case, pursuant to Article 50 of the American Convention. On November 11, 1999, the Commission transmitted the report, with its conclusions and recommendations, to the Government of Guatemala, and asked that it inform the Commission, within two months, on the measures taken to carry out the Commission's recommendations.

277. On January 12, 2000, the Government of Guatemala communicated to the Commission its answer to Report No. 125/99. The State reported that it wished to refer to the cases in general terms, as it sought to reflect "on the complexity and difficulties" it has found in addressing them. The analysis of the State's answer will be divided into four parts: (a) the duty to investigate, (b) combining the cases, (c) extrajudicial execution, and (d) the duty to make reparations.

a. Duty to investigate

278. The State indicated that the passage of time "has made it impossible, in most cases, to have access to the sources of information and of conviction to reinitiate and redirect" the pertinent investigations. In addition, the State noted that many of the cases in the report "are dispersed throughout the territory of the Republic, which has made it difficult to locate the respective case files and evidence." Similarly, the State reported that the events occurred when the old code of criminal procedure was in force, which was "oriented by the principles of secret process, procedural and investigative initiative vesting in the judiciary, written procedure, and other procedures that minimized the participation of the Public Ministry." The Guatemalan State also noted that the Commission should consider the political and historical context of armed confrontation in which the events in the cases in question took place, because as a result of that conflict the outlook "was discouraging for the internal organs entrusted with the investigation, administration, and enforcement of justice."

279. Having analyzed the answer of the Guatemalan State to Report 125/99, this answer shows that the State has not carried out the Commission's recommendation to undertake an exhaustive, impartial, and effective investigation to determine the circumstances of the extrajudicial executions and to judge and punish the persons responsible for the same.

280. Independently of the difficulties the State mentioned that may arise in investigating cases of this nature, such as time, the dispersion of the cases in the national territory, the procedural difficulties, and the political and historical context, one must bear in mind that the record before the Commission reflects virtually no serious effort whatsoever on the part of the Guatemalan State to investigate the facts alleged in due course, or to place on trial and punish the persons responsible. The information provided to the Commission merely shows that in these cases the judicial procedures were not performed with due diligence and that they have also been subjected to a prolonged, improper, and unwarranted delay.

281. In this regard, the Commission wishes to point out that the passage of time and the territorial dispersion of the cases are not an appropriate justification for the State's failure to have undertaken a serious and effective investigation. Similarly, the Commission does not doubt that these events occurred during difficult moments in the history of Guatemala; nonetheless, the fact that there was a conflict in the country is also no justification for the lack of justice and deprivation of the right to life that occurred in these cases. While the Guatemalan State reformed its Code of Criminal Procedure, the Commission reiterates that the victims' right to justice has not been respected in these cases, as the obligation to guarantee the victims' rights has not been upheld either before or after the reform of the Code, given the State's failure to investigate, try or punish the individuals responsible.

282. In this respect, the Commission wishes to note that, once the State had learned that the individuals in question had been extrajudicially executed, it was under the duty to take serious, effective, and timely steps to investigate. As the Court has noted:

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished

and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.[FN107]

[FN107] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Merits, *supra*, para. 176.

In certain circumstances, it may be difficult to investigate acts that violate an individual's rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it 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. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.[FN108]

[FN108] *Id.*, para. 177.

283. In addition, the Commission has taken due note of what the Guatemalan State has expressed in stating that "through the competent organs of the State, it is in the best disposition to redirect an exhaustive investigation to clarify all of these cases. To this end, it seeks from the Illustrious Commission the corresponding authorization to forward to the Public Ministry a copy of Confidential Report 125/99, for the purpose of giving renewed procedural impetus to these cases. Likewise, the Government of Guatemala shall make the pertinent efforts for the Public Ministry to appoint a Special Prosecutor to give special treatment to these cases." In this regard, the Commission urges the State to take all measures necessary to carry out an effective, serious, and impartial investigation of the facts alleged, and to place on trial and punish the persons responsible.

b. Accumulation of cases

284. With respect to the joinder of cases, the State indicated its disagreement with combining 46 cases, as the Commission did under Article 40 of its Regulations. The State grounds its opinion "in the fact that there is no coincidence or identity of persons, facts, places, or dates in the cases in question. The Commission, in the view of the Government, could only find the similarity that the cases referred to in Report 125/99 took place during the same calendar year (1990-1991), which is not the situation contemplated for combining cases in Article 40(2) of its Regulations."

