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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
Commission member Marta Altolaguirre, national of Guatemala, did not participate in the discussion or vote on this Report, pursuant to Article 19(2) of the IACHR's Regulations.
Dated: 19 January 2001
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Represented by: APPLICANT: Center for Justice and International Law
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I. CLAIMS PRESENTED

1. On February 22, 1995, the Inter-American Commission on Human Rights (hereinafter "Commission") received a petition dated February 8, 1995, alleging that Articles 109, 110, 113, 114, 115, 131, 133, 255, and 317 of the Civil Code of the Republic of Guatemala (hereinafter "Civil Code"), which define the role of each spouse within the institution of marriage, create distinctions between men and women which are discriminatory and violate Articles 1(1), 2, 17 and 24 of the American Convention on Human Rights (hereinafter "American Convention").

2. The petitioners, the Center for Justice and International Law and María Eugenia Morales de Sierra, indicated that Article 109 of the Civil Code confers the power to represent the marital union upon the husband, while Article 115 sets forth the exceptional instances when this authority may be exercised by the wife. Article 131 empowers the husband to administer marital property, while Article 133 provides for limited exceptions to that rule. Article 110 addresses responsibilities within the marriage, conferring upon the wife the special "right and obligation" to care for minor children and the home. Article 113 provides that a married woman may only exercise a profession or maintain employment where this does not prejudice her role as mother and homemaker. They stated that, according to Article 114, a husband may oppose his wife's activities outside the home, as long as he provides for her and has justified reasons. In the case of a controversy with respect to the foregoing, a judge shall decide. Article 255 confers primary responsibility on the husband to represent the children of the union and to administer their property. Article 317 provides that, by virtue of her sex, a woman may be excused from exercising certain forms of guardianship.

3. The petitioners reported that the constitutionality of these legal provisions had been challenged before the Guatemalan Court of Constitutionality in Case 84-92. In response, the Court had ruled that the distinctions were constitutional, as, inter alia, they provided juridical certainty in the allocation of roles within marriage. The petitioners requested that the Commission find the foregoing provisions of the Civil Code incompatible in abstracto with the guarantees set forth in Articles 1(1), 2, 17 and 24 of the American Convention.

4. The Commission indicated to the petitioners the need to identify concrete victims, as this was a requirement under its case system. On April 23, 1997, the petitioners submitted their written presentation of María Eugenia Morales de Sierra as the concrete victim in the case.

II. PROCESSING BY THE COMMISSION

5. Pursuant to the filing of the petition, on March 14, 1995 the petitioners sent the Commission a copy of the sentence issued by the Court of Constitutionality in Case 84-92. The Commission opened Case 11.625 on May 6, 1996, and the pertinent parts of the petition were transmitted to the Republic of Guatemala (hereinafter "State" or "Guatemalan State") with a request for information in response within 90 days.

6. The State requested an extension of time to respond by means of a note of August 6, 1996. In a note of August 7, 1996, the Commission indicated that an extension of 30 days had been granted.

7. The response of the State, dated September 10, 1996, was received and the pertinent parts thereof were transmitted to the petitioners for their observations.

8. Pursuant to the petitioners' request, the Commission granted a hearing to address the admissibility of Case 11.625 during its 93rd regular period of sessions. At the conclusion of that hearing, held on October 10, 1996 at the Commission's headquarters, the parties agreed that the Commission should review the matter during its next period of sessions to assess any developments and evaluate the feasibility of resolving the case through the procedure of friendly settlement initiated.

9. Additional information provided by the petitioners during that hearing was formally transmitted to the State for its observations by means of a note of October 15, 1996.

10. On December 13, 1996, the State transmitted a report to the Commission on pending efforts in favor of reforming the Civil Code, as well as the text of the "Law to Prevent, Sanction and Punish Intrafamilial Violence," approved by the Congress by means of Decree Number 97-96, and scheduled to enter into force on December 28, 1996. This submission was transmitted to the petitioners by means of a note dated January 9, 1997.

11. Pursuant to the January 24, 1997 request of the petitioners, the Commission held a hearing on this case at its headquarters on March 5, 1997, during its 95th regular period of sessions. The Commission questioned the petitioners as to whether they were requesting a

determination in abstracto or pursuing an individual claim. The petitioners indicated that, in the concrete case, María Eugenia Morales Aceña de Sierra had been directly affected by the challenged legislation, and also represented other women victims in Guatemala. The Commission requested that they formalize the status of María Eugenia Morales de Sierra as the victim in writing, in order to comply with the dispositions of its Regulations and proceed to process the petition within its case system.

12. The petitioners formalized the status of María Eugenia Morales de Sierra as victim in a communication of April 23, 1997, the date as of which the Commission considers this status to have been established in the file. The pertinent parts of this communication were transmitted to the State for its observations by means of a note of June 9, 1997.

13. On July 10, 1997, the Government provided a brief submission of additional information which was transmitted to the petitioners for their observations by means of a note dated July 14, 1997.

14. On July 28, 1997, the petitioners provided the Commission with documentation complementing their April 23, 1997 submission. The documentation was transmitted to the Government of Guatemala for its observations on August 14, 1997.

15. Pursuant to the request of the petitioners, the Commission held an additional hearing on the admissibility of the present case on October 10, 1997, at its headquarters, during its 97th period of sessions. Pursuant to Commission inquiry, the State indicated that it remained disposed to consider the option of the friendly settlement procedure. The petitioners indicated their belief that this option had been thoroughly explored, but had failed to provide any fruitful results.

16. On March 6, 1998, the Commission approved Report 28/98, declaring the present case admissible. That report was transmitted to both parties by means of notes of April 2, 1998.[FN1]

[FN1] Report 28/98 is published in Annual Report of the IACHR 1997, OEA/Ser.L/V/II.98, Doc. 7 rev., April 13, 1998, at p. 144.

17. Citing ongoing discussions concerning reforms to the relevant articles of the Civil Code, on May 5, 1998, the State requested an extension of time to provide information relevant to Report 28/98. The Commission granted an extension until June 22, 1998, and informed the petitioners that this had been done.

18. The State filed a brief submission, dated June 23, 1998, indicating that it remained disposed to enter into friendly settlement negotiations, and requesting that, if this were accepted by the petitioners, the Commission suspend its processing of the matter. This filing was transmitted to the petitioners for any observations by means of a note of July 16, 1998.

19. The petitioners filed a summary of their arguments concerning the merits of the claims raised by means of a note dated August 10, 1998. The pertinent parts thereof were transmitted to the State for its observations on August 27, 1998.

III. THE POSITIONS OF THE PARTIES

The Position of the Petitioners

20. From the initiation of this matter, the petitioners have maintained that the challenged articles of the Civil Code of Guatemala establish distinctions between men and women which are discriminatory and therefore violate the terms of the American Convention. Pursuant to their designation of María Eugenia Morales de Sierra as the named victim, the petitioners asserted that these articles place her in a position of juridical subordination to her husband, and prevent her from exercising control over important aspects of her life. They indicate that the cited provisions discriminate against the victim in a manner which is immediate, direct and continuing, in violation of the rights established in Articles 1(1), 2, 17, and 24 of the American Convention. Pursuant to their arguments submitted after Commission's adoption of Report 28/98 admitting the case, they further allege that this discrimination infringes upon the private and family life of the victim in contravention of Article 11(2) of the Convention.

