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Title/Style of Cause:	Remigio Domingo Morales, Rafael Sanchez, Pedro Tau Cac, Jose Maria Ixcaya Pixtay, Jose Vicente Garcia, Mateo Sarat Ixcoy, Celestino Julaj Vicente, Miguel Calel, Pedro Raguez, Pablo Ajiataz, Manuel Ajiataz Chivalan, Catrino Chanchavac Larios, Miguel Tau Imul, Camilo Ajqui Gimon, Juan Tzunux Us, Catalino Chochoy, José Corino Thesen, Abelino Baycaj, Juan Galicia Hernandez, Andres Abelino Galicia Gutierrez, Orlando Adelso Galicia Gutierrez and Antulio Delgado v. Guatemala
Doc. Type:	Report
Decided by:	Chairman: Claudio Grossman; First Vice-Chairman: Juan E. Méndez; Commissioners: Helio Bicudo, Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.
Dated:	4 April 2001
Citation:	Domingo Morales v. Guatemala, Case 10.626, Inter-Am. C.H.R., Report No. 59/01, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)
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I. SUMMARY

1. From 1990 to 1993, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a number of petitions alleging the extrajudicial execution of a total of fifteen persons, and the attempted extrajudicial execution of another seven. Each of these petitions alleged that the material authors of the violations of the victims’ fundamental rights had been members of the Civil-Defense Patrols [Patrullas de Autodefensa Civil] (hereinafter the “PAC” or “Civil Patrols”) or military commissioners.
2. The cases listed above were opened following receipt of the petitions and then processed in accordance with the provisions of the American Convention on Human Rights (hereinafter “the American Convention”) and the Commission’s Regulations. Having done this and after determining that every case alleged that the material authors of the various human rights violations were members of either the Civil Patrols or military commissioners, and having considered how the PAC and military commissioners operate, the time frame of the various

petitions in question and the modus operandi in each one, the Commission, acting in accordance with Article 40 of its Regulations, decided to combine these cases and address them in a single report.[FN2]

[FN2] The Commission wishes to note that case 11.198 was divided in two on December 8, 2000. Thus, case 11.198(A) concerns the denunciations of extrajudicial executions, while 11.198(B) concerns denunciations of a different nature.

3. The present report examines whether the Republic of Guatemala (hereinafter "Guatemala" or "the State") incurred international responsibility for the acts committed by the Civil Patrols and/or military commissioners in the deaths of Remigio Domingo Morales, Rafael Sánchez, Pedro Tau Cac, José María Ixcaya Pixtay, José Vicente García, Mateo Sarat Ixcoy, Celestino Julaj Vicente, Miguel Calel, Pedro Raguez, Pablo Ajiataz, Manuel Ajiataz Chivalán, Catrino Chanchavac Larios, Miguel Tau Imul, Camilo Ajquí Gimon and Juan Tzunux Us; in the attempted extrajudicial execution of Catalino Chochoy, José Corino Thesen, Abelino Baycaj, Juan Galicia Hernández, Andrés Abelino Galicia Gutiérrez, Orlando Adelso Galicia Gutiérrez and Antulio Delgado, and in the grave injuries they sustained as a result.

4. As set forth in the present report and after examining the information supplied by the petitioners, the responses given by the State, the historical context in which the events occurred and the abundant information available as to organization, use, objectives and operations of the Civil Patrols and military commissioners, the Commission declares the present case admissible.

5. Likewise, the Commission concludes that the facts that prompted the petitions are true and that Guatemala is responsible for violation of the following rights: (1) the right to life recognized in Article 4 of the American Convention, in the cases of Remigio Domingo Morales, Rafael Sánchez, Pedro Tau Cac, José María Ixcaya Pictay, José Vicente García, Mateo Sarat Ixcoy, Celestino Julaj Vicente, Miguel Calel, Pedro Raguez, Pablo Ajiataz, Manuel Ajiataz Chivalan, Catrino Chanchavac Larios, Miguel Tau Imul, Camilo Ajquí Gimon and Juan Tzunux Us; (2) the right to personal liberty recognized in Article 7 of the Convention in the cases of Remigio Domingo Morales, Rafael Sánchez, Pedro Tau Cac y Camilo Ajqui Gimon; (3) the right to humane treatment recognized in Article 5 of the American Convention and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, in the cases of Remigio Domingo Morales, Rafael Sánchez, Pedro Tau Cac and Camilo Ajqui Gimon; and the right to humane treatment upheld in Article 5 of the Convention in the cases of the victims of attempted extrajudicial execution, namely Catalino Chochoy, José Corino, Abelino Baycaj, Antulio Delgado, Juan Galicia Hernández, Andrés Abelino Galicia Gutiérrez and Orlando Adelso Galicia Gutiérrez; (4) the rights of the child recognized in Article 19 of the American Convention, in the cases of minors Rafael Sánchez and Andrés Abelino Galicia Gutiérrez; (5) the rights to a fair trial and to judicial protection recognized in Articles 8 and 25 of the American Convention, in the case of all the victims, both those who were executed extrajudicially and those who were the targets of attempted extrajudicial executions; (6) also, the State is considered responsible in all these cases because it failed to comply with its obligation to respect and ensure the rights protected in the American Convention on Human Rights, as stipulated in Article 1(1) thereof.

6. The Commission is therefore recommending to the State that: (1) it conduct a thorough, impartial and effective investigation of each case to ascertain the facts in the extrajudicial executions and attempted extrajudicial executions of the victims and the attendant violations, and to punish those responsible; (2) it adopt the measures necessary for the families of the victims of the extrajudicial executions to receive prompt and sufficient compensation for the violations herein established; (3) it take the measures necessary so that the victims of the attempted extrajudicial executions receive adequate and prompt compensation for the violations herein established; (4) it effectively prevent a resurgence and reorganization of the Civil Patrols; (5) the principles upheld in the United Nations “Declaration on the right and responsibility of individuals, groups and institutions to promote and protect universally recognized human rights and fundamental freedoms” be promoted and that the necessary measures be taken for ensuring the freedom of expression enjoyed by those who work to secure respect for fundamental rights and for protecting their life and personal integrity.

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

A. Cases involving extrajudicial executions

1. Case 10.626: Remigio Domingo Morales and Rafael Sánchez

a. Facts alleged

7. On June 28, 1990, in the hamlet of Tuisquián, village of Xemal, the municipality of Colotenango, department of Huehuetenango, Remigio Domingo Morales and teenager Rafael Sánchez (15 years) were seized by Civil Patrolmen and accused of being guerrillas. Once in custody, the commander of the military base at Huehuetenango ordered the local PAC to gather everyone from the hamlet to “be present when Civil Patrolmen Nicolás Godínez, Modesto Godínez and Andrés Domingo stoned them on the commander’s orders.” The victims were taken to the Huehuetenango hospital in critical condition. According to records, the victims died from the serious injuries they sustained at the hands of their captors. The events were reported to the proper authorities and to the press.

b. Proceedings with the Commission

8. On August 17, 1990, the Commission opened case 10.626 and forwarded the pertinent parts of the petition to Guatemala, requesting that the government provide pertinent information. Guatemala supplied information on July 10, 1991 and September 26, 1994. On November 6, 1995, the petitioners filed their observations to the State’s response, which were then promptly brought to its attention. Since then, no new information has been forthcoming from either party.

9. On August 9, 1998, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement. The parties did not accept the Commission’s offer.

c. The State’s position

10. The State reported that in the instant case, "the Second Court of First Instance of the Department of Huehuetenango instituted criminal inquiry number 1261-90. A number of members of the Colotenango Civil Patrol were charged with battery and unlawful arrest...." The State requested that, in keeping with Article 46 of the American Convention, the case be declared inadmissible on the grounds that the remedies under domestic law had not been exhausted.

2. CASE 10.627: Pedro Tau Cac

a. Facts alleged

11. On July 2, 1990, in the town of Chiop, Santa María Chiquimula, Totonicapán, Pedro Tau Cac, a member of the Runujel Junam Ethnic Communities Council, was attacked while doing farm work. His assailants were men in civilian dress—presumably members of the PAC—who detained him and took him to some unknown destination. Several days later, his corpse was found in a deserted area and bore signs of torture. The