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Title/Style of Cause: Isabela and Francisco Velasquez; Ronal Homero Mota, Julio de Jesus Maldonado, Jose Felipe Alvarez Andres; Eleodoro Polanco Arévalo; Adolfo Rene and Luis Pacheco del Cid; Nicolas Matoj, Bernal de Matoj, Juan Matoj, Nicolas Matoj (son), Francisco Matoj, Cecilia Matoj, Maria Matoj, Francisco Rivera and family, and Jacinto Terraza and family 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: Velasquez v. Guatemala, Case 10.588, Inter-Am. C.H.R., Report No. 40/00, OEA/Ser.L/V/II.106, doc. 3, rev. (1999)

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I. SUMMARY

1. During 1990 and 1991, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received five petitions alleging the forced disappearance of: Isabela and Francisco Velásquez; Ronal Homero Mota, Julio de Jesús Maldonado, José Felipe Alvarez Andrés; Eleodoro Polanco Arévalo; Adolfo René and Luis Pacheco del Cid; Nicolás Matoj, Bernal de Matoj, Juan Matoj, Nicolás Matoj (son), Francisco Matoj, Cecilia Matoj, María Matoj, Francisco Rivera and family, and Jacinto Terraza and family, respectively. In each instance, the petitioners alleged that the victim or victims had been disappeared by soldiers of the Guatemalan Army or individuals linked with the Guatemalan security forces.

2. The cases listed above were opened pursuant to the receipt of these petitions, and processed according to the terms of the American Convention on Human Rights (hereinafter “the Convention”) and the Commission’s Regulations. In carrying out that processing, having ascertained that each case dealt with an alleged forced disappearance at the hands of members of or persons linked to the security forces, and having considered the common nature and time frame of the allegations at issue, the Commission decided, pursuant to Article 40 of its Regulations, to accumulate these cases and address them in a single report. The present report examines whether the Republic of Guatemala (hereinafter “Guatemala” or “the State”) bears

international responsibility for the alleged forced disappearance of the victims and for the corresponding violation of Articles 1(1), 3, 4, 5, 7, 8, 19 and 25 of the American Convention.

3. The State, for its part, provided limited information in response to the Commission's requests for information. In essence, in two of those cases the State contested the admissibility of the petitions, maintaining that its mechanisms of domestic jurisdiction were seized of the matters, and that the petitioners had yet to exhaust domestic remedies as required by the Convention. With respect to the three remaining cases, the State reported that its files disclosed no record of denunciations having been made at the domestic level, and indicated that it was awaiting the receipt of further information that would enable it to investigate the claims made.

4. As set forth in the report that follows, having examined the contentions of the parties, the Commission decided to admit the present case, and found the State responsible for violations of the rights to life, humane treatment, personal liberty, and recognition as a person before the law, as well as to judicial guarantees and protection, as established in Articles 4, 5, 7, 3, 8 and 25 of the American Convention, with respect to the forced disappearance of Isabela and Francisco Velásquez; Ronal Romero Mota, Julio de Jesús Maldonado, José Felipe Alvarez Andrés; Eleodoro Polanco Arévalo; Adolfo René and Luis Pacheco del Cid; Nicolás Matoj, Bernal de Matoj, Juan Matoj, Nicolás Matoj (son), Francisco Matoj, Cecilia Matoj, María Matoj, Francisco Rivera and family, and Jacinto Terraza and family. With respect to the several victims who were minors, the State was held responsible for having failed to provide the measures of protection for children required under Article 19. The State was accordingly held responsible for having failed to uphold its Article 1(1) obligation to respect and ensure those rights under the Convention. As a consequence, the Commission recommended that the State carry out an impartial and effective investigation to determine the circumstances of the forced disappearance of the victims, and to sanction those responsible in accordance with domestic law, and that it adopt the measures necessary to ensure that the victims' family members receive fair and prompt reparation for the violations established.

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

CASE 10.588: ISABELA VELÁSQUEZ AND FRANCISCO VELÁSQUEZ

A. Facts alleged

5. The petition, dated April 7, 1990, alleged that, on March 13, 1990, soldiers of the Guatemalan Army arrived in Chajul, in the Department of El Quiché, where they proceeded to persecute members of the community, and destroy 35 houses, a religious center and agricultural lands. The petitioners alleged that, in the course of effectuating this alleged incursion, the soldiers had disappeared Isabela Velásquez, and her son Francisco, a minor then 13 years of age.

6. Neighbors reportedly witnessed the abduction, and indicated that the mother and child had been agricultural laborers in Chajul. The petitioners alleged that, during the same operation, Mr. Pedro Gallego de León was tortured and killed, and his wife and sons, 2 and 6 years of age, were also disappeared. According to the petition, these events were denounced before the Office

of the Ombudsman for Human Rights and reported to the local press. Finally, the petitioners alleged that these violations were carried out as part of a policy of persecution effectuated by the Army against populations in El Quiché and Huehuetenango displaced by the armed conflict.

B. Proceedings before the Commission

7. The Commission opened Case 10.588 on July 30, 1990. By a note of that date, the pertinent parts of the petition were transmitted to the State of Guatemala with a request for information in response within a period of 90 days. On January 28, 1991, the Commission reiterated its request for information to the State, with a response requested within 30 days. The State acknowledged receipt of this communication by means of a note of February 11, 1991. In a letter dated June 18, 1992, the Commission asked the petitioners to provide additional information within 45 days. On March 9, 1994, the Commission reiterated its request to the State for information, indicating that, absent a response, it might consider the application of Article 42 of its Regulations, which allows it to presume the facts denounced to be true as long as other evidence does not lead to a contrary conclusion.

8. The State provided a brief report on the case in a note dated April 18, 1994. On May 6, 1994, that information was transmitted to the petitioners, with the submission of observations in response requested within 45 days. That request to the petitioners was reiterated on September 7, 1994, with information requested within 60 days. In a March 6, 1996, communication to the State, the Commission requested information on the results of any investigations effectuated with respect to the facts denounced.

9. The Commission addressed the State and the petitioners, by means of notes of December 2 and 8, 1998, respectively, for the purpose of requesting updated information on the case. The Commission also placed itself at the disposal of the parties for the purpose of facilitating a friendly settlement in accordance with Article 48(1)(f) of the American Convention, if they should wish to avail themselves of this procedure. The parties were asked to respond on both points within 30 days. On December 17, 1998, the State requested an extension of one month to present the corresponding information. In a note of December 28, 1998, the Commission granted the State an extension to expire on January 30, 1999. On January 20, 1999, the State requested a further extension of 60 days to collect and present information. The Commission replied with a note of January 27, 1999, granting a 60 day extension. By a note of March 30, 1999, the State requested an extension of 60 additional days. The Commission responded on April 9, 1999, indicating that, in view of the additional time already granted and its work program, a further extension would not be possible.

C. Position of the State

10. In its response of April 18, 1994, the State reported that, after it had received the complaint in 1990, it had requested that the General Headquarters of the National Police and the Public Ministry provide relevant information concerning the allegations. The State indicated that both institutions had searched their records, but that neither the police nor the judicial files contained any indication that a denunciation had been filed, or other relevant information. The State indicated that, having received this information, it had requested that the National Police,

through its regional headquarters in the Department of El Quiché, initiate the corresponding investigation to establish the truth or falsehood of the complaint. Accordingly, the State reported that it was awaiting the results of this investigation.

CASE 10.608: RONAL HOMERO MOTA, JULIO DE JESÚS MALDONADO AND JOSÉ FELIPE ALVAREZ ANDRÉS

A. Facts alleged

11. The petition, dated July 27, 1990, alleged the disappearance of Ronal Homero Mota, Julio de Jesús Maldonado and José Felipe Alvarez Andrés, agricultural laborers who lived in San Lucas Tolimán, Sololá. The petitioners alleged that, on July 11, 1990, these three men went out to hunt at one in the afternoon, as was their customary practice, but had never returned. The petitioners reported that the owner of a restaurant in San Lucas Tolimán had heard more about their fate from some policemen, who allegedly told him that they had captured the men in question and turned them over to the Army. Family members of the victims then went to the military detachment of Atitlán with a judge, where they were turned away with the explanation that they must return accompanied by the Procurador of Sololá in order to obtain information regarding their missing relatives. Family members subsequently learned that their loved ones were no longer at that base, but had been transferred from Sololá closer to Guatemala City. Nothing further was known about the missing men since that date. Finally, the petitioners reported that the matter had been denounced before the Office of the Ombudsman for Human Rights.

B. Proceedings before the Commission

12. The Commission opened case 10.608 on August 15, 1990. On August 17, 1990, it transmitted the pertinent parts of the petition to the State, with information in response requested within 90 days. By means of a note of January 23, 1991, the State submitted a brief response, which was in turn submitted to the petitioners on January 29, 1991, with observations and information requested within 30 days. By means of brief communication dated June 28, 1991, the State provided updated information on the case and observations. This information was transmitted to the petitioners on July 17, 1991, with the submission of corresponding observations requested within 30 days. On June 15, 1992, the Commission reiterated that request to the petitioners, with additional information requested within 45 days. On November 19, 1993, the Commission asked the Government for updated information about the domestic proceedings. Pursuant to the December 14, 1993 request by the State for an extension of time to respond, on January 13, 1994, the Commission addressed the State to indicate that a 30 day extension had been granted. On February 17, 1994, the Commission granted the Government an additional extension of 30 days, which the State had requested in a letter dated February 10, 1994.