285. On this point, the Commission reiterates what it already indicated, when it noted that "after determining that each of the cases referred to an allegation of extrajudicial execution of persons at the hands of the security forces or persons linked to them, and considering the character and time frame common to the complaints in question, the Commission decided, pursuant to Article 40 of its Regulations, to combine those cases and to proceed to resolve them together."

c. Extrajudicial executions

286. The State, in its response, rejected the term "extrajudicial execution" used by the Commission in this report, because, according to the State, "there is no certainty that State agents have taken the lives of the persons referred to in the report." And it maintains that the Commission itself, in some paragraphs of the report, used the expression "alleged extrajudicial execution." [FN109]

[FN109] IACHR, Confidential Report N° 125/99, Case 10.586, p. 53, para. 192.

287. On this point, the Commission would like to reiterate its conclusions to the effect that there were extrajudicial executions in the 46 cases analyzed in this report. These executions were part of a practice that existed and was used in Guatemala in 1990 and 1991, perpetrated by State agents or by persons acting at their behest or with their acquiescence. In this respect, see the Commission's analysis on the merits at paragraphs 212 and following.

d. Duty to make reparation

288. Finally, the State indicated in its answer that, as regards the Commission's recommendations, "it would also evaluate the possibility of including the victims' families in the programs for compensation and assistance in place for the victims of the armed conflict." On this point, the Commission has taken due note of what was indicated by the State, and urges it to adopt the measures necessary for the victims' families to receive adequate and timely reparation.

VII. CONCLUSIONS

289. Based on the foregoing analysis, the Commission concludes that the Guatemalan State is responsible for the violation of the rights to life, judicial guarantees, and judicial protection enshrined in Articles 4, 8, and 25 of the American Convention, to the prejudice of:

Joaquín Ortega, Teodoro Mejía Aguilar, Arcadio Mejía Velásquez, Efraín Ventura Cifuentes, and Luis Ventura (10.586); Fidelino Raúl Tobías Aparicio, Miguel Angel Rianca Sicay, Gregorio Ramírez y Ramírez, and Juan Pablo Quiejuy (10.609); Mateo de la Cruz (10.610), Aldo Tomás Sicaja and Francisco Alfredo Yuman (10.611); Mario Gómez Castillo (10.612); Emilio Santiago Ronquillo Peralta (10.614); Miguel Angel de León García and Jorge Adalberto Girón (10.618), Arturo Martínez Rodríguez and Alfredo Ubido Segura (10.622); Ricardo Alberto Ajcjbón (10.653); Juan Cristino Rodríguez, Sara Rodríguez, Mercedes Oxlaj, and Dominga

Rodríguez Chet (10.657); Guilgo Teodoro Zapeta Vásquez (10.658); Alberto Paron Boche (10.660); Pedro Rivera Matom (10.667); Magdalena Efranin Fray Santos (10.687); David Gutiérrez Morales, Everardo Boteo Morales, Juan Orellana Chacón, and Israel Chacón Aquino (10.692); Orlando Estuardo Alvarado Morales (10.714); Salvador Sosof Vásquez and Baltazar Pablo Mendoza (10.725); Pedro Chávez (10.730); Martín Quic Ratzán (10.731); Urbano Efraín Alvarado Mejía (10.747); Toribio López and Tiburcio Carrillo (10.755); Arnoldo Pérez Arana (10.759); Jorge Simaj Saquil, María Azurdía, and Jorge Luis Simaj Azurdía (10.763); Félix Tizul Piruch (10.764); Víctor Segura (10.777); Gloria Patzay Vicente (10.780); Omar Cain Carvajal Leiva (10.782); Juana Coche Tacaxoy and José Pospoy Mendoza (10.784); Marco Tulio Collado Pardo (10.785); Oscar Aguilar Saquic (10.787); Cristóbal Chico López, Wenceslao Santiago Saavedra, and Marvin Estuardo Castillo Saavedra (10.788); Víctor Manuel Chiquín (Chanquín) (10.789); Ricardo Rivera Ovando (10.852); Pedro García Chuc (10.855); Carlos Evercio Melgar Pocón (10.858); María del Carmen Anabisca Secáida (10.861); Byron Estuardo Polanco (10.869); Eulogio Meléndez Boteo, Pedro Meléndez Galicia, and Noé Meléndez Galicia (10.872); Margarita Chávez (10.873); Dinora Pérez Valdez (10.875); Felicito Cristóbal Samayoa (10.891); Leandro Barillas (10.903); Oswaldo Luna Aceituno (10.920); Tomás Ventura Chon (10.922); Julio Quevedo Quezada (10.935), and Raúl Sao Villagrán (10.936).