21. The petitioners contend that Articles 109, 110, 113, 114, 115, 131, 133, 255 and 317 of the Civil Code create distinctions between married women, single women and married men, with the result that María Eugenia Morales is prohibited from exercising rights to which those other groups are entitled. Citing international human rights jurisprudence, including that of the Inter-American Court, they assert that, while a difference in treatment is not necessarily discriminatory, any such distinction must be objectively justified in the pursuit of a legitimate end, and the means employed must be proportionate to that end. The distinctions at issue in this case, they maintain, are illegitimate and unjustified.

22. The petitioners allege that, as a married woman living in Guatemala, a mother, a working professional, and the owner of property acquired jointly with her husband during their marriage, Ms. Morales de Sierra is subject to the immediate effects of this legal regime by virtue of her sex and civil status, and the mere fact that the challenged provisions are in force. By virtue of Article 109, representation of the marital unit corresponds to the husband, and by virtue of Article 131, he administers the marital property. Articles 115 and 133 provide respective exceptions to these general rules only where the husband is essentially absent. By virtue of Article 255, the husband represents and administers the property of minors or incapacitated persons. A wife, in contrast, may be excused from exercising custody over such persons by virtue of her sex and the terms of Article 317. These articles prevent Ms. Morales de Sierra from legally representing her own interests and those of her family, and require that she depend on her husband to do so.

23. Further, her right to work is conditioned on what the petitioners characterize as the anachronistic legislative division of duties within marriage, with Article 110 providing that care of the home and children corresponds to the wife and mother, and Articles 113 and 114 providing that a wife may pursue activities outside the home only to the extent that these do not

prejudice her role within it. Although the victim's husband has never opposed her exercise of her profession, by law he could do so at any moment, and in the case of a dispute, a judge would decide. The petitioners refer to the dicta of the Inter-American Court in Advisory Opinion OC-14 in submitting that a norm which deprives a group within a population of certain rights, for example on the basis of a factor such as race or sex, automatically injures all the members of the group thus affected.

24. The petitioners dispute the finding of the Court of Constitutionality of Guatemala that the challenged provisions are justified as a form of protection for women, and as a means of establishing juridical certainty in the allocation of rights and responsibilities within marriage. They assert that the means employed are disproportionate and the resulting discrimination in treatment is unreasonable. These provisions, they argue, are contrary to the principle of equality between the spouses, and nullify the juridical capacity of a married woman within the domestic legal order, thereby controverting the protections set forth in Articles 17 and 24 of the American Convention, as well as the obligations set forth in Articles 1(1) and 2. Further, they argue that the manner in which the provisions impede the ability of the victim to exercise her rights, in limiting, for example, her right to work or to dispose of her property, constitutes an unjustified interference in her private life in contravention of Article 11(2).

25. Finally, the petitioners note that the challenged provisions contravene Articles 15 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women, provisions to which the Commission may refer in formulating its decision. They further note that the recognized relationship between inequality in gender relations and the prevalence of violence against women may also serve to guide the Commission's findings.

The Position of the State

26. The State does not controvert the substance of the claims raised by the petitioners. Rather, it maintains that it is continuing to take steps to modify the challenged articles of the Civil Code to bring them into conformity with the norms of the American Convention and the Convention on the Elimination of All Forms of Discrimination against Women. In proceedings before the Commission prior to the adoption of Report 28/98, the State acknowledged that the cited provisions are "out of date" and give rise to concerns with respect to the obligation of nondiscrimination. It further noted that efforts in favor of reform of the articles had been based on the fact that they contravene Article 46 of the Constitution, as well as provisions of the American Convention and the Convention on the Elimination of All Forms of Discrimination Against Women. The Government emphasized that it had demonstrated its interest in derogating or reforming certain articles of the Civil Code, both through supporting initiatives in favor of legislative changes, and through a constitutional challenge to Articles 113 and 114 presented by the Attorney General in 1996.

27. It was principally on the basis of pending initiatives in favor of reform that the State had challenged the admissibility of the case, contending that domestic mechanisms continued to offer available and effective relief for the situation denounced, and that the petitioners had accordingly failed to satisfy the requirement of exhausting internal remedies.[FN2] Following the adoption of the Commission's report on admissibility, the State indicated that the Congress was

continuing to pursue the objective of modifying certain articles of the Civil Code in order to bring them into conformity with the Convention on the Elimination of All Forms of Discrimination against Women. As of the State's June 22, 1998 submission, those reforms were still under discussion in the Congress. The State maintains that the measures undertaken in favor of reform of the challenged articles demonstrate its commitment to upholding the guarantees set forth in the Constitution, and in the American Convention on Human Rights and other applicable international law.

[FN2] See generally, Report 28/98, *supra*, paras. 23, 27 and 20.

IV. CONSIDERATIONS REGARDING THE MERITS

Initial considerations

28. At the outset, it is pertinent to note that, notwithstanding the presentation of various draft reform projects before the Guatemalan congressional commissions charged with pronouncing on such initiatives, as of the date of the present report, the relevant articles of the Civil Code continue in force as the law of the Republic of Guatemala. In brief, Article 109 provides that representation of the marital union corresponds to the husband, although both spouses have equal authority within the home.[FN3] Article 110 stipulates that the husband owes certain duties of protection and assistance to the wife, while the latter has the special right and duty to care for minor children and the home.[FN4] Article 113 sets forth that the wife may exercise a profession or pursue other responsibilities outside the home only insofar as this does not prejudice her responsibilities within it.[FN5] Article 114 establishes that the husband may oppose the pursuit of his wife's activities outside the home where he provides adequately for maintenance of the home and has "sufficiently justified reasons." Where necessary, a judge shall resolve disputes in this regard.[FN6] Article 115 states that representation of the marital union may be exercised by the wife where the husband fails to do so, particularly where he abandons the home, is imprisoned, or is otherwise absent.[FN7] Article 131 states that the husband shall administer the marital property.[FN8] Article 133 establishes exceptions to this rule on the same basis set forth in Article 115.[FN9] Article 255 states that, where husband and wife exercise parental authority over minor children, the husband shall represent the latter and administer their goods.[FN10] Article 317 establishes that specific classes of persons may be excused from exercising certain forms of custody, including, *inter alia*, women.[FN11]

[FN3] Article 109 of the Civil Code establishes: "(Representation of the marital union). The husband shall represent the marital union, but both spouses shall enjoy equal authority and considerations in the home; they shall establish their place of residence by common agreement and shall arrange everything concerning the education and establishment of their children, as well as the family budget."

[FN4] Article 110 of the Civil Code establishes: "(Protection of the wife). The husband must provide protection and assistance to his wife and is obliged to supply everything needed to sustain the home in accordance with his economic means."

The wife has the special right and duty to attend to and look after her children while they are minors and to manage the household chores.”

[FN5] Article 113 of the Civil Code establishes: “(Wife employed outside the home). The wife may perform work, (38) exercise a profession, business, occupation, or trade, (39) provided that her activity does not prejudice the interests and care of the children or other responsibilities in the home.” [Notes 38 and 39 refer to articles of the Constitution and Commercial Code].

[FN6] Article 114 of the Civil Code establishes: “The husband may object to his wife pursuing activities outside the home, so long as he provides adequately for maintenance of the home and has sufficiently justified grounds for objection. The judge shall rule outright on the issue.”

[FN7] Article 115 of the Civil Code establishes: “(Representation by the wife). Representation of the marital union shall be exercised by the wife should the husband fail to do so for any reason and particularly when : 1) If the husband is legally deprived of that right; 2) If the husband abandons the home of his own free will, or is declared to be absent; and 3) If the husband is sentenced to imprisonment and for the duration of such imprisonment.”

[FN8] Article 131 of the Civil Code establishes: “Under the system of absolute joint ownership [comunidad absoluta] by husband and wife or community of property acquired during marriage [comunidad de gananciales], the husband shall administer the marital property, exercising powers that shall not exceed the limits of normal administration.

Each spouse or common-law spouse shall dispose freely of goods registered under his or her name in the public registries, without prejudice to the obligation to account to the other for any disposal of common property.”

[FN9] Article 133 of the Civil Code establishes: “(Administration by the wife). Administration of the marital property shall be transferred to the wife in the instances set forth in Article 115, with the same powers, restrictions, and responsibilities as those established in the foregoing articles.”

[FN10] Article 255 of the Civil Code establishes: “Where husband and wife, or common-law spouses, jointly exercise parental authority over minor children, the husband shall represent the minor or incompetent children and administer their goods.”

[FN11] Article 317 of the Civil Code establishes: “(Exemption). The following may be excused from exercising custody and guardianship: 1) Those already exercising another custody or guardianship; 2) Persons over sixty years of age; 3) Those who have three or more children under their parental authority; 4) Women; 5) Persons of low-income for whom this responsibility would threaten their means of subsistence; 6) Persons prevented from exercising this responsibility due to chronic illness; and 7) Those who have to be absent from the country for over one year.”

29. The Commission received information about two initiatives in favor of reform of those articles during the on-site visit it carried out in Guatemala from August 6 to 11, 1998, but has yet to receive information as to corresponding action by the plenary of the Congress. Nor has it received information as to the outcome, if any, of the constitutional challenge against Articles 113 and 114 which was presented by the Attorney General before the Court of Constitutionality in 1996. While the State appears to link the continuation of efforts in favor of reform to its willingness to explore the option of friendly settlement, the petitioners have indicated that they consider the possibility of entering into friendly settlement negotiations to have been explored and exhausted.

30. Paragraphs 28 and 29 refer to a general situation which the Commission examined during its recent on-site visit to Guatemala, and to which it made reference in its Report on the Situation of Women in the Americas. (See references, *infra*.) In the concrete case of María Eugenia Morales de Sierra, the Commission explicitly addressed its competence *ratione personae* in its Report 28/98 on admissibility:

With respect to the question of jurisdiction *ratione personae*, the Commission has previously explained that, in general, its competence under the individual case process pertains to facts involving the rights of a specific individual or individuals. See generally, IACHR, Case of Emérita Montoya González, Report 48/96, Case 11.553 (Costa Rica), in Annual Report of the IACHR 1996, OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997, paras. 28, 31. The Commission entertains a broader competence under Article 41.b of the Convention to address recommendations to member states for the adoption of progressive measures in favor of the protection of human rights.

Pursuant to their original petition for a decision in abstracto, which appeared to rely on the Commission's competence under Article 41.b of the American Convention rather than that under Article 41.f, the petitioners modified their petition and named María Eugenia Morales de Sierra as an individual victim, as previously noted, in their communication of April 23, 1997. With the identification of an individual victim, the Commission may advance with its decision on admissibility in the present case. As the Honorable Court has explained, in order to initiate the procedures established in Articles 48 and 50 of the American Convention, the Commission requires a petition denouncing a concrete violation with respect to a specific individual. I.Ct.H.R., Advisory Opinion OC-14/94, "International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention)," of Dec. 9, 1994, para. 45, see also, paras. 46-47. With respect to the other contentious mechanisms of the system, Article 61.2 of the Convention establishes, further, that "[i]n order for the Court to hear a case, it is necessary that the procedures set forth in ... [those Articles] shall have been completed." "The contentious jurisdiction of the Court is intended to protect the rights and freedoms of specific individuals, not to resolve abstract questions." *Id.* para 49.[FN12]

[FN12] Report, *supra*, paras. 30, 31.

The right of María Eugenia Morales de Sierra to equal protection of and before the law

31. The right to equal protection of the law set forth in Article 24 of the American Convention requires that national legislation accord its protections without discrimination. Differences in treatment in otherwise similar circumstances are not necessarily discriminatory.[FN13] A distinction which is based on "reasonable and objective criteria" may serve a legitimate state interest in conformity with the terms of Article 24.[FN14] It may, in fact, be required to achieve justice or to protect persons requiring the application of special

measures.[FN15] A distinction based on reasonable and objective criteria (1) pursues a legitimate aim and (2) employs means which are proportional to the end sought.[FN16]

[FN13] See e.g., Eur. Ct. H.R., *Belgian Linguistics Case*, Ser. A No. 6, p. 34, para. 10.

[FN14] See generally, *id.*; U.N.H.R. Committee, *Broeks v. The Netherlands*, Comm. No. 172/1984, para. 13, *Zwaan de Vries v. The Netherlands*, Comm. No. 182/1984, para. 13.

[FN15] See e.g., I/A Court H.R., *Advisory Opinion OC-4/84*, "Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica," January 19, 1984, para. 56.

[FN16] See e.g. *Belgian Linguistics Case*, *supra*.

32. Pursuant to the status of Guatemala as a State Party to the Convention on the Elimination of All Forms of Discrimination against Women,[FN17] and the terms of Article 29 of the American Convention,[FN18] it must be noted that Article 15.1 of the former requires that States Parties shall ensure that women are accorded equality with men before the law. Article 15(2) specifies that women must be accorded the same legal capacity as men in civil matters, particularly with respect to concluding contracts and administering property, and the same opportunities to exercise that capacity. Discrimination against women as defined in this Convention is:

[FN17].Guatemala ratified the Convention on August 12, 1982.

[FN18] See I/A Court H.R., "Other Treaties" Subject to the Advisory Jurisdiction of the Court (Art. 64 American Convention on Human Rights), *Advisory Opinion OC-1/82* of September 24, 1982. Series A No. 1.

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

This definition, responding as it does to the specific causes and consequences of gender discrimination, covers forms of systemic disadvantage affecting women that prior standards may not have contemplated.

33. In the proceedings before the Commission, the State has not controverted that Articles 109, 110, 113, 114, 115, 131, 133, 255 and 317 of the Civil Code create distinctions between married women and married men which are based on sex. In fact, it has acknowledged that aspects of the challenged provisions are inconsistent with the equality and non-discrimination provisions of the Constitution, the American Convention and the Convention on the Elimination of All Forms of Discrimination against Women.

34. Notwithstanding that recognition, however, the June 24, 1993 decision of the Court of Constitutionality on the validity of the cited articles remains the authoritative application and

interpretation of national law. That decision bases itself on the fact that the Constitution establishes that men and women are entitled to equality of opportunities and responsibilities, whatever their civil status, as well as to equality of rights within marriage. It notes that certain human rights treaties, including the Convention on the Elimination of All Forms of Discrimination against Women, form part of internal law. In its analysis of Article 109, the Court indicates that the legal attribution of representation of the marital unit to the husband is justified by reason of “certainty and juridical security.” This does not give rise to discrimination against the wife, the Court continues, as she is free to dispose of her own goods, and both spouses are attributed with equal authority within the home. The Court validates Article 115 on the same basis. With respect to Article 131, which vests authority in the husband to administer jointly held property, the Court recalls that, pursuant to Article 109, both spouses shall decide on matters concerning the family economy, including whether property shall be held separately or jointly. In the absence of such a decision, reasons of certainty and juridical security justify the application of Article 131. The Court finds Article 133 valid on the same basis.

35. In analyzing Article 110, which attributes responsibility for sustaining the home to the husband, and responsibility for caring for minor children and the home to the wife, the Court emphasizes the mutual support spouses must provide each other and the need to protect the marital home and any children. The division of roles is not aimed at discriminating, the Court finds, but at protecting the wife in her role as mother, and at protecting the children. The woman is not prejudiced; rather, the provisions enhance her authority. In analyzing Articles 113 and 114, which permit a woman to pursue work outside the home to the extent this does not conflict with her duties within it, the Court states that these contain no prohibition on the rights of the woman. As no right is absolute, the Articles contain limitations aimed primarily at protecting the children of the union. Consistent with the duties of each spouse, the husband may oppose his wife’s activities outside the home only if he offers adequate sustenance and has justified reasons. The disposition that a judge shall decide in the event of a disagreement protects against the possibility of arbitrary action, as it ensures that the husband’s reasons refer to the legally defined role of the wife and the protection of the children.

36. The Commission observes that the guarantees of equality and non-discrimination underpinning the American Convention and American Declaration of the Rights and Duties of Man reflect essential bases for the very concept of human rights. As the Inter-American Court has stated, these principles “are inherent in the idea of the oneness in dignity and worth of all human beings.”[FN19] Statutory distinctions based on status criteria, such as, for example, race or sex, therefore necessarily give rise to heightened scrutiny. What the European Court and Commission have stated is also true for the Americas, that as “the advancement of the equality of the sexes is today a major goal,” ... “very weighty reasons would have to be put forward” to justify a distinction based solely on the ground of sex.[FN20]

[FN19] Advisory Opinion OC-4, *supra*, para. 55.

[FN20] See e.g., *Eur. Ct. H.R., Karlheinz Schmidt v. Germany*, Ser. A No. 291-B, 18 July 1994, para 24, citing, *Schuler-Zgraggen v. Switzerland*, Ser. A No. 263, 24 June 1993, para. 67, *Burghartz v. Switzerland*, Ser. A No. 280-B, 22 Feb. 1994, para. 27.

37. The gender-based distinctions under study have been upheld as a matter of domestic law essentially on the basis of the need for certainty and juridical security, the need to protect the marital home and children, respect for traditional Guatemalan values, and in certain cases, the need to protect women in their capacity as wives and mothers. However, the Court of Constitutionality made no effort to probe the validity of these assertions or to weigh alternative positions, and the Commission is not persuaded that the distinctions cited are even consistent with the aims articulated. For example, the fact that Article 109 excludes a married woman from representing the marital union, except in extreme circumstances, neither contributes to the orderly administration of justice, nor does it favor her protection or that of the home or children. To the contrary, it deprives a married woman of the legal capacity necessary to invoke the judicial protection which the orderly administration of justice and the American Convention require be made available to every person.

38. By requiring married women to depend on their husbands to represent the union—in this case María Eugenia Morales de Sierra—the terms of the Civil Code mandate a system in which the ability of approximately half the married population to act on a range of essential matters is subordinated to the will of the other half. The overarching effect of the challenged provisions is to deny married women legal autonomy.[FN21] The fact that the Civil Code deprives María Eugenia Morales de Sierra, as a married woman, of legal capacities to which other Guatemalans are entitled leaves her rights vulnerable to violation without recourse.[FN22]

[FN21] See generally, Committee on the Elimination of Discrimination against Women (CEDAW), General Recom. 21, “Equality in marriage and family relations,” U.N. Doc. HRI\GEN\1\Rev.1 at 90 (1994), para. 7.

[FN22] See generally, U.N.H.R. Committee, *Ato del Avellanal v. Peru*, Comm. No. 202/1986, para. 10.2.

39. In the instant case the Commission finds that the gender-based distinctions established in the challenged articles cannot be justified, and contravene the rights of María Eugenia Morales de Sierra set forth in Article 24. These restrictions are of immediate effect, arising simply by virtue of the fact that the cited provisions are in force. As a married woman, she is denied protections on the basis of her sex which married men and other Guatemalans are accorded. The provisions she challenges restrict, inter alia, her legal capacity, her access to resources, her ability to enter into certain kinds of contracts (relating, for example, to property held jointly with her husband), to administer such property, and to invoke administrative or judicial recourse. They have the further effect of reinforcing systemic disadvantages which impede the ability of the victim to exercise a host of other rights and freedoms.

The case of María Eugenia Morales de Sierra and rights of the family: equality of rights and balancing of responsibilities in marriage

40. Article 17(1) of the American Convention establishes rights pertaining to family life pursuant to the disposition that, as “the natural and fundamental group unit of society,” the

family “is entitled to protection by society and the state.” The right to marry and found a family is subject to certain conditions of national law, although the limitations thereby introduced must not be so restrictive “that the very essence of the right is impaired.”[FN23] Article 17(4), which derives from Article 16(1) of the Universal Declaration of Human Rights, specifies that “States Parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities” in marriage and its dissolution. In this regard, Article 17(4) is the “concrete application” of the general principle of equal protection and non-discrimination of Article 24 to marriage.[FN24]

[FN23] Eur. Ct. H.R., *Rees v. United Kingdom*, Ser. A No. 106, 17 Oct. 1986, para. 50.

[FN24] See OC-4/84, para. 66.

41. In the case of Guatemala and other States Parties, the Convention on the Elimination of All Forms of Discrimination against Women specifies steps that must be taken to ensure substantive equality in family law and family relations. Pursuant to Article 16 of that Convention, States Parties are required to ensure, inter alia, “on the basis of equality between men and women,” the same rights and duties with respect to the exercise of custody or other types of guardianship of children; the “same personal rights ... to choose a family name, a profession and an occupation;” and the same rights with respect to the ownership, administration and disposition of property.

42. The petitioners have indicated that the cited articles of the Civil Code impede the ability of wife and husband to equally exercise their rights and fulfill their responsibilities in marriage. María Eugenia Morales de Sierra alleges that, although her family life is based on the principle of reciprocal respect, the fact that the law vests exclusive authority in her husband to represent the marital union and their minor child creates a disequilibrium in the weight of the authority exercised by each spouse within their marriage--an imbalance which may be perceived within the family, community and society. While the victim, as a parent, has the right and duty to protect the best interests of her minor child, the law strips her of the legal capacity she requires to do that.

43. As discussed above, the challenged articles of the Civil Code establish distinct roles for each spouse. The husband is responsible for sustaining the home financially, and the wife is responsible for caring for the home and children (Article 110). The wife may work outside the home only to the extent this does not prejudice her legally defined role within it (Article 113), in which case her husband has the right to oppose such activities (Article 114). The husband represents the marital union (Article 109), controls jointly held property (Article 131), represents the minor children, and administers their property (Article 255). The Court of Constitutionality characterized the State’s regulation of matrimony as providing certainty and juridical security to each spouse, and defended the disposition of roles on the basis that the norms set forth preferences which are not discriminatory, but protective.

44. The Commission finds that, far from ensuring the “equality of rights and adequate balancing of responsibilities” within marriage, the cited provisions institutionalize imbalances in

the rights and duties of the spouses. While Article 110 suggests a division of labor between a husband's financial responsibilities and the wife's domestic responsibilities, it must be noted that, pursuant to Article 111, a wife with a separate source of income is required to contribute to the maintenance of the household, or to fully support it if her husband is unable to do so. The fact that the law vests a series of legal capacities exclusively in the husband establishes a situation of de jure dependency for the wife and creates an insurmountable disequilibrium in the spousal authority within the marriage. Moreover, the dispositions of the Civil Code apply stereotyped notions of the roles of women and men which perpetuate de facto discrimination against women in the family sphere, and which have the further effect of impeding the ability of men to fully develop their roles within the marriage and family. The articles at issue create imbalances in family life, inhibiting the role of men with respect to the home and children, and in that sense depriving children of the full and equal attention of both parents. "A stable family is one which is based on principles of equity, justice and individual fulfillment for each member." [FN25]

[FN25] CEDAW, General Recom. 21, supra, para. 24.

45. In the case of Ms. Morales de Sierra, the Commission concludes that the challenged articles controvert the duty of the State to protect the family by mandating a regime which prevents the victim from exercising her rights and responsibilities within marriage on an equal footing with her spouse. The State has failed to take steps to ensure the equality of rights and balancing of responsibilities within marriage. Accordingly, in this case, the marital regime in effect is incompatible with the terms of Article 17(4) of the American Convention, read with reference to the requirements of Article 16(1) of the Convention on the Elimination of All Forms of Discrimination Against Women.

The right to privacy and the present case

46. Article 11(1) of the American Convention sets forth that every person has the right to have his or her honor and dignity recognized. Pursuant to Article 11(2): "No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation." Article 11(3) provides that this right is to be protected by law. The requirements of Article 11 encompass a range of factors pertaining to the dignity of the individual, including, for example, the ability to pursue the development of one's personality and aspirations, determine one's identity, and define one's personal relationships. [FN26]

[FN26] See, inter alia, Eur. Ct. H.R., Gaskin v. United Kingdom, Ser. A No. 160 (addressing interest of applicant in accessing records concerning childhood and early development); Niemetz v. Germany, Ser. A No. 251-B, para. 29 (noting that respect for private life includes right to "establish and develop relationships," both personal and professional.)

47. A principal objective of Article 11 is to protect individuals from arbitrary action by State authorities which infringes in the private sphere.[FN27] Of course, where State regulation of matters within that sphere is necessary to protect the rights of others, it may not only be justified, but required. The guarantee against arbitrariness is intended to ensure that any such regulation (or other action) comports with the norms and objectives of the Convention, and is reasonable under the circumstances.[FN28]

[FN27] See generally, Eur. Ct. H.R., *Kroon v. The Netherlands*, Ser. A No. 297-C, para. 31 (1994).

[FN28] See U.N.H.R. Committee, *Toonan v. Australia*, Comm. No. 488/1992, para. 8.3, citing, General Comment 16[32] on Article 17 [of the ICCPR], Doc. CCPR/C/21/Rev.1 (19 May 1989).

48. The petitioners claim that the cited articles of the Civil Code, particularly as they restrict María Eugenia Morales de Sierra's ability to exercise her profession and dispose of her property, constitute an arbitrary interference with her right to have her private life respected. In the proceedings generally, the victim has indicated that the cited provisions prevent her from exercising authority over basic aspects of her day-to-day life concerning her marriage, home, children and property. While she and her husband organize their home on the basis of mutual respect, her status in the family, community and society is conditioned by the attribution of authority to her husband to represent the marital union and their minor child. While their jointly held property has been obtained through mutual sacrifice, the law prevents her from administering it. Further, while her husband has never opposed her pursuit of her profession, the law authorizes him to do so at any moment. She notes that, although there are increasing opportunities for women to more fully incorporate themselves into the processes of national life and development, married women such as herself are continuously impeded by the fact that the law does not recognize them as having legal status equivalent to that enjoyed by other citizens.

49. The provisions in question have been upheld as a matter of domestic law on the basis that they serve to protect the family, in particular the children. However, no link has been shown between the conditioning of the right of married women to work on spousal approval, or the subordination of a wife's control of jointly held property to that of her husband and the effective protection of the family or children. In mandating these and other forms of subordination of a wife's role, the State deprives married women of their autonomy to select and pursue options for their personal development and support. This legislation, most specifically in the way it makes a woman's right to work dependent on the consent of her husband, denies women the equal right to seek employment and benefit from the increased self-determination this affords.

50. Whether or not the husband of the victim—in this case María Eugenia Morales de Sierra—opposes her exercise of her profession[FN29] is not decisive in this regard. The analysis turns on the fact that the legislation infringes on the victim's personal sphere in a manner which cannot be justified. The mere fact that the husband of María Eugenia Morales de Sierra may oppose that she works, while she does not have the right to oppose this in his case, implies a discrimination. This discrimination has consequences from the point of view of her position in Guatemalan society, and reinforces cultural habits with respect to which the Commission has commented in

its Report on the Status of Women in the Americas.[FN30] As a married woman, the law does not accord her the same rights or recognition as other citizens, and she cannot exercise the same freedoms they do in pursuing their aspirations. This situation has a harmful effect on public opinion in Guatemala, and on María Eugenia Morales de Sierra's position and status within her family, community and society.

[FN29] As noted above, in the present case the victim's husband has not opposed the exercise of her profession.

[FN30] Published in, Report of the IACHR 1997, OEA/Ser.L/V/II.98 doc. 7 rev., 13 April 1998.

The obligation of the State to respect and guarantee the rights of María Eugenia Morales de Sierra without discrimination, and to adopt domestic legal measures

51. As is demonstrated in the foregoing analysis, the State of Guatemala has failed to fulfill its obligations under Article 1(1) of the American Convention to "respect the rights and freedoms recognized [t]herein and to ensure to all persons subject to [its] jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of ... [inter alia] sex...." "Any impairment of those rights which can be attributed under the rules of international law to the action or omission of any public authority constitutes an act imputable to the State, which assumes responsibility in the terms provided by the Convention." [FN31] Article 1 imposes both negative and positive obligations on the State in pursuing the objective of guaranteeing rights which are practical and effective.

[FN31] Velásquez Rodríguez Case, para. 164; Godínez Cruz Case, para. 173.

52. Articles 109, 110, 113, 114, 115, 131, 133, 255 and 317 have a continuous and direct effect on the victim in this case, in contravening her right to equal protection and to be free from discrimination, in failing to provide protections to ensure that her rights and responsibilities in marriage are equal to and balanced with those of her spouse, and in failing to uphold her right to respect for her dignity and private life. A person who enjoys the equal protection of and recognition before the law is empowered to act to ensure other rights in the face of public or private acts. Conversely, gender-discrimination operates to impair or nullify the ability of women to freely and fully exercise their rights, and gives rise to an array of consequences.[FN32] The inter-American system has recognized, for example, that gender violence is "a manifestation of the historically unequal power relations between women and men." [FN33] "Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse...." [FN34] De jure or de facto economic subordination, in turn, "forces many women to stay in violent relationships." [FN35]

[FN32] See generally, Report on the Status of Women, supra, at p. 1018-1020.

[FN33] See, Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), preamble, Art. 7.e [ratified by Guatemala April 4, 1995].

[FN34] CEDAW, General Recom. 19, “Violence against women,” U.N. Doc. HRI\GEN\1\Rev.1, p. 84, at para. 11 (1994); see generally, Convention of Belém do Pará, Art. 6(b).

[FN35] General Recom. 19, supra, para. 23.

53. Recognizing that the defense and protection of human rights necessarily rests first and foremost with the domestic system, Article 2 of the Convention provides that States Parties shall adopt the legislative and other measures necessary to give effect to any right or freedom not already ensured as a matter of domestic law and practice. In the instant case, the State has failed to take the legislative action necessary to modify, repeal or definitively leave without effect Articles 109, 110, 113, 114, 115, 131, 133, 255 and 317 which discriminate against the victim and other married women in violation of Articles 24, 17 and 11 of the American Convention. When the articles at issue were challenged as unconstitutional, the State, acting through its Court of Constitutionality, failed to respond in conformity with the norms of the American Convention.[FN36] Although relevant national and international authorities have identified these articles as incompatible with the State’s obligations under national and international law, they remain the law of the land.[FN37]

[FN36] See, Report N° 43/96, Case 11.430, Mexico, OEA/Ser.L/V/II.95, Doc. 7 rev., Mar. 14, 1997, para. 102.

[FN37] See Report 28/98, supra, paras. 6, 7 23 (recording position of State itself that articles in question were not in conformity with national and international obligations); CEDAW, Thirteenth Sess., A/49/38, Sessional/Annual Rpt [consid. of report on Guatemala], paras. 44, 48, 70-71, 78-79, 81 (expressing Committee’s concern with respect to “highly discriminatory provisions” of Code restricting or violating fundamental rights.)

54. The obligation to respect and ensure the rights of the Convention requires the adoption of all the means necessary to assure María Eugenia Morales de Sierra the enjoyment of rights which are effective. The failure of the State to honor the obligations set forth in Articles 1 and 2 of the Convention generates liability, pursuant to the principles of international responsibility, for all acts, public and private, committed pursuant to the discrimination effectuated against the victim in violation of the rights recognized in the American Convention and other applicable treaties. Pursuant to those same principles, the State of Guatemala is obliged to repair the consequences of the violations established, including through measures to restore the rights of María Eugenia Morales de Sierra to the full extent possible, and to provide a just indemnity for the harm she has sustained. Measures of reparation are meant to provide a victim with an effective remedy, with the essential objective of providing full restitution for the injury suffered.[FN38]

[FN38] Velásquez Rodríguez Case, Interpretation of the Compensatory Damages Judgment, Judgment of August 17, 1990, Series C No. 9, para. 27.

V. ACTIONS SUBSEQUENT TO REPORT N° 86/98

55. Pursuant to the terms of Article 50 of the Convention, the Commission adopted Report N° 86/98 on October 1, 1998. That Report set forth the Commission's analysis (contained in sections I – V, supra) and finding that the State of Guatemala was responsible for having violated the rights of María Eugenia Morales de Sierra to equal protection, respect for family life, and respect for private life established in Articles 24, 17 and 11 of the American Convention on Human Rights. The Commission accordingly found the State responsible for having failed to uphold its Article 1 obligation to respect and ensure those rights under the Convention, as well as its Article 2 obligation to adopt the legislative and other measures necessary to give effect to those rights of the victim. Further, the Commission indicated that the conduct at issue also constituted violations of the obligations set forth in the Convention on the Elimination of All Forms of Discrimination against Women, most specifically, in Articles 15 and 16. Consequently, the Commission recommended (1) that the State take the legislative and other measures necessary to amend, repeal or definitively leave without effect Articles 109, 110, 113, 114, 115, 131, 133, 255 and 317 of the Civil Code so as to bring national law into conformity with the norms of the American Convention and give full effect to the rights and freedoms guaranteed to María Eugenia Morales de Sierra therein; and, (2) that it redress and adequately compensate María Eugenia Morales de Sierra for the violations established.

56. The Report was transmitted to the State of Guatemala on November 6, 1998. Pursuant to the terms set forth, the State was given two months from the date of that transmission 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. On November 24, 1998, the Commission transmitted a communication to the State attaching a *fe de errata* to correct a drafting error in one paragraph of that Report.

57. The State transmitted its response to Report 86/98 by note dated December 7, 1998. In that response, the State emphasized its acceptance of the need to address certain norms in the Civil Code that were out of date and discriminatory toward married women. However, it reiterated its position that the victim had not been personally prejudiced by the challenged norms, as her family life and professional career had not been harmed. In line with its recognition of the need to reform the provisions as a general matter, the State informed the Commission that the Congress had on November 19, 1998 approved Decree Number 80-98, enacting reforms to the Civil Code. The attached text reflected reforms to Articles 109, 110, 115, 131 and 255, and the derogation of Articles 114 and 133. The State further informed the Commission that the reforms would enter into force pursuant to their sanction, promulgation and publication.

58. On December 28, 1998, the Commission addressed the State to request that it supply information as soon as possible on the time required to accomplish the actions necessary for the reforms to enter into force. By a note of January 12, 1999, the State reported that the text of Decree 80-98 had been published in the *Diario de Centro América* on December 23, 1998. The

modifications had entered into force eight days after publication. The State indicated that it considered that it had fully complied with the recommendations issued by the Commission in Report 86/98.

59. Having analyzed the reforms indicated, and having noted that they addressed seven of the nine provisions challenged by the petitioner, the Commission addressed the State on January 25, 1999, to request information as to any measures taken with respect to Articles 113 and 317, which were not addressed in Decree 80-98, and to ask for additional information about the language of Article 131 as published, which appeared to be inconsistent with the explanation of the reform.[FN39] In view of the fact that the three month period provided in Article 51 was set to expire on February 6, 1999, the Commission requested a response within 7 days, and indicated that a request for an extension could only be considered if accompanied by an express manifestation by the State that this would suspend that time period.

[FN39] According to Article 5 of Decree 80-98, "Article 131, paragraph 2 is amended to read as follows: 'Under the system of absolute joint ownership [comunidad absoluta] by husband and wife or that of community of property acquired during the marriage [comunidad de gananciales], both spouses shall administer the marital property, either jointly or separately.'"

60. By a note of that same date, the Commission transmitted a copy of the text of Decree 80-98 to the petitioners with a request for observations as to whether the reforms set forth satisfied in whole or in part the claims presented. A response was requested within 7 days.

61. On January 25, 1999, the petitioners submitted a request that the Commission schedule a hearing on this matter during its next period of sessions. The Commission acknowledged receipt on January 29, and requested information as to the proposed purpose of such a hearing.

62. On February 1, 1999, the petitioners presented a communication setting forth their view as to why the reforms did not completely resolve the discrimination denounced or fully repair the violations suffered by the victim.

63. On February 4, 1999, the State presented information indicating that no measures had been taken with respect to Articles 113 and 317, and reiterating the reforms reported with respect to Article 131.

64. By a note of February 5, 1999, the State requested an extension of 60 days to present additional information concerning the case, with the express understanding that this would suspend the three-month time period provided in Article 51 of the Convention. That request was accepted, subject to that understanding, by a note of the same date, which indicated that the extension would expire on April 7, 1999.

65. By a note of that same date, the Commission informed the parties that it had granted a hearing concerning the case, scheduled for March 5, 1999. On February 17, 1999, the parties were informed that the date had been changed to March 4, 1999.

66. During that hearing the petitioners expressed their view that the State had yet to recognize a violation in the particular case, had made no measures of reparation, and had not addressed Articles 113 and 317, which formed an important part of their complaint. They also pointed out that the reformed text of Article 131 was unclear. Further, they indicated that what was required with respect to Articles 109 and 131 was that decisions on the representation of the marital union and marital property be taken jointly, rather than jointly or separately as the reforms provide.

67. The State, for its part, presented arguments as to why it considered that Article 317 did not require reform. Its position was that the Article permits women to request to be excused from exercising certain forms of custody; accordingly, it provides a privilege that can be invoked by choice and imposes no discrimination. The State indicated that a draft reform to derogate Article 113 had been elaborated in February, but that additional time would be required to work toward its adoption. With respect to Article 131, the State indicated that there had been a mistake in the transmission of the text when published, and that this would be corrected. The State indicated that it wished to have an additional extension of one year to accomplish the measures indicated, with the understanding that this suspended the period referred to in Article 51 of the Convention.

68. On March 10 and 11, 1999, the petitioners submitted communications as to why they considered that an additional extension should not be granted. They indicated that the State had indicated no intention to derogate Article 317, or to amend Articles 109 or 131 to require joint decision making, and that there were no guarantees that Article 113 would in fact be derogated.

69. Pursuant to that hearing, by note of March 24, 1999, the State requested an additional one-year extension, again, with the express understanding that this interrupted the running of the three-month time period provided in Article 51. That communication was transmitted to the petitioners for their information on March 31, 1999. In the interim, on March 29, 1999, the petitioners had submitted an additional communication on these points, asking that the case be placed before the Inter-American Court of Human Rights without delay, or, if an extension were granted, that it be limited to three months.

70. On April 7, 1999, the Commission granted the requested extension of one year, with the understanding that this suspended the period referred to in Article 51, and under the condition that the State present significant advances toward full compliance with the recommendations in meetings to be convoked by the Commission during its next two periods of sessions.

71. By notes of April 7 and 8, 1999, the Commission convened the parties for a working meeting on May 7, 1999, during its 103 period of sessions, to discuss the status of the recommendations issued in Report 86/98 and the measures of compliance that remained pending, particularly those concerning Articles 113, 131 and 317. By means of a note of April 15, 1999, the Commission informed the petitioners of the extension and the express conditions under which it had been granted.

72. As a follow-up to the May 7, 1999 meeting, the Commission addressed the State on August 23, 1999, with a request that it supply information within 30 days on the measures adopted to effectuate the recommendations issued in Report 86/98. On August 31, 1999, the Commission convened the parties for a hearing to be held on October 5, 1999, during its 104^o period of sessions.

73. On September 2, 1999, the State informed the Commission that it had complied with the recommendations issued in Report 86/98 through the adoption of Decree 29-99, reforming Article 131 and derogating Article 113. A copy of the decree was attached, with the information that it had entered into force as of the date of the letter. Given this compliance, the State asked that the case be archived. This information was transmitted to the petitioners on September 13, 1999, with observations in response requested within 21 days.

74. In the course of the October 5, 1999 hearing, the petitioners presented a communication requesting that, in view of the reform of Article 131 and derogation of Article 113, the Commission issue a final report setting forth the partial compliance of the State. The petitioners congratulated the State for having reformed the majority of the discriminatory provisions challenged in the case, recognizing in particular the derogation of Articles 113 and 114, and reform to Article 110, establishing that spouses have an equal responsibility to care for the children and home. The petitioners asked that the final report expressly indicate the State's failure to derogate the challenged provision of Article 317. Further, they asked that it reflect that, by allowing either spouse to exercise authority autonomously, the reforms to Articles 109, 115, 131 and 255 do not guarantee María Eugenia Morales de Sierra effective participation in decision making. They maintain that this may only be done by requiring joint consent in such decisions.

75. The State, for its part, reiterated the importance it attaches to having carried out the reforms in question. It also reiterated its view that Article 317 constitutes a privilege, a special consideration which may be invoked, rather than a form of discrimination which is imposed. The State indicated that it would submit the legislative history of the Article as well as opinions on the question by the Attorney General and President of the Congressional Commission of Women and the Family in support of its position. The petitioner's communication was formally transmitted to the State on October 13, 1999, with a request that any further information on the case be submitted within 30 days.

76. On December 17, 1999, the State submitted a response indicating its view that the reforms adopted had accomplished what was required, and reiterating its views with respect to Article 317. This information was transmitted to the petitioners on December 21, 1999, with any observations requested within 30 days.

77. The above proceedings having been carried out, and certain articles having been reformed pursuant to Decrees 80-98 and 27-99, the Commission wishes to briefly summarize the status of the legislation at issue in the present case. Articles 113, 114 and 133 have been derogated. Article 109 has been reformed to provide that representation of the marital union corresponds equally to both spouses, who shall have equal authority in the home and decide jointly on household and family matters. In the case of disagreement, a family court judge will

decide who prevails.[FN40] Article 110 maintains its original heading, “protection of the wife,” and first paragraph, stipulating that the husband owes certain duties of protection and assistance to the wife.[FN41] It has been modified with respect to its second paragraph to reflect that both spouses have the duty to care for minor children.[FN42] Article 115 has been modified to provide that in case of a disagreement between spouses as to representation of the marital union, a family judge will decide to whom it shall correspond on the basis of the conduct of each.[FN43] Article 131 has been amended to read that both spouses may administer marital property, either jointly or separately.[FN44] Article 255 has been modified to provide that both spouses shall represent children and administer their property, either jointly or separately.[FN45] Article 317, which allows certain classes of persons to be excused from exercising certain types of custody remains in its original form.[FN46]

[FN40] According to Article 1 of Decree 80-98, “Article 109 is amended to read as follows: Article 109. Marital representation. Representation of the marital union shall correspond equally to both spouses, who shall have equal authority and considerations in the home; they shall establish their place of residence by common agreement, and shall arrange everything concerning the education and establishment of their children, as well as the family budget. In the event of disagreement between the spouses, a family court judge shall decide who prevails.”

[FN41].The non-amended part states: “Article 110. (Protection of the wife). The husband must provide protection and assistance to his wife and is obliged to supply everything needed to sustain the home in accordance with his economic means.”

[FN42] According to Article 2 of Decree 80-98, Article 110, paragraph 2 is amended to read as follows: “Both spouses shall have the obligation to attend to and care for their children while they are minors.”

[FN43] According to Article 4 of Decree 80-98:

Article 115. In the event of disagreement between the spouses with regard to representation of the marital union, a family court judge will decide to whom it shall correspond on the basis of the conduct of each both inside and outside the home. The judge shall also indicate how long that spouse will exercise representation and the conditions that the other spouse must fulfill to recover the chance to represent the union once again.

In any event, administration shall be exercised individually, without the need for a court order to that effect, in the following cases:

1. If one of the spouses is prohibited from exercising administration by court order;
2. Voluntary abandonment of the home or declaration of absence; and
3. Pursuant to a sentence of imprisonment, and for its full duration.

[FN44].According to Article 1 of Decree 27-99:

Article 131. Under the system of absolute joint ownership [comunidad absoluta] by husband and wife or community of property acquired during marriage [comunidad de gananciales], both spouses shall administer the marital property, either jointly or separately.

Each spouse or common-law spouse shall dispose freely of goods registered under his or her name in the public registries, without prejudice to the obligation to account to the other for any disposal of common property.

[FN45] According to Article 8 of Decree 80-98:

Article 255. For the duration of the marital union or common-law marriage, the father and mother shall jointly exercise parental authority. Both parents shall also, jointly or separately, represent and administer the property of minor or incompetent children, except in cases governed by Article 115, or in cases of separation or divorce, in which representation and administration shall be exercised by the spouse who has custody of the minor or incompetent child.

[FN46] See notes 3-11, supra.

78. The Commission fully recognizes and values the reforms enacted by the State of Guatemala in response to the recommendations set forth in Report 86/98. As the parties have recognized, these constitute a significant advance in the protection of the fundamental rights of the victim and of women in Guatemala. The reforms represent a substantial measure of compliance with the Commission's recommendations, and are consistent with the State's obligations as a Party to the American Convention.

79. The Commission is not, however, in a position to conclude that the State has fully complied with the recommendations. The original heading and first paragraph of Article 110, which remain in force, refer to the duty of the husband to protect and assist his wife within the marriage, a duty that, in and of itself, is consistent with the nature of the marital relationship. For its part, Article 111 of the Code establishes the obligation of the wife to contribute equitably to maintenance of the home to the extent that she can,[FN47] a duty that is also consistent with the relationship between spouses. While neither of these duties gives rise, in itself, to a situation of incompatibility, they continue to reflect an imbalance in that the legislation recognizes that the wife is the beneficiary of the husband's duty to protect and assist her, while the law does not impose the same duty on her with regard to her husband. Article 17(4) of the American Convention requires the State to "ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage."

[FN47] Article 111 of the Civil Code. (Obligation of the wife to contribute to maintenance of the household). The wife shall also contribute equitably to maintenance of the household if she has property of her own or performs a job, profession, trade, or business; however, if the husband is unable to work and has no property of his own, the wife shall cover all the expenses out of her income.

80. With regard to Article 317, the decisive factor is not whether it is viewed as referring to a privilege or an obligation; what is dispositive is the nature of the distinction made in the provision and the justification offered for it. Essentially, the terms of Article 317 identify categories of persons who may be excused from custody or guardianship due to limitations, for example, economic or health reasons. It is not evident, nor has the State explained what limitation justifies including "women" in these categories. According to Article 17 of the American Convention, and as expressly stipulated in Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, States Parties must guarantee equal rights and duties with regard to exercising custody and other forms of guardianship of children.

81. In this sense, both Article 317 and the title and first paragraph of Article 110 suggest, expressly or implicitly, that women are characterized by inherent weaknesses that limit their capacity as compared to men. This affects María Eugenia Morales de Sierra in her right to equal protection of the law, in accordance with Article 24 of the American Convention, and to respect for her human dignity, pursuant to Article 11 of that Convention. Additionally, as stated in paragraph 44 above, these norms apply stereotyped notions about gender roles, thereby perpetuating de facto discrimination against women in the family sphere. Further, with regard to the question of compliance with the recommendations, the State has provided no measures of reparation to the victim in response to the findings and recommendations of the Commission.

82. The petitioners have responded to the modification of Articles 109, 115, 131 and 255 by contending that the Convention requires that the decisions at issue be taken by both spouses jointly, rather than autonomously as the reforms permit. Because this position was not developed in the proceedings prior to Report 86/98, and because it has not been sufficiently sustained subsequently in relation to the facts of the particular case and the experience of the victim, or the normative content or jurisprudence of the system, the Commission finds that the question has not been sufficiently defined in the case, and cannot conclude that the reforms fail to satisfy the recommendations for this reason.

VI. CONCLUSIONS

83. On the basis of the foregoing analysis and conclusions, the Commission finds that the recommendations issued in Report 86/98 have been complied with in important measure. It reiterates its conclusion that the State of Guatemala has not discharged its responsibility for having violated the rights of María Eugenia Morales de Sierra to equal protection, respect for family life, and respect for private life established in Articles 24, 17, and 11 of the American Convention on Human Rights in relation to the heading and paragraph one of Article 110 and paragraph four of Article 317. The Commission accordingly finds the State responsible for having failed to uphold its Article 1 obligation to respect and ensure those rights under the Convention, as well as its Article 2 obligation to adopt the legislative and other measures necessary to give effect to those rights of the victim.

VII. RECOMMENDATIONS

84. 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. Adapt the pertinent provisions of the Civil Code to balance the legal recognition of the reciprocal duties of women and men in marriage and take the legislative and other measures necessary to amend Article 317 of the Civil Code so as to bring national law into conformity

with the norms of the American Convention and give full effect to the rights and freedoms guaranteed to María Eugenia Morales de Sierra therein.

2. Redress and adequately compensate María Eugenia Morales de Sierra for the harm done by the violations established in this Report.

VIII. PUBLICATION

85. On November 7, 2000, the Commission transmitted Report No. 92/00—the text of which is reproduced above—to the State of Guatemala and to the petitioners, pursuant to Article 51(2) of the American Convention, and granted the State one month to comply with the foregoing recommendations. In accordance with the aforementioned Article 51(2), at this stage in the proceedings the Commission shall restrict itself evaluating the measures taken by the Guatemalan State to comply with the recommendations and remedy the situation examined. The Guatemalan State did not submit observations on Report 92/00.

86. In view of the foregoing considerations and the provisions of Article 51(3) of the American Convention and Article 48 of the Regulations of the Commission, the Commission decides to reiterate the conclusions and recommendations contained, respectively, in Chapters VI and VII supra; to publish this report; and to include it in its Annual Report to the General Assembly of the OAS. Pursuant to the provisions contained in the instruments governing its mandate, the IACHR will continue to evaluate the measures taken by the State of Guatemala with respect to those recommendations, until the State has fully complied with them.

Approved by the Inter-American Commission on Human Rights on January 19, 2001. (Signed): Hélio Bicudo, Chairman; Claudio Grossman, _First Vice-Chairman; Juan E. Méndez, Second Vice-Chairman; and Commissioners Robert K. Goldman, Peter Laurie and Julio Prado Vallejo.