13. By means of a communication dated February 17, 1994, the State provided additional information concerning the case. On March 3, 1994, the Commission transmitted that information to the petitioners, with observations or additional information requested within 45 days. The Commission reiterated the latter request to the petitioners on July 19, 1994.

14. The Commission addressed the State and the petitioners, by means of notes of December 2 and 8, 1998, respectively, for the purpose of requesting updated information on the case. The Commission also placed itself at the disposal of the parties for the purpose of facilitating a friendly settlement in accordance with Article 48(1)(f) of the American Convention, if they should wish to avail themselves of this procedure. The parties were asked to respond on both points within 30 days. On December 17, 1998, the State requested an extension of one month to present the corresponding information. In a note of December 28, 1998, the Commission granted an extension to expire on January 30, 1999. On January 20, 1999, the State requested a further extension of 60 days to collect and present information. The Commission replied with a note of January 27, 1999, granting a 60 day extension. By a note of March 30, 1999, the State requested an extension of 60 additional days. The Commission responded on April 9, 1999, indicating that, in view of the extensions already granted and its work program, a further extension would not be possible.

C. Position of the State

15. The State initially reported that, on June 15, 1990, criminal process 540-90 had been initiated before the Court of First Instance of Sololá in response to the disappearance of Ronal Homero Mota, Julio de Jesús Maldonado and José Felipe Alvarez Andrés. The Public Ministry had asked the presiding judge to order the Department of Criminal Investigations of the General Directorate of the National Police to initiate a thorough investigation as to the whereabouts of the three missing persons. In its submission of June 28, 1991, the State reported that the criminal process was pending in the summary phase, and requested that, as domestic remedies had not been exhausted, the Commission declare the case inadmissible.

16. In its February 17, 1994 submission, the State further reported that, on July 6, 1990, the local Justice of the Peace of San Lucas Tolimán had gone to the military detachment of the Cantón Panabaj, in the Municipality of Santiago Atitlán, Sololá in order to execute a writ of exhibición personal [a form of habeas corpus] in favor of the three victims. The wives of the three men had been present for this measure, the result of which was “negative.” The State reported that the Department of Criminal Investigations of the General Directorate of the National Police had issued a report concerning its investigation on July 22, 1990, which stated that officials of the department had interviewed the wives of the disappeared and some of their neighbors. The State indicated that, given the fact that neither the wives nor the neighbors gave a detailed version of the events or presented evidence of any kind, no certified facts from the investigation could be transmitted to the court in order to resolve the case. The criminal process therefore remained in its initial stage and the investigations were continuing.

CASE 10.796: ELEODORO POLANCO ARÉVALO

A. Facts alleged

17. On February 13, 1991, the Commission received a complaint concerning the alleged disappearance of Eleodoro Polanco Arévalo, resident of Section J, Lot Z-17, Colonia Margarita 4 in San Juan Sacatepéquez. The petitioners alleged that, on January 26, 1991, unidentified armed

men, linked with the security forces but dressed in civilian clothing, broke down the door of Eleodoro Polanco Arévalo's home. They threatened to kill the family members present, and then proceeded to the room where Mr. Polanco had been sleeping. They shot and wounded him, and forcibly carried him away with them. The victim has neither been seen nor heard from since that time. The petitioners indicate that his father-in-law, Celso Nasario Sicay, denounced these facts to the National Police, and that the crime was reported to the media as well.

B. Proceedings before the Commission

18. Case 10.796 was opened on February 27, 1991. That same date, the pertinent parts of the petition were transmitted to the State of Guatemala, with the submission of information in response requested within 90 days. The State acknowledged receipt on March 6, 1991. On September 9, 1991, the State submitted its response to the Commission. On September 20, 1991, the Commission transmitted that information to the petitioners, with observations and/or information requested within 30 days. This request was reiterated on March 5, 1992, giving the petitioners 60 days to respond.

19. On December 1, 1993, the Commission asked the State for additional information regarding the status of domestic proceedings related to Case 10.796. On September 6, 1994, the State submitted additional information, which was duly transmitted to the petitioners on September 16, 1994, with information or observations in response requested within 45 days. This request was reiterated on October 2, 1995. The Commission asked the Government for updated information on April 24, 1996.

20. In communications dated December 2, 1998, the Commission addressed the State and the petitioners for the purpose of requesting updated information on the case. The Commission also placed itself at the disposal of the parties for the purpose of facilitating a friendly settlement in accordance with Article 48(1)(f) of the American Convention, if they wished to avail themselves of this procedure. The parties were asked to respond on both points within 30 days. On December 17, 1998, the State requested an extension of one month to present the corresponding information. In a note of December 28, 1998, the Commission granted an extension to expire on January 30, 1999. On January 20, 1999, the State requested a further extension of 60 days to collect and present information. The Commission replied with a note of January 27, 1999, granting a 60 day extension. By a note of March 30, 1999, the State requested an extension of 60 additional days. The Commission responded on April 9, 1999, indicating that, in view of the extensions already granted and its work program, a further extension would not be possible.

C. Position of the State

21. In its response of September 9, 1991, the State informed the Commission that proceedings had in fact been instituted before the Second Court of First Instance of Criminal Proceedings of Guatemala City by the father-in-law of the victim, Mr. Celso Nazario Sicay. The State reported that cause C-514-91 was pending in the summary stage, and that the Public Ministry had cited Mr. Sicay in order that he should provide additional details to enable those responsible to be located. The State argued that, in view of the pendency of the judicial

proceeding, the case before the Commission was inadmissible on the basis of the non-exhaustion of domestic remedies.

22. In its September 6, 1994 submission, the State informed the Commission that, subsequent to Mr. Sicay's complaint to the National Police, agents of the latter had gone to the scene to conduct a search. Those agents had submitted their report to Court of Criminal Peace of the Municipality of San Juan Sacatepéquez, which had ordered the first measures of investigation. The investigation was later transferred to the Second Court of First Instance, Criminal Branch, as cause 514-91. In describing the allegations, the State characterized the crime as having been committed by two assailants. The State reported that, at a later point (no date was given), National Police agents had gone to Mr. Sicay's home to interview him. They learned that he no longer lived there, and were unable to establish his whereabouts, which impeded their investigation. The State indicated that, according to its records, evidence sufficient to accuse anyone specifically had not been found, and Mr. Sicay had never ratified his denunciation or formally accused anyone. Pursuant to the entry into force of the new Code of Criminal Procedure on July 1, 1994, the case had been transferred to the Office of the General Prosecutor, which would continue investigating until sufficient elements had been established to justify the opening of the trial phase.

CASE 10.856: ADOLFO RENÉ PACHECO DEL CID AND LUIS PACHECO DEL CID

A. Facts alleged

23. The petition, dated April 2, 1991, denounced the alleged disappearance of Adolfo René Pacheco del Cid, 25 years old, and his brother Luis Pacheco del Cid, 24 years old, both residents of San Vicente Pacaya, Escuintla. The wives of the two men then worked in Guatemala City, and lived on 24th Avenue 6-39, Zone 6, where their husbands would frequently come to visit them. The petitioners alleged that, on March 16, 1991, during such a visit, the wives witnessed six armed men abduct Adolfo and Luis from their home in zone 6. The victims remain disappeared since that date. The petitioners asserted that the disappearances had been denounced before the corresponding authorities, and that information had also reached the press.

B. Proceedings before the Commission

24. The Commission opened Case 10.856 on April 10, 1991, and that same day transmitted the pertinent parts of the petition to the State of Guatemala, requesting the presentation of information in response within 90 days. The State acknowledged receipt of the communication on April 24, 1991. On March 5, 1992, the Commission reiterated that request, and asked for a response within 60 days. The Commission sent the State a further reiteration on November 19, 1993, indicating the possibility of applying the presumption contained in Article 42 of its Regulations if a response was not forthcoming within 30 days. By means of a note of December 14, 1993, the State requested an extension of time to respond. On January 13, 1994, the Commission indicated that a one month extension had been granted. The Commission granted the State another 30 day extension on February 17, 1994, pursuant to the latter's February 10, 1994 request. On March 17, 1994, the State requested a third extension, and an additional 30 days was granted by note of April 27, 1994.

25. The State submitted its response on June 13, 1994. This was duly transmitted to the petitioners on June 21, 1994, with observations and information in response requested within 45 days. This request was reiterated on September 7, 1994.

26. The Commission addressed the State and the petitioners, by means of notes of December 2 and 8, 1998, respectively, for the purpose of requesting updated information on the case. The Commission also placed itself at the disposal of the parties for the purpose of facilitating a friendly settlement in accordance with Article 48(1)(f) of the American Convention, if they should wish to avail themselves of this procedure. The parties were asked to respond on both points within 30 days. On December 17, 1998, the State requested an extension of one month to present the corresponding information. In a note of December 28, 1998, the Commission granted an extension to expire on January 30, 1999. On January 20, 1999, the State requested a further extension of 60 days to collect and present information. The Commission replied with a note of January 27, 1999, granting a 60 day extension. By a note of March 30, 1999, the State requested an extension of 60 additional days. The Commission responded on April 9, 1999, indicating that, in view of the extensions already granted and its work program, a further extension would not be possible.

C. Position of the State

27. In its response, the State indicated that the organs responsible for carrying out the investigation were not able to obtain positive results because they lacked the necessary detailed information to properly effectuate it. The State reported that it had conducted a thorough study of its archives, and found no record of a denunciation having been submitted to the pertinent jurisdictional authorities. The State indicated that the Department of Criminal Investigation of the National Police, through its division responsible for disappearances, carried out an investigation. It had, however, been unsuccessful because family members of the victims had moved after the disappearances took place and could not be located for questioning. The State further reported that the victims' neighbors had been unwilling to cooperate with the security forces. Finally, the State indicated that it was awaiting further information that would enable it to move forward with its investigation of the alleged disappearances.