In addition, the State is responsible for violating the right to personal liberty set forth at Article 7 of the American Convention to the prejudice of:

Joaquín Ortega, Teodoro Mejía Aguilar, Arcadio Mejía Velásquez, Efraín Ventura Cifuentes, and Luis Ventura (10.586); Fidelino Raúl Tobías Aparicio, Miguel Angel Rianca Sicay, Gregorio Ramírez y Ramírez, and Juan Pablo Quiejuy (10.609); Mateo de la Cruz (10.610), Aldo Tomás Sicaja and Francisco Alfredo Yuman (10.611); Mario Gómez Castillo (10.612); Emilio Santiago Ronquillo Peralta (10.614); Miguel Angel de León García and Jorge Adalberto Girón (10.618), Arturo Martínez Rodríguez and Alfredo Ubido Segura (10.622); Ricardo Alberto Ajcaybón (10.653); Guilgo Teodoro Zapeta Vásquez (10.658); Pedro Rivera Matom (10.667); David Gutiérrez Morales, Everardo Boteo Morales, Juan Orellana Chacón, and Israel Chacón Aquino (10.692); Orlando Estuardo Alvarado Morales (10.714); Jorge Simaj Saquil, María Azurdía, and Jorge Luis Simaj Azurdía (10.763); Félix Tizul Piruch (10.764); Gloria Patzay Vicente (10.780); Omar Cain Carvajal Leiva (10.782); Oscar Aguilar Saquic (10.787); Cristóbal Chico López, Wenceslao Santiago Saavedra, and Marvin Estuardo Castillo Saavedra (10.788); Ricardo Rivera Ovando (10.852); Pedro García Chuc (10.855); Carlos Evercio Melgar Pocón (10.858); Byron Estuardo Polanco (10.869); Margarita Chávez (10.873); Felicito Cristóbal Samayoa (10.891); and Raúl Sao Villagrán (10.936).

As well as the right to humane treatment enshrined in Article 5 of the American Convention, and its duty to prevent and punish torture as set forth at Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of:

Fidelino Raúl Tobías Aparicio, Miguel Angel Rianca Sicay, Gregorio Ramírez y Ramírez, and Juan Pablo Quiejuy (10.609); Mateo de la Cruz (10.610), Arturo Martínez Rodríguez and Alfredo Ubido Segura (10.622); Pedro Rivera Matom (10.667); Orlando Estuardo Alvarado Morales (10.714); Félix Tizul Piruch (10.764); Gloria Patzay Vicente (10.780); Omar Cain Carvajal Leiva (10.782); Cristóbal Chico López, Wenceslao Santiago Saavedra, and Marvin

Estuardo Castillo Saavedra (10.788); Ricardo Rivera Ovando (10.852); Margarita Chávez (10.873); Felicito Cristóbal Samayoa (10.891); and Raúl Sao Villagrán (10.936).

Further, the State is responsible for violating the rights of the child established in Article 19 of the American Convention, to the detriment of minors:

Magdalena Efranin Fray Santos (10.687); Toribio López and Tiburcio Carrillo (10.755); Jorge Luis Simaj Azurdia (10.763); and Oscar Aguilar Saquic (10.787).

Accordingly, the State is responsible for breach of the obligation imposed by Article 1(1) to respect and guarantee the rights enshrined in the Convention with respect to all the victims named above.

VIII. RECOMMENDATIONS

290. Based on the analysis and conclusions of this report, the Inter-American Commission on Human Rights recommends to the Guatemalan State that it:

1. Carry out a complete, impartial, and effective investigation to determine the circumstances of the extrajudicial executions and related violations in the cases of the victims named in section VII, and to punish the persons responsible pursuant to Guatemalan law.
2. To adopt the measures necessary for the family members of the victims identified in paragraph 287 to receive adequate and timely reparation for the violations established herein.

IX. PUBLICATION

291. On February 24, 2000, the Commission transmitted Report N° 05/00, the text of which is found supra, to the Guatemalan State and the petitioners, pursuant to Article 51(2) of the American Convention, and gave the State one month to implement the preceding recommendations.

292. On March 3, 2000, during the 106th Regular Session of the IACHR, at the hearing held on "the general situation of human rights in Guatemala," the representatives of the Guatemalan State stated that they would like to sign an agreement or commitment to implement the recommendations issued by the IACHR in this report. On April 13, 2000, the Commission received from the Guatemalan State its formal commitment to implement the recommendations of this report, the text of which is set forth below:

COMMITMENT BY THE GOVERNMENT OF THE REPUBLIC OF GUATEMALA TO IMPLEMENT THE RECOMMENDATIONS ISSUED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS IN ITS REPORT N° 5/00 (CASE 10.586 ET AL.)

I. BACKGROUND

The Republic of Guatemala, through the Presidential Commission on Coordination of Executive Policy concerning Human Rights (COPREDEH), desirous of promoting and protecting human

rights and in view of their importance to the consolidation of democracy in Guatemala and absolute respect for human rights as the basis for a just, proper, democratic, and representative society, has resolved to initiate a new process as part of the development of human rights in the Guatemalan State.

Within this context, COPREDEH is initiating talks with individuals who have been victims of human rights violations and/or with family members of such persons whose cases are before the inter-American system for the promotion and protection of human rights--talks intended to bring about friendly settlements, which seek to discover the facts, circumstances, and other elements that may lead to the prosecution and punishment of those found to be responsible for the violations and to compensation of the victims by the State.

The Guatemalan State, in strict compliance with the obligations it undertook by signing the American Convention on Human Rights, and with other human rights instruments under international law, through COPREDEH, has resolved to implement the recommendations of Report N° 5/00 on Case 10.586 et al., issued by the Inter-American Commission on Human Rights on February 24, 2000.

II. PARTY APPEARING

On express instructions from Alfonso Portillo, the Constitutional President of the Republic of Guatemala, Victor Hugo Godoy, in his capacity as Chair of the Presidential Commission on Coordination of Executive Policy concerning Human Rights (COPREDEH), appears and sets forth the Commitment to Implement the Recommendations issued by the Inter-American Commission on Human Rights.

III. RESPONSIBILITY OF THE STATE AND ACCEPTANCE OF THE FACTS

The Guatemalan Government recognizes the institutional responsibility of the State stemming from noncompliance with Article 1(1) of the American Convention on respect for the rights and freedoms recognized in the Convention, and Articles 1, 2, and 3 of the Political Constitution of the Republic of Guatemala regarding each and every one of the individuals listed in Report N° 5/00 (Case 10.586 et al.) of February 24, 2000, owing to its failure to guarantee the essential rights recognized in Articles 4, 5, 7, 8, 19, and 25 of the American Convention on Human Rights and other international instruments ratified by Guatemala, under the terms indicated in the aforementioned report.

Against this background, the Guatemalan State acknowledges that the facts described in Report No. 5/00 (Case 10.586 et al.) of February 24, 2000 occurred and undertakes to again take up the recommendations contained in that report; to promote domestic legal proceedings so that the circumstances surrounding those facts may be ascertained; and, if appropriate, to take the necessary corrective measures to compensate the victims or, in their absence, their family members.

IV. THE SEARCH FOR THE VICTIMS' FAMILY MEMBERS

As there is insufficient information to immediately locate the victims' family members, the Guatemalan State undertakes to make every effort to determine their whereabouts so that they may receive the corresponding compensation, in accordance with Section V of this declaration.

V. COMPENSATION

The Guatemalan State undertakes to compensate the family members of the victims listed in Report N° 5/00 (Case 10.586 et al.), of February 24, 2000. As to date it has been impossible to locate those individuals, the Guatemalan State undertakes to determine, with the victims or their family members, at a later date and in the usual way, the compensation that the State will make, on the basis of the principles and criteria established in the Inter-American System for the Promotion and Protection of Human Rights.

If the victims' family members are not located within a reasonable period, compensation shall be made so as to benefit society in general, in the areas where the facts occurred. Such compensation shall be determined on the basis of agreement reached by the representatives of the Guatemalan State and the petitioners in Case 10.586 et al.

VI. PUNISHMENT OF THOSE RESPONSIBLE

Subject to the provisions of the Guatemalan legal and constitutional system, the Guatemalan State undertakes to initiate investigations of the facts described in Report N° 5/00 (Case 10.586 et al.), of February 24, 2000, and, insofar as possible, to bring civil, criminal, and administrative proceedings against those individuals who, it is alleged, in the exercise of their public functions or owing to their abuse of state power, participated in the alleged violation and/or, if the investigations do not establish that elements or agents of the State participated in these violations, to determine the criminal and civil liability of those private individuals who may have participated in and committed the unlawful acts. In addition, insofar as it is able and in keeping with the nature and circumstances of each case, the Guatemalan State undertakes to bring legal proceedings against individuals who, by omission, negligence, or incompetence, may have delayed the administration of justice, in terms of obstruction, denial, or delay of the prompt, effective application of justice.

VII. RIGHT TO SEEK RECOVERY OF COMPENSATION

The Guatemalan State reserves the right to seek to recover any compensation it makes, pursuant to the provisions of the Guatemalan legal system, from any persons responsible for the violation of human rights, through a final judgment handed down by the Guatemalan courts, which may not be appealed, subject to the provisions of domestic law in this area and pursuant to Articles 8 and 25 of the American Convention on Human Rights.

VIII. REPORTING

The Guatemalan State, through COPREDEH, undertakes to report every four months to the Inter-American Commission on Human Rights on progress made in complying with the obligations assumed by the State under this declaration.

In keeping with its usual practice and the obligations imposed on it by the American Convention, the Inter-American Commission on Human Rights shall monitor compliance with this agreement.

X. LEGAL BASIS

This undertaking to comply with the recommendations made by the Inter-American Commission on Human Rights is signed on the basis of respect for the human rights recognized in the American Convention on Human Rights and other international human rights instruments; the fundamental principles established in the Political Constitution of the Republic of Guatemala; and the Peace Agreements signed by the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG) [Guatemalan National Revolutionary Unity].

293. Under the aforementioned Article 51(2), it is the responsibility of the Commission at this stage to evaluate the measures taken by the Guatemalan State to comply with the recommendations and remedy the violations established.

294. The information received indicates that the Guatemalan State has not yet fully complied with the recommendations made in Report N° 05/00 of the Commission. However, the IACHR must highlight and commend the Guatemalan States' acknowledgement of its responsibility for the facts described in this Report and its intention to comply with the Commission's recommendations, expressed by the Guatemalan State at the hearing on the human rights situation in Guatemala and in the document transcribed above. The Commission urges the Guatemalan State to comply with each of the commitments it has made. The Commission will monitor such measures as the Guatemalan State may adopt to comply with the above-mentioned recommendations and the commitment it has made.

295. In view of the foregoing considerations and of the provisions of Article 51(3) of the American Convention and Article 48 of the IACHR Regulations, the Commission decides: to reiterate the conclusions and recommendations contained in Sections VII and VIII above; to urge the Guatemalan State to comply with the commitment it has made; to publish this report; and to include it in the Annual Report of the IACHR to the General Assembly of the OAS. The Commission, pursuant to the provisions of the instruments governing its mandate, will continue to evaluate the measures adopted by the Guatemalan State in relation to the aforementioned recommendations and the commitment it has made, until the State has complied fully with those recommendations and that commitment.

Approved by the Inter-American Commission on Human Rights, on April 13, 2000. (Signed by): Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Juan E. Méndez, Second Vice-Chairman; Robert K. Goldman, Peter Laurie, Julio Prado Vallejo, members of the Commission.