CASE 10.921: NICOLÁS MATOJ, BERNAL DE MATOJ, JUAN MATOJ, NICOLÁS MATOJ (Son), FRANCISCO MATOJ, CECILIA MATOJ, MARÍA MATOJ, FRANCISCO RIVERA AND FAMILY AND JACINTO TERRAZA AND FAMILY

A. Facts alleged

28. The petition, dated July 12, 1991, alleged the disappearance of the Matoj family, including their minor children, as well as the Rivera family and the Jacinto family. They had been agricultural laborers living in San Gaspar Chajul in El Quiché at the time of the alleged events. The victims ranged in age from the oldest, Nicolas Matoj, who had been 76, to the youngest of the minor children. According to the petition, on June 23, 1991, the Army conducted a violent operation in the villages of the district, in the course of which soldiers forcibly entered the homes of the inhabitants and arbitrarily detained the above-mentioned

victims. This had allegedly been done in the presence of witnesses from the locality. When the operation was over, the soldiers took the victims with them to an unknown destination, and nothing further was known of them. The petitioners state that the facts alleged were denounced to the corresponding authorities, and to the press.

B. Proceedings before the Commission

29. On July 19, 1991, the Commission opened Case 10.921. On July 22, 1991, it transmitted the pertinent parts of the complaint to the State, requesting the presentation of information in response within 90 days. The State acknowledged receipt of that communication on July 26, 1991. On March 5, 1992, the Commission reiterated that request, and asked for a response within 60 days. On November 15, 1993, the Commission addressed the petitioners to request updated information on the case within 60 days. On November 15, the Commission again reiterated its request for information to the State, indicating that it would consider applying the presumption contained in Article 42 of its Regulations if a response was not forthcoming within 30 days. By means of a note of December 13, 1993, the State requested an extension of time to respond. By a note of that same date, the Commission indicated that a one month extension had been granted. On April 4, 1994, the State requested a further extension of 30 days, which was granted by note of April 11, 1994.

30. The Government submitted its response to the petition on September 28, 1994, which was duly transmitted to the petitioners for observations and/or information. In a letter dated October 2, 1995, the Commission reiterated its request to the petitioners, asking for the submission of information within 60 days.

31. In communications dated December 2, 1998, the Commission addressed the State and the petitioners for the purpose of requesting updated information on the case. The Commission also placed itself at the disposal of the parties for the purpose of facilitating a friendly settlement in accordance with Article 48(1)(f) of the American Convention, should they wish to avail themselves of this procedure. The parties were asked to respond on both points within 30 days. On December 17, 1998, the State requested an extension of one month to present the corresponding information. In a note of December 28, 1998, the Commission granted an extension to expire on January 30, 1999. On January 20, 1999, the State requested a further extension of 60 days to collect and present information. The Commission replied with a note of January 27, 1999, granting a 60 day extension. By a note of March 30, 1999, the State requested an extension of 60 additional days. The Commission responded on April 9, 1999, indicating that, in view of the extensions already granted and its work program, a further extension would not be possible.

C. Position of the State

32. The State indicated in its response that the General Directorate of the National Police, through its regional headquarters in El Quiché, had been asked to investigate the allegations at issue in the case. Within that investigation, members of the National Police had interviewed three members of the Municipal Corporation of San Gaspar Chajul, who stated that they had no knowledge that the Matoj family had been subject to any such detention, and that an incident of

that nature would generally be reported to the local authorities. The Public Ministry reported that no criminal proceedings had been instituted regarding the disappearance of the Matoj family, neither in the municipality of San Gaspar Chajul, nor in the Department of El Quiché. The State indicated its disposition to clarify the situation, and asked the Commission to request that the petitioners submit more precise information concerning the events alleged in order to proceed with the pertinent investigations.

Accumulation of the cases

33. As noted in section I, as a procedural matter the Commission decided, pursuant to Article 40 of its Regulations, to accumulate Cases 10.588, 10.608, 10.796, 10.856 and 10.921, and address them in a single report. This was done on the basis that, through the processing of these cases, the Commission was able to ascertain that each dealt with an alleged forced disappearance at the hands of members of or persons linked with the State security forces. The allegations thus concerned facts of a similar nature and, moreover, concerned a common time frame.

III. ANALYSIS OF ADMISSIBILITY

A. Competence of the Commission

34. In accordance with its mandate, the Commission is competent to examine the subject matter of this complaint, as it concerns alleged violations implicating Articles 1, 3, 4, 5, 7, 8 and 25 of the American Convention. Guatemala has been a party to that Convention since its ratification of May 25, 1978, and that treaty entered into force for all Parties on July 18, 1978. The allegations at issue concern events subsequent to those dates. The petitioners have locus standi to appear pursuant to the terms of Article 44 of the Convention. In their submissions, the petitioners have stated claims which, if consistent with other requirements and shown to be true, could tend to establish the violation of a right protected by the American Convention.

B. Requirements to admit a petition

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

Exhaustion of Domestic Remedies

36. Article 46 of the American Convention specifies that, in order for a case to be admitted, "remedies under domestic law [must] have been pursued and exhausted in accordance with generally recognized principles of international law." This requirement exists to ensure the State concerned the opportunity to resolve disputes within its own legal framework. When domestic remedies are unavailable as a matter of fact or law, however, the requirement that they be exhausted is excused.[FN2] Article 46(2) of the Convention specifies that this exception applies: if the legislation of the State concerned fails to afford due process for the protection of the right

allegedly violated; if the party alleging violation has been hindered in his or her access to domestic remedies; or if there has been unwarranted delay in the issuance of a final judgment. Consequently, when a petition indicates that internal remedies have been unavailable in law or in fact, Article 37 of the Commission's Regulations establishes that the burden then shifts to the Government to demonstrate which specific domestic remedies remain to be exhausted and offer effective relief for the harm alleged.[FN3]

[FN2] See IACtHR, *Exceptions to the Exhaustion of Domestic Remedies* (Art. 46.1, 46.2.a and 46.2.b American Convention on Human Rights), Advisory Opinion OC-11/90 of August 10, 1990, Ser. A No. 11, para. 17.

[FN3] IACtHR, *Velásquez Rodríguez Case*, Merits, Judgment of July 29, 1988, Ser. C N° 4, para. 59 (citing decision on preliminary exceptions in same case, para. 88).

37. Each of the five petitions filed before the Commission claimed that the violations alleged had been reported to the pertinent domestic authorities. In Cases 10.588 and 10.608, the petitioners specified that the alleged disappearance of Mrs. Velásquez and her son, and those of Mr. Mota, Mr. Maldonado and Mr. Alvarez had been denounced to the Office of the Human Rights Ombudsman. In the latter case, the petitioners further specified that family members went to the military detachment of Atitlán with a judge, where they were turned away with the explanation that they would have to return accompanied by the prosecutor from Sololá in order to obtain information regarding their missing relatives. In Case 10.796, the petitioners specified that the presumed disappearance of Mr. Polanco had been reported to the National Police. In Cases 10.856 and 10.921, the petitioners indicated simply that the alleged disappearances of the brothers Pacheco del Cid, and the Matoj family, respectively, had been denounced before the competent authorities. The petitions disclosed generally that, notwithstanding that the State had been placed on notice of the disappearances alleged, the latter had failed to effectively seek or obtain information as to the whereabouts or fate of the victims.

38. For its part, the State expressly controverted the admissibility of two of the five cases, arguing that criminal proceedings had been initiated in Case 10.608, concerning the alleged disappearance of Mr. Mota, Mr. Maldonado and Mr. Alvarez, and in Case 10.796, concerning the alleged disappearance of Mr. Polanco. In both instances the State asserted that, given the pendency of these criminal processes, the petitioners had failed to exhaust domestic remedies as required by the American Convention, and the cases should therefore be declared inadmissible.

39. With regard to Case 10.608, the State indicated that, on July 6, 1990, the local Justice of the Peace of San Lucas Tolimán had gone to the military detachment of the Cantón Panabaj, in the Municipality of Santiago Atitlán, Sololá, to execute a writ of habeas corpus in favor of the three victims. The State reported that the result of the procedure had been “negative,” without further details, and without controverting the petitioners’ assertion that the Justice and family members were turned away with the explanation that they would have to return with the prosecutor of Sololá in order to obtain the information they were seeking. With respect to the criminal investigation, the State reported that the pertinent office of the National Police had issued a report concerning its investigation, dated July 22, 1990, which stated that it had been unable to

uncover relevant evidence to transmit to the court charged with the case. The State reported that process 540-90 remained pending in its initial stage before the Court of First Instance and that investigations were continuing.

40. A writ of habeas corpus would normally be the effective "means of finding a person presumably detained by the authorities, of ascertaining whether he is legally detained and, given the case, of obtaining his liberty." [FN4] This is necessarily so because cases of forced disappearance "require urgent action by the authorities." [FN5] According to the information before the Commission, the habeas corpus petition in this case was unsuccessful because the judge attempting to carry it out was obstructed in his duties by military officials. In any case, according to the record before the Commission, the writ produced no results with respect to clarifying the whereabouts or fate of the victim. In general, the writ of habeas corpus is the proper remedy in the case of a forced disappearance, and a petitioner in such a case need not invoke other remedies to meet the standard set in Article 46(1)(a). [FN6] The State nonetheless argued that criminal process 540-90 offered and provided an effective remedy. Although the filing of a writ of habeas corpus is sufficient to meet the admissibility requirements in the present case, the Commission will nonetheless review the criminal process pursued in this and Case 10.796 below to determine whether they offered available and effective relief for the violations alleged.

[FN4] IACHR, Caballero Delgado and Santana Case, Preliminary Objections, Judgment of January 21, 1994, Ser. C N° 17, para. 64, citing, Velásquez Rodríguez Case, Merits, supra, para. 65; Godínez Cruz Case, Merits, Judgment of January 20, 1989, Ser. C. N° 5, para. 68; Fairén Garbí and Solís Corrales Case, Merits, Judgment of March 15, 1989, Ser. C N° 6, para. 90.

[FN5] IACHR, Caballero Delgado and Santana Case, supra.

[FN6] Id., para. 67.

41. With respect to Case 10.796, the alleged disappearance of Mr. Polanco was denounced before the National Police, and criminal process 514-91 was opened as a result. It had been initiated under the authority of a local court, and was later transferred to the Attorney General's Office pursuant to the entry into force of the new Criminal Procedure Code in mid-1994, where it presumably remains pending.

42. With respect to process 514-91 concerning Mr. Polanco, as well as process 540-90 at issue in Case 10.608, concerning Mr. Mota, Mr. Maldonado and Mr. Alvarez, the Commission observes that the formal existence of legal remedies is not, in and of itself, sufficient to show that they offer the available and effective relief required under the terms of Article 46(1)(a). [FN7] An adequate remedy is capable of protecting the right at issue, [FN8] and an effective remedy is capable of producing the result for which it was designed. [FN9] In this regard, the record before the Commission discloses that these criminal investigations have done neither. Once the State was placed on notice of the alleged disappearance of Mr. Polanco, and of Mr. Mota, Mr. Maldonado and Mr. Alvarez, it had a duty de oficio to effectuate the relevant investigations. While the State complained that it lacked sufficiently detailed information to investigate, the record reflects no serious efforts to investigate the whereabouts or fate of the victims on the basis

of the rudimentary data that was available (which included, inter alia, such essentials as the name of the victim, the date and place of the facts, and general allegations as to responsibility). In Case 10.796, the record simply reflects no serious efforts to investigate the whereabouts or fate of the victim. In Case 10.608, as noted, the judge attempting to execute the habeas corpus writ was reportedly impeded from doing so, and the record discloses no further attempts to execute it, or to investigate the fate of the three victims, or to bring charges against the military officials who reportedly obstructed the judge in his official functions.

[FN7] See IACtHR, Velásquez Rodríguez Case, Merits, *supra*, para. 63; Godínez Cruz Case, Merits, *supra*, para. 65; Fairén Garbi and Solís Corrales Case, Merits, *supra*, para. 86.

[FN8] See, e.g., IACtHR, Velásquez Rodríguez Case, *supra*, paras. 63, 64,

[FN9] *Id.* paras. 66-68.

43. Further, according to the record, it must be presumed that these investigations remain pending without conclusion. Given that almost nine years have passed since the criminal processes were initiated, an issue of undue delay necessarily arises. While any criminal investigation will necessarily have its own requirements, “[t]he rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the [presumed] ... victim ineffective.”[FN10] As a general rule, a criminal investigation must be conducted promptly, not only to protect the interests of the victim, but to safeguard the rights of any person thereby placed under suspicion.

[FN10] IACtHR, Velásquez Rodríguez Case, Preliminary Exceptions, Judgment of June 26, 1987, Ser. C N° 1, para. 93; Fairén Garbi and Solís Corrales Case, Preliminary Exceptions, Judgment of June 26, 1987, Ser. C N° 2, para. 92; Godínez Cruz Case, Preliminary Exceptions, Judgment of June 26, 1987, Ser. C N° 3, para. 95.

44. The State did not expressly controvert the admissibility of the remaining three cases. With respect to these cases, 10.588, 10.856 and 10.921, the State contested the petitioners’ allegations that denunciations had been filed with the appropriate officials, indicating that a review of records by the National Police and Public Ministry disclosed no denunciations filed with respect to the alleged disappearance of Mrs. Velásquez and her son, the brothers Pacheco del Cid and the Matoj family et al., respectively. Further, with respect to Case 10.588, the State indicated that it had requested that the National Police investigate the information in the petition, and was awaiting the results. With respect to Cases 10.856 and 10.921, the State indicated that it was awaiting receipt of additional information that would enable it to pursue further investigations.

45. With respect to these cases, the Inter-American Court of Human Rights has explained that the State’s failure to contest admissibility on this ground, or to provide relevant information with respect to the non-exhaustion of remedies is conclusive. “[T]he rule of prior exhaustion is a

prerequisite established in favor of the State, which may waive its right, even tacitly, and this occurs, *inter alia*, when it is not timely invoked.”[FN11]

[FN11] IACtHR, *Fairen Garbi and Solis Corrales Case*, Merits, Judgment of March 15, 1989, Ser. C N° 6, para. 109. See also, *inter alia*, *Viviana Gallardo, et al.*, Judgment of Nov. 13, 1981, N° 101/81, Ser. A, para 26; *Velásquez Rodríguez Case*, Preliminary Objections, *supra*, para. 88; *Fairen Garbi and Solis Corrales Case*, Preliminary Objections, *supra*, para. 87; *Godínez Cruz Case*, Preliminary Objections, *supra*, para. 90; *Gangaram Panday Case*, Preliminary Objections, Judgment of December 4, 1991, Ser. C N° 12, para. 38; *Neira Alegría and others*, Preliminary Objections, Judgment of December 11, 1991, Ser. C N° 13, para. 30.

46. With respect to all five cases, the Commission must also take note of the prevailing conditions with respect to the availability and efficacy of judicial remedies for alleged disappearances at the time of the events in question. In its Annual Reports for 1989-90, 1990-91, and 1991, each dealing with the immediately preceding period, the Commission expressed grave concern with respect to the phenomena of disappearances in Guatemala and the inability of the judiciary to respond. In 1990, the Commission reported that, in addition to its inability to control the violence and its own security forces, “the present Government is also tainted by the inaction of organs in the legal system which have been called upon to investigate and punish” disappearances and other human rights violations. “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...”[FN12] In 1991, the Commission quoted an Assistant Ombudsman for Human Rights to the effect that “flagrant human rights violations continue to occur with absolute impunity in Guatemala” and that the country “is going back to the dark past of the 1980’s when we lived amid virtual state terrorism.”[FN13] Both this Commission and the Commission for Historical Clarification particularly singled out the inefficacy of writs of habeas corpus in the period leading up to the facts of the present cases.[FN14] The rule of exhaustion of domestic remedies does not require the invocation of remedies where this would place the physical integrity of the petitioner at risk, or where this offers no possibility of success.[FN15]

[FN12] IACHR, Annual Report of the IACHR 1989-90, OEA/Ser.L/V/II.77 rev. 1, Doc. 7, 17 May 1990, at p. 157, see also p. 150. With respect to the period in question generally, see, Commission for Historical Clarification [hereinafter “CEH”], Report of the Commission for Historical Clarification [hereinafter Report] (1999), Ch. II, Vol. 3, “Denegación de Justicia,” paras. 421-441.

[FN13] IACHR, Annual Report of the IACHR 1990-91, OEA/Ser.L/V/II.79 rev. 1, Doc. 12, 22 Feb. 1991, at p. 445, and see p. 449; see also, Annual Report of the IACHR 1991, OEA/Ser.L/V/II.81, Doc. 6 rev. 1, 14 Feb. 1992, pp. 205, 206, 213.

[FN14] See generally, IACHR, Annual Report of the IACHR 1990, *supra*, p. 445; CEH, Report, *supra*, “Denegación de Justicia,” paras. 430-431.

[FN15] See, IACtHR, OC-11/90, *supra*, para. 33; 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., Feb. 11, 1994, pp. 181, 185.

47. On the basis of the foregoing considerations with respect to the specific characteristics of these cases on record before the Commission, as well as those relating to the availability and efficacy of domestic remedies more generally during the time period in question, the Commission finds the requirement of prior exhaustion to have been satisfied in Case 10.608, with respect to which a writ of habeas corpus was filed. The requirement is excused in the remaining cases on the basis that the Guatemalan judiciary did not offer proper due process to victims of human rights violations during this period, victims were impeded from pursuing such remedies, and, moreover, such remedies were subject to undue delay.

Timeliness

48. In accordance with Article 46(1)(b) of the Convention, a petition must be presented in a timely manner, namely, within six months from the date on which the complaining party was notified of the final judgment at the domestic level. This rule ensures legal certainty and stability once a decision has been taken. When there has been no final judgment, as with the present cases, Article 46(2) indicates that, insofar as this is attributable to a lack of due process, denial of access to remedies, or unwarranted delay, the six months rule does not apply. In that case, Article 38 of the Commission's Regulations establishes that the deadline for presentation shall be "within a reasonable period of time, in the Commission's judgment, as from the date on which the alleged violation of rights has occurred, considering the circumstances of each specific case." As this provision indicates, the six months rule does not apply where the complaint concerns a continuing violation.

49. The petitions filed in these five cases were presented promptly, within several weeks to several months of the alleged disappearances, and the State has presented no exception in this regard. In any event, it should be noted that each case deals with an alleged forced disappearance, which is, by definition, a continuing violation. Additionally, the petitioners alleged having invoked domestic remedies, without results, as is analyzed above. Furthermore, these cases deal with crimes that required prosecution *de officio*, and the Guatemalan State had the obligation to investigate them and process the corresponding causes of action. Over eight years have transpired with no substantive results. Under these circumstances, the Commission considers that the requirement of timely presentation is satisfied.

IV. FRIENDLY SETTLEMENT

50. Both parties were notified of the Commission's disposition to facilitate a friendly settlement should they wish to invoke that procedure established in Article 48(1)(f) of the Convention. Neither party manifested their interest in initiating the procedure in the time period provided. Accordingly, as the parties were given the opportunity to avail themselves of the procedure and effectively rejected that possibility, the Commission now proceeds to its analysis of the merits of the matter at issue.

V. ANALYSIS OF THE MERITS

A. Preliminary considerations with respect to the facts

51. The starting point for the Commission's analysis of the facts is that, according to the record, Isabela and Francisco Velásquez, Ronal Homero Mota, Julio de Jesús Maldonado, José Felipe Alvarez Andrés, Eleodoro Polanco Arévalo, Adolfo René and Luis Pacheco del Cid, Nicolás Matoj, Bernal de Matoj, Juan Matoj, Nicolás Matoj, Francisco Matoj, Cecilia Matoj, María Matoj, Francisco Rivera and family, and Jacinto Terraza and family have neither been seen nor heard from since the dates of their alleged disappearances in 1990 and 1991. The State has presented no information to the contrary.

52. The Commission has carefully analyzed the evidence of State responsibility for these disappearances based on their specific characteristics, as well as their relation to the general characteristics of disappearances during the period in question denounced before and reported by this Commission and other reliable sources. With respect to making a determination as to the nature of the participation of State agents, if any, in the violations alleged, the Commission has grouped the cases into those where the allegations and information on record directly implicate State agents, and those with respect to which that information refers to persons "linked with the security forces."

53. The allegations and information on record in Cases 10.588, 10.606 and 10.921 directly implicate the participation of State agents. In Case 10.588, the petitioners alleged that, on March 13, 1990, soldiers of the Guatemalan Army arrived in Chajul, in the Department of El Quiché, where they proceeded to persecute members of the community, disappearing Isabela Velásquez and her minor son Francisco, attacking other residents, and destroying homes, a religious center and fields. These actions reportedly took place in the presence of numerous witnesses. The petitioners alleged that these events were part of a policy of persecution effectuated by the Army against sectors of the population in El Quiché and Huehuetenango displaced by the armed conflict.

54. Case 10.608 involves allegations that Ronal Homero Mota, Julio de Jesús Maldonado and José Felipe Alvarez Andrés, who lived in San Lucas Tolimán, Sololá, were detained by agents of the National Police when they went out to hunt on July 11, 1990. They were reportedly then turned over to the Guatemalan Armed Forces. The policemen in question themselves reportedly described the events to a local resident. According to the record, on July 6, 1990, the local Justice of the Peace of San Lucas Tolimán had gone with the wives of the victims to the military detachment of the Cantón Panabaj, in the Municipality of Santiago Atitlán, Sololá to effectuate a writ of habeas corpus, only to be turned away.

55. In Case 10.921, the petitioners alleged that, on June 23, 1991, the Army conducted a violent operation in the district San Gaspar Chajul in El Quiché, in the course of which, soldiers forcibly entered the homes of the inhabitants and arbitrarily detained members of the Matoj family, including minor children, as well as the Rivera and Jacinto families. This reportedly took

place in the presence of numerous witnesses from the community. When the operation was over, the soldiers forcibly carried the victims off to an unknown destination.

56. The information submitted in these three cases is explicit in identifying State agents as the perpetrators of the violations alleged. It provides certain important details, and is, moreover, internally consistent. The State, for its part, has provided no substantive information with respect to the merits of these claims. In one case, however, the information the State provided with respect to domestic remedies tends to support aspects of the petitioners' allegations. In Case 10.608, concerning Mr. Mota, Mr. Maldonado and Mr. Alvarez, as discussed above, the State reported that a writ of habeas corpus was executed at the military detachment of the Cantón Panabaj, in the Municipality of Santiago Atitlán, Sololá with "negative" results. The State provided no information as to why the judge deemed this action to have been required in the first place, no information as to why the results were "negative," and no information as to any subsequent measures.

57. In the remaining two cases, the allegations set forth indirect or circumstantial evidence of the participation of State agents, or persons acting at their behest or with their acquiescence. In each case, the petitioners referred to perpetrators "linked with the security forces," which the Commission understands to mean members of the security forces, or persons acting in concert with them, or with their acquiescence and tolerance. In Case 10.796 the petitioners alleged that on January 26, 1991, unidentified men, described as linked with the security forces but dressed in civilian clothing, broke down the door of Eleodoro Polanco Arevalo's home in San Juan Sacatepéquez. The perpetrators threatened to kill the family members present, and then shot and wounded the victim, and forcibly carried him away with them. In Case 10.856, concerning the brothers Pacheco del Cid, the petitioners alleged that, on March 16, 1991, the brothers' wives witnessed six armed men, characterized as linked to the security forces, abduct their husbands from their home in Zone 6 of Guatemala City.

58. The events denounced in each of these cases were carried out in an open and notorious way. In the first case, the armed perpetrators threatened witnesses with death, and shot and wounded the victim before carrying him off with them. These perpetrators, who had gained entry by breaking down the door, and who had carried their victim off bleeding in the street, were evidently not concerned with being seen by witnesses. In the second case, the six perpetrators likewise openly displayed arms, and abducted their victims from their home in the presence of witnesses.

Disappearances in Guatemala during the period

59. The Commission's analysis of the facts of the present case cannot be divorced from their context. As characterized in the report Guatemala: Nunca Más, "The forced disappearance has been one of the most barbarous selective methods used by Guatemalan intelligence, and was applied in a widespread manner during certain moments of the armed conflict." [FN16] The practice had as its objective the targeting of certain victims, but also sought to sow terror in the community and paralyze the victim's social circle. [FN17]

[FN16] [Translation.] Human Rights Office of the Archbishop of Guatemala, Guatemala: *Nunca Más* (1998) Vol. II “Mecanismos del horror,” p. 186.

[FN17] *Id.*, pp. 186-87.

60. In its reports concerning the time period at issue in these five cases, the Commission described a pattern of forced disappearances in Guatemala. In 1990, the Commission indicated that reports of forced disappearances had risen alarmingly.[FN18] The Commission described the common elements in these disappearances:

they are carried out openly at any time of day or night, in any place of Guatemala, and without any concern for eyewitnesses. 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 investigation.[FN19]

[FN18] IACHR, Annual Report of the IACHR 1989-90, *supra*, p. 150.

[FN19] *Id.*, pp. 153-54.

61. The Commission for Historical Clarification reported that the practice generally was the result of a counterinsurgency strategy implemented through the Army, the Civilian Self-Defense Patrols (PAC’s), Military Commissioners, the Treasury Guard, the National Police and other paramilitary actors including death squads.[FN20] Of the total number of forced disappearances registered by the Commission for Historical Clarification, 92% were linked to a specific security force: of these, 80% were perpetrated by the Army, principally in rural areas and often in concert with the PAC’s, 12% by the PAC’s themselves, and 8% by other security forces, principally the National Police.[FN21]

[FN20] CEH, Report, Ch. II, Vol. II, p. 5, para. 409, see also, *Nunca Más*, *supra*.

[FN21] CEH, *supra*, paras. 410-14.

62. The Commission for Historical Clarification identified certain geographic points where the population was most severely victimized by the practice of disappearances by State agents. In the Department of El Quiché, this practice was concentrated in the municipalities of Ixcán, Chichicastenango, Santa Cruz del Quiché and Chajul.[FN22] The disappearances denounced in Cases 10.588 and 10.921 were allegedly carried out by Army agents in Chajul. In the Department of Guatemala, disappearances were concentrated in the capital.[FN23] Case 10.856 concerns an alleged disappearances by persons linked with the security forces in Guatemala City. The allegations at issue in Cases 10.608 and 10.769, concerning disappearances in San Lucas Toliman, Sololá, and San Juan Sacatepéquez, Chimaltenango, respectively, took place in Departments marked by this practice and in immediate proximity to the municipalities singled out as worst affected.[FN24] Thus, each of the cases at issue in the present report is related to a geographic point of concentration for the practice of disappearances.

[FN22] *Id.*, para. 408.

[FN23] *Id.*

[FN24] *Id.*

63. Integrally linked with the practice of disappearances was a consistent pattern of denial of justice and due process on the part of the judiciary. The very institution of the State called upon to respond to disappearances with investigation and prosecution instead played an active role in their perpetuation by refusing to accept denunciations, failing to initiate investigations de oficio, and impeding and obstructing the administration of justice.[FN25] While in urban areas the State was represented through the presence of various institutions, in rural areas there was little State presence except for the Army. As one witness before the Commission for Historical Clarification stated, “How could one go to ask for him [the victim] at the [military] Zone, when it was they who took him?”[FN26] In all areas, urban and rural, “the control, threats and repression that were exercised against the population” negated the will of family members to pursue the fate of their loved ones.[FN27] “The absence of official investigations has closed, until the present, the paths to search for the disappeared.”[FN28]

[FN25] *Id.*, Ch. II, Vol. II, p. 38, paras. 524-25.

[FN26] [Translation.] *Id.*, para. 526.

[FN27] [Translation.] *Id.*, paras. 527-30.

[FN28] [Translation.] Guatemala: *Nunca Más*, Vol. II “Mecanismos del horror”, p. 187.

64. The crime of disappearance was described by the Inter-American Court of Human Rights in the Velásquez Rodríguez Case, and later codified in the Inter-American Convention on Forced Disappearance of Persons (which Guatemala has signed but not ratified).[FN29] The enforced disappearance of human beings, where an individual is taken into custody and the authorities deny this fact in order to conceal responsibility, “is a multiple and continuous violation of many rights under the Convention.”[FN30] Where it can be shown that the disappearance of a specific victim is linked to an official practice of disappearances, “the allegations will have been proven as long as the evidence presented on both points meets the standard of proof required in cases such as these.”[FN31] The applicable standard of proof takes into account both the seriousness of the charge against the State, and the need to establish the truth of the allegations in a convincing manner, and includes the consideration of direct and circumstantial evidence as well as presumptions.[FN32]

[FN29] See, IACtHR, Velásquez Rodríguez Case, Merits, *supra*, paras. 149-58; Godínez Cruz Case, Merits, *supra*, paras. 157-66; Fairén Garbí and Solís Corrales Case, Merits, *supra*, paras. 146-52. See also, e.g., IACHR, Annual Report of the IACHR 1980-81, OEA/Ser. L/V/II.54, doc. 9 rev. 1, 16 Oct. 1981, at pp. 113-14. Article 2 of the Inter-American Convention on Forced Disappearance of Persons defines a disappearance as:

...the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.

[FN30] IACtHR, Velásquez Rodríguez Case, Merits, supra, paras. 155, 181.

[FN31] Id., paras. 126-27.

[FN32] Id., para. 129.

The Right to personal liberty

65. Any lawful deprivation of liberty must issue from and be executed by a competent authority, and must be effectuated in accordance with the substantive and procedural requirements of domestic law as well as of the American Convention. A disappearance stands in direct opposition to such requirements, and outside the boundaries of the rule of law.

66. The Commission has concluded on the basis of the totality of the information before it, both with respect to the facts of each specific case and with respect to the characteristics of forced disappearances practiced in Guatemala during the time period, that the victims in Cases 10.588, 10.608 and 10.921 were abducted and deprived of their liberty by State agents, and that the victims in Cases 10.796 and 10.856 were abducted and deprived of their liberty by persons who were either themselves State agents, or were acting in concert with, or with the acquiescence and tolerance of such agents.

67. An individual who is disappeared is also deprived of the right to be taken without delay before a judge and to invoke the appropriate procedures to obtain a review of the legality of the detention, in further violation of the provisions of Article 7 of the American Convention. The right to petition for a determination of the legality of detention is the fundamental guarantee of a detainee's constitutional and human rights in the case of a deprivation of liberty by State agents. "[H]abeas 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." [FN33]

[FN33] IACtHR, Habeas Corpus in Emergency Situations (Arts. 27.2, 25.1 and 7.6 American Convention on Human Rights), Advisory Opinion OC-8/87, of January 30, 1987, Ser. A N° 8, para. 35. "If those in charge need not produce the prisoner posthaste they can use brutal methods with impunity, for the purposes of either interrogation or intimidation." IACHR, Report on the Situation of Human Rights in Bolivia, OEA/Ser.L/V/II.53, doc. 6, 1 July 1981, pp. 41-42., at p. 42.

The right to be treated humanely

68. A disappearance constitutes an implicit violation of Article 5 due to the nature of the crime. The victim is forcibly abducted, detained under clandestine conditions, and held incommunicado, cut off from contact with the outside world and any form of aid or protection. This alone would necessarily produce great anxiety and suffering. While it is impossible to verify precisely how long the victims may have been held by their captors, it may be presumed under the circumstances that the treatment they were accorded contravened the standards of Article 5 of the Convention. Additionally, in the case of Mr. Polanco, who was shot and wounded before being forcibly carried off, it is clear that he would have been suffering pain from his injuries.

69. In addition to the harm posed to the victim's physical and mental integrity, a disappearance by its nature causes great anxiety and suffering for the victim's loved ones. The victim's family is unable to come to his aid, unable to clarify his fate, and unable to find any sense of closure with respect to the victim's fate.[FN34] The passage of time gives rise to a presumption that the victim was killed, but family members have no means to locate the remains or to provide a proper burial.

[FN34] See, IACtHR, Blake Case, *supra*, para. 114.

The right to life

70. As established by the Inter-American Court, "The practice of disappearances often involves secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible. This is a flagrant violation of the right to life, recognized in Article 4 of the Convention..."[FN35] At no point has the State disputed that Isabela and Francisco Velásquez, Ronal Homero Mota, Julio de Jesús Maldonado, José Felipe Alvarez Andrés, Eleodoro Polanco Arévalo, Adolfo René and Luis Pacheco del Cid, Nicolás Matoj, Bernal de Matoj, Juan Matoj, Nicolás Matoj, Francisco Matoj, Cecilia Matoj, María Matoj, Franciso Rivera and family, and Jacinto Terraza and family remain disappeared.

[FN35] IACtHR, Velásquez Rodríguez Case, *Merits*, *supra*, para. 157.

71. While Guatemalan authorities were on notice of allegations that the victims had last been seen accompanied by State agents, in Cases 10.588, 10.608 and 10.921, or persons linked with the Guatemalan security forces, in Cases 10.796 and 10.856, the record contains no substantive information as to the results of serious official efforts to investigate their fate. Under such circumstances, the burden of proof necessarily rests with the State to rebut the presumption of its responsibility with other information.[FN36]

[FN36] See, IACtHR, Case of Neira Alegria and Others, Judgment of January 19, 1995, Ser. C N° 20, paras. 60, 65.; citing, Velásquez Rodríguez Case, *Merits*, *supra*, paras. 135-36, Godínez

Cruz Case, Merits, *supra*, paras. 141-42; IACHR, Report 11/98, Case 10.606, Samuel de la Cruz Gómez, published in Annual Report of the IACHR 1997, OEA/Ser.L/V/II.98, Doc. & rev., April 13, 1998, p. 619, at para. 48.

72. While the State has reported on the existence of judicial processes initiated by the family members of the victims in Cases 10.608 and 10.796, it has provided no substantive information whatsoever as to the results of any measures of investigation into the whereabouts or fate of these or other victims. Consequently, considering: 1) the fact that the victims in Cases 10.588, 10.608 and 10.921, Isabela and Francisco Velásquez; Ronal Homero Mota, Julio de Jesús Maldonado and José Felipe Alvarez Andrés; and members of the Matoj, Rivera and Terraza families, were reportedly last seen in the control of State agents; 2) that the State does not dispute that they remain disappeared; 3) that a disappearance not only constitutes an arbitrary deprivation of liberty but also poses serious danger to the personal integrity, security and life of the victim; and, 4) that over eight years have passed since the victims were last seen or heard from, it may be presumed that they were in fact deprived of their right to life, arbitrarily and illegally, by agents of the Guatemalan State.

73. Considering that (1) the victims in Cases 10.796 and 10.856, concerning Eleodoro Polanco Arévalo and Adolfo René and Luis Pacheco del Cid, were reportedly last seen in the control of persons who were either State agents, or acting at the behest of, or with the acquiescence and tolerance of State agents, (2) the State does not dispute that they remain disappeared, (3) that a disappearance not only constitutes an arbitrary deprivation of liberty but also poses serious danger to the personal integrity, security and life of the victim; and, 4) that over eight years have passed since the victims were last seen or heard from, responsibility must be imputed to the State for these acts which deprived the victims of their right to life, arbitrarily and illegally, carried out by its agents or by persons acting in concert with or with the acquiescence and tolerance of such agents.

The right to judicial protection and to be heard in accordance with due process

74. Under the American Convention on Human Rights, when a protected right or freedom has been infringed, the State is obliged to respond *sua sponte* with certain measures of investigation, actions to sanction and punish the perpetrators, and steps to ensure access to compensation.[FN37] At the same time, the victim has a direct right to seek judicial protection and redress. The act of enforced disappearance, where an individual is held *incommunicado* and the authorities conceal the fact of custody, places the individual concerned outside of the protection of the law. This renders the detainee unable to access the right to file a writ of habeas corpus, the remedy through which judicial protection is normally made available to address an illegal detention.

[FN37] IACtHR, Velásquez Rodríguez Case, Merits, *supra*, paras. 166, 172, 176-84.

75. As the victim of a disappearance is unable to seek judicial vindication, the right to seek that recourse necessarily devolves to the victim's family members. The Commission has established that victims and/or their relatives have a right to a judicial investigation by a criminal court designed to establish and sanction responsibility for human rights violations.[FN38] This flows from the obligation of the State to "use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction [in order] to identify those responsible."[FN39] Under the Convention:

[FN38] See generally, IACHR, Reports 28/92 (Argentina) and 29/92 (Uruguay) in Annual Report of the IACHR 1992-93, OEA/Ser.L/V/II.83, Doc. 14 corr. 1, March 12, 1993, at pp. 49-51, 161-165.

[FN39] IACtHR, Velásquez Rodríguez Case, Merits, supra, para. 174.

State parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8.1), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art. 1).[FN40]

[FN40] IACtHR, Velásquez Rodríguez Case, Preliminary Exceptions, supra, para. 91.

76. This obligation is met not through measures of form but of substance. States Parties are required to take affirmative steps to ensure that the rights under the Convention are enforced.[FN41] The remedies provided for by the State must therefore be "truly effective in establishing whether there has been a violation of human rights and in providing redress."[FN42] The ability to vindicate a right through judicial recourse under the Guatemalan system presupposes that a competent court will be willing and able to draw upon the capacity of the State to provide the required measures of investigation.

[FN41] IACtHR, Velásquez Rodríguez Case, Merits, supra, para. 167.

[FN42] IACtHR, Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights), Advisory Opinion 9-87 of October 6, 1987, Ser. A N° 9, para. 24. See also, Velásquez Rodríguez Case, Preliminary Objections, supra, para 91.

77. Accordingly, the response of the State to the disappearance of Isabela and Francisco Velásquez, Ronal Homero Mota, Julio de Jesús Maldonado, José Felipe Alvarez Andrés, Eleodoro Polanco Arévalo, Adolfo René and Luis Pacheco del Cid, Nicolás Matoj, Bernal de Matoj, Juan Matoj, Nicolás Matoj, Francisco Matoj, Cecilia Matoj, María Matoj, Francisco Rivera and family, and Jacinto Terraza and family must be analyzed in terms of whether it established that there had been a violation of the victim's rights and provided corresponding redress. The

writ of habeas corpus is theoretically designed to compel an urgent official response in the case of an illegal detention. This simple and prompt recourse contemplated in Article 25 constitutes one of the pillars, not only of the system, but of the rule of law in a democratic society, and plays an integral role in protecting the most fundamental individual rights and freedoms.[FN43] In the instant case, however, the writs of habeas corpus filed on behalf of Mr. Mota, Mr. Maldonado and Mr. Alvarez were not met with an effective response. The State simply reported that the result of the writ was “negative,” without supplying substantive information reflecting that an investigation designed to establish the victims’ whereabouts or fate was ever carried out. Rather, the information on record provides credible evidence that, when the judge attempted to execute the writ, military officials impeded the performance of his duty and obstructed justice.

[FN43] See, IACtHR, Castillo Páez Case, Sentence of November 3, 1997, Ser. C N° 34, paras. 82-83; Suárez Rosero Case, Sentence of November 12, 1997, Ser. C N° 35, para. 65

78. The State maintains that the criminal processes which remain pending provide an effective remedy to certain victims’ families. Again, the record of the present case contains no substantive information reflecting a serious or effective effort to investigate the fate of the victims, or to investigate those responsible for their disappearance. The record provides no reports of measures of investigation ordered or taken to advance the criminal processes opened in Cases 10.608 and 10.796. With respect to the other cases, there is no information on record to demonstrate any substantive measures of investigation aimed at establishing the facts of the disappearances or the corresponding criminal responsibility.

79. With respect to the question of delay, the Commission has no substantive information before it to explain or justify the fact that the record discloses no final or other results of investigation, notwithstanding the passage of over eight years since the disappearances at issue took place. Notwithstanding the passage of over eight years since these crimes were committed, the record reflects that the State of Guatemala has failed to officially account for them, and has failed to try and punish a single person, or repair any of the consequences. Those who committed the crimes have been cloaked in a mantle of impunity, and the victims have been denied any measure of justice.

80. Because the State failed to respond to the disappearance of the victims as required, their families have been denied justice. The victims’ families have a right to know the truth about what happened to them.[FN44] They are also entitled to use that information to vindicate their right as successors to seek reparation from the State. The State of Guatemala was required to use all available means “to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure ... adequate compensation.”[FN45] In the instant case it is clear, over eight years after the victim’s disappearance, that the Guatemalan State failed to honor its obligation to provide simple, swift and effective legal recourse to the victims’ families, so that their rights might be vindicated.

[FN44] See, e.g., IACHR, Annual Report of the IACHR 1985-86, OEA/Ser.L/V/II.68 doc. 8 rev. 1, 26 Sept. 1986, "Areas in which steps need to be taken..." at p. 193.

[FN45] IACtHR, Velásquez Rodríguez Case, Merits, supra, para. 174.

The right to recognition as a person under the Law and other Rights

81. According to the above findings, Isabela Velásquez, Francisco Velásquez, Ronal Homero Mota, Julio de Jesús Maldonado, José Felipe Alvarez Andrés, and members of the Matoj, Rivera and Terraza families were forcibly disappeared by State agents. Eleodoro Polanco Arévalo, and Adolfo René and Luis Pacheco del Cid were disappeared by such agents or by persons working in concert with, or with the acquiescence and tolerance of such agents. These disappearances constitute multiple and continuing violations of the American Convention on Human Rights. The objective of those who perpetrate a disappearance is to operate beyond the margins of the law, to conceal all evidence of their crimes, and to escape any sanction. For the victim, the consequence of an enforced disappearance is to be denied the most basic rights deemed to inhere in the very fact of being human. Consequently, the act of enforced disappearance violates the right of the individual under Article 3 of the American Convention "to recognition as a person before the law." [FN46]

[FN46] See generally, Article 1.2, Declaration on the Protection of All Persons from Enforced Disappearance, characterizing an enforced disappearance as placing the victim: "outside the protection of the law ... inflict[ing] severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law...." GA Res. 47/133 of 18 Dec. 1992. See also, Inter-American Convention on Forced Disappearance of Persons, supra.

Rights of the child

82. Article 19 of the American Convention provides that, "[e]very 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." Two of the cases under study concern the forced disappearance of minors. Francisco Velásquez, the subject of Case 10.588, was disappeared along with his mother when he was 13 years old. Case 10.921 involved the disappearance of members of the Matoj family, including several minor children.

83. Respect for the human rights of children is a question of primordial importance for every State. It is for this reason that Article 19 establishes special measures of protection for children corresponding to their vulnerability as minors. The events set forth in this report demonstrate the failure of the State of Guatemala to uphold this standard of protection established in the Convention in the cases of these victims.

The obligation of the State to respect and guarantee individual rights

84. The violations at issue in the instant case demonstrate that the State of Guatemala has failed to uphold the undertaking set forth in Article 1(1) of the American Convention on Human Rights to respect the rights recognized therein and to ensure to all persons subject to its jurisdiction the free and full exercise of those rights.

85. The concept of rights and guarantees "cannot be divorced from the system of values and principles that inspire it."^[FN47] Within the inter-American system, the interrelated violations that constitute a disappearance have been subjected to special condemnation.^[FN48] The Inter-American Court has emphasized that: "The practice of disappearances, in addition to directly violating many provisions of the Convention ... constitutes a radical breach of the treaty in that it shows a crass abandonment of the values which emanate from the concept of human dignity and of the most basic principles of the Inter-American system and the Convention."^[FN49] At the time in question, disappearances constituted a practice of State agents in Guatemala, and that practice was not challenged or met with an adequate response on the part of the State or its judiciary.^[FN50]

^[FN47] IACtHR, OC-8/87, *supra*, at para. 26.

^[FN48] The practice of disappearances has been characterized by the OAS General Assembly as "an affront to the conscience of the Hemisphere" and "a crime against humanity." General Assembly Resolution 666 (XIII-0/83).

^[FN49] IACtHR, Velásquez Rodríguez Case, Merits, *supra*, para 158.

^[FN50] See e.g., IACHR, Annual Report of the IACHR 1989-90, *supra*, at pp. 150, 153-54; Annual Report of the IACHR 1990-91, *supra*, at pp. 445, 449-50; Annual Report of the IACHR 1991, OEA/Ser.L/V/II.86, Doc. 6 rev. 1, 14 Feb. 1992, at p. 206.

86. The first obligation of any State Party to the American Convention is to respect the rights and freedoms set forth therein. "[U]nder international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even if they are acting outside the sphere of their authority or in violation of internal law."^[FN51] Moreover, "any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State."^[FN52] Based on the record and its foregoing analysis, the Commission concludes that the victims in Cases 10.588, 10.608 and 10.921 were disappeared by State agents, and that the victims in Cases 10.796 and 10.856 were disappeared by State agents or by persons acting in concert with such agents, or with their acquiescence and tolerance. In both sets of cases, the relevant authorities failed to mount an effective response.

^[FN51] IACtHR, Velasquez Rodriguez Case, Merits, *supra*, paras. 170, 166.

^[FN52] *Id.*, paras. 170, 172.

87. The second obligation of the State is to guarantee the free and full exercise of the rights recognized by the Convention. As the Inter-American Court has established, this

implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation of human rights.[FN53]

[FN53] Id. para. 166.

In the case of a forced disappearance, the State has the duty to determine the fate of the victim, submit those responsible to appropriate prosecution and punishment, and indemnify the victim's family members. The foregoing analysis demonstrates that the State of Guatemala has failed to guarantee these rights of the victims and their families.

VI. ACTIONS SUBSEQUENT TO REPORT N° 83/99

88. Pursuant to the terms of Article 50 of the Convention, the Commission adopted Report N° 83/99 on May 7, 1999, during its 103rd Regular Session. That Report set forth the Commission's analysis (contained in sections I – V, supra) and finding that the State of Guatemala bears responsibility in the cases of the forced disappearance of Isabela and Francisco Velásquez, Ronal Homero Mota, Julio de Jesús Maldonado, José Felipe Alvarez Andrés, Eleodoro Polanco Arévalo, Adolfo René and Luis Pacheco del Cid, Nicolás Matoj, Bernal de Matoj, Juan Matoj, Nicolás Matoj, Francisco Matoj, Cecilia Matoj, María Matoj, Francisco Rivera and family, and Jacinto Terraza and family. The Commission established State responsibility for violations of the rights to recognition as a person before the law, to life, to humane treatment, to personal liberty, and to judicial guarantees and protection, set forth in Articles 3, 4, 5, 7, 8 and 25 of the American Convention on Human Rights. The Commission further established that, with respect to the forced disappearance of minor Francisco Velásquez, and the minor children of the Matoj family, the State bears responsibility for having failed to observe the right of children to special measures of protection as established in Article 19. The Commission indicated that, in accordance with the foregoing finding, the State bears responsibility for having failed to uphold its Article 1(1) obligation to respect and ensure those rights under the Convention. Consequently, the Commission recommended (1) that the State carry out a “complete, impartial and effective investigation” in order to establish the fate of the victims and sanction those responsible in accordance with Guatemalan law, and (2) that it adopt the measures necessary to ensure that the victims' families receive fair and prompt reparation for those violations.

89. The Report was transmitted to the State of Guatemala on August 9, 1999. Pursuant to the terms set forth, the State was given two months from the date of receipt to comply with the recommendations issued and report to the Commission on the measures taken for that purpose. By a note of the same date, the Commission informed the petitioners that a report on the case had been adopted pursuant to the terms of Article 50 and transmitted to the State.

90. The State submitted its response to Report 83/99 by note dated October 12, 1999.

91. In relation to the Commission's recommendation that it carry out a complete, impartial and effective investigation designed to clarify the fate of the victims, as well as to identify and sanction those responsible, the State reported that it had taken, or was preparing to take certain steps. With respect to Ronal Homero Mota, Julio de Jesús Maldonado and José Felipe Alvarez Andrés (Case 10.608), the State reported that process 540-90 remained before the Court of First Criminal Instance, Narcoactivity and Crimes against the Environment of the Department of Sololá. With respect to Eleodoro Polanco Arévalo (Case 10.796), it reported that process 514-91 remained before the Second Court of First Criminal Instance, Narcoactivity and Crimes against the Environment. The State indicated that "in the next days" it would be requesting the assistance of the President of the Supreme Court with respect to moving those cases forward.

92. In relation to Isabela and Francisco Velásquez (Case 10.588), Adolfo René and Luis Pacheco del Cid (10.856), and the Matoj family (Case 10.921), the State reported that it had no record of any judicial process underway, or of any denunciation having been filed before its judiciary. The State was therefore searching for a legal mechanism to initiate the corresponding processes, investigate, and determine whether the victims were indeed disappeared, in order to determine the corresponding criminal responsibility. The State indicated that no one had come forward to offer the authorities information, and requested that the Commission require additional data from the petitioners in order to assist its investigation. The State noted that certain characteristics of these five cases made their clarification difficult, namely the passage of time since the facts, and the situation of persons who had gone into exile, or changed identity or been internally displaced, but expressed its interest in carrying out a complete, impartial and effective investigation to meet the objective set forth in the Commission's recommendation.

93. Finally, the State indicated that, for the reasons set forth in its response, it would not presently pronounce with respect to the Commission's recommendation concerning measures of reparation for the families of those disappeared.

94. Having reviewed the information provided by the State in response to Report 83/99, the Commission finds it necessary to offer the following observations. Most fundamentally, the response of the State does not demonstrate compliance with the recommendations issued by the Commission in Report 83/99, aimed at remedying the violations established.

95. In the first place, the record with respect to all five cases continues to reflect that the State has yet to carry out an investigation meeting the standards of due diligence, either in terms of establishing the fate of the victims or the corresponding criminal responsibility. In relation to the two cases where the State indicates that judicial processes remain pending, concerning Ronal Homero Mota, Julio de Jesús Maldonado and José Felipe Alvarez Andrés (Case 10.608) and Eleodoro Polanco Arévalo (Case 10.796), the Commission reiterates that the obligation of the State to effectively investigate requires measures not of form but of substance.[FN54] Neither the record of these cases nor the response of the State to Report 83/99 demonstrate that any substantive measures have been taken. The very limited information before the Commission demonstrates only that these processes were not effectuated with due diligence, and have,

moreover, been subjected to prolonged undue and unexplained delay. The State did not address the deficiencies the Commission identified in Report 83/99 concerning this issue in its response. The Commission has taken due note of the State's commitment to seek the assistance of the President of the Supreme Court in impelling these processes forward, and will continue to monitor developments until these and the other three cases have been fully clarified.

[FN54] See para. 76, supra.

96. With respect to the remaining three cases, concerning Isabela and Francisco Velásquez (Case 10.588), Adolfo René and Luis Pacheco del Cid (10.856), and the Matoj family and others (Case 10.921), the State has reported that it finds no record of any denunciation before its judicial authorities. For the record, the Commission notes that, according to the information recorded in section II, supra, the petitioners reported and the State has never disputed that the facts of Case 10.588 were denounced before the Ombudsman for Human Rights of the State, while the facts of Case 10.856 were denounced before police officials, who initiated an investigation that failed to produce results. With respect to Case 10.921, the petitioners indicated that the facts were denounced to the relevant local authorities. Once the State was on notice that the individuals concerned were alleged to have disappeared, it was obliged to undertake the appropriate measures of investigation. As is well established in the inter-American human rights system, the duty to investigate:

must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the state as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.[FN55]

[FN55] IACtHR, Velásquez Rodríguez, Merits, supra, para. 177; see also para. 179, noting that allegations involving crimes against the person must be subject to official investigation pursuant to the duty of the State to ensure public order.

97. Independently of the difficulties which the State noted may arise in investigating cases of this nature, it must be noted that the record before the Commission reflects virtually no attempt to investigate the basic facts that were denounced before local authorities, and subsequently before this Commission.

98. The Commission reiterates that, in any case of disappearance, the State is obliged to establish the fate of the victim, submit those responsible to appropriate prosecution and punishment, and compensate the victim's family members. The Commission found that the victims in the five cases at issue were forcibly disappeared at the hands of State agents, or by persons acting at the behest or with the tolerance of such agents. The lack of investigation, prosecution and punishment of those responsible has created a situation of impunity in these

cases, which directly contravenes the duty of the State to combat that phenomenon by all the means at its disposal.[FN56] The failure of the State to clarify the fate of the victims or to take steps to locate their remains perpetuates the violation of the right of their family members to know the truth about what happened to them. As the Court, as well as the Commission have consistently indicated, “[t]he duty to investigate facts of this type continues as long as there is uncertainty about the fate of the person who has disappeared.”[FN57]

[FN56] See IACtHR, Paniagua Morales et al. v. Guatemala, Judgment of March 8, 1998, Merits, at para. 173.

[FN57] IACtHR, Velásquez Rodríguez, Merits, supra , para. 181; Neira Alegría Case, para. 69 and operative para. 4; Caballero Delgado and Santana Case, paras. 58, 59; El Amparo Case, Reparations, para. 61, operative para. 4; Castillo Páez Case, Merits, para. 90.

VII. CONCLUSIONS

99. On the basis of the foregoing analysis and conclusions, the Commission finds that the recommendations issued in Report 33/99 have not been complied with, and therefore reiterates its conclusion that the State of Guatemala is responsible for violations of the rights to recognition as a person before the law, to life, to humane treatment, to personal liberty, and to judicial guarantees and protection, established in Articles 3, 4, 5, 7, 8 and 25 of the American Convention on Human Rights with respect to the forced disappearance of Isabela and Francisco Velásquez, Ronal Homero Mota, Julio de Jesús Maldonado, José Felipe Alvarez Andrés, Eleodoro Polanco Arévalo, Adolfo René and Luis Pacheco del Cid, Nicolás Matoj, Bernal de Matoj, Juan Matoj, Nicolás Matoj, Francisco Matoj, Cecilia Matoj, María Matoj, Francisco Rivera and family, and Jacinto Terraza and family. In the cases of the forced disappearance of the minor Francisco Velásquez and the minor children of the Matoj family, the State is also responsible for failing to observe the right of children to special measures of protection, established in Article 19. With respect to the foregoing, the State is accordingly responsible for having failed to uphold its Article 1(1) obligation to respect and ensure those rights under the Convention.

VIII. RECOMMENDATIONS

100. On the basis of the analysis and conclusions set forth in the present report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

To reiterate its recommendations to the State of Guatemala that it:

1. Carry out a complete, impartial and effective investigation in order to determine the circumstances of the forced disappearance of these victims and sanction those responsible in accordance with Guatemalan law.

2. Adopt the measures necessary so that the family members of the victims identified in paragraph 96 receive adequate and prompt reparation for the violations here established.

IX. PUBLICATION

101. On February 2, 2000, the Commission transmitted Report N° 139/99, 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.

102. 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 declared 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° 139/99 (CASES 10.588, 10.608, 10.796, 10.856 and 10.921)

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° 139/99 on Cases 10.588, 10.608, 10.796, 10.856 and 10.921, issued by the Inter-American Commission on Human Rights on November 19, 1999.

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° 139/99 (Cases 10.588, 10.608, 10.796, 10.856 and 10.921) of November 19, 1999, owing to its failure to guarantee the essential rights recognized in Articles 3, 4, 5, 7, 8 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 N° 139/99 (Cases 10.588, 10.608, 10.796, 10.856 and 10.921) of November 19, 1999 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° 139/99 (Cases 10.588, 10.608, 10.796, 10.856 and 10.921) of November 19, 1999. 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 Cases 10.588, 10.608, 10.796, 10.856 and 10.921.

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° 139/99 (Cases 10.588, 10.608, 10.796, 10.856 and 10.921), of November 19, 1999, 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].

103. 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.

104. The information received indicates that the Guatemalan State has not yet fully complied with the recommendations made in Report N° 139/99 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.

105. 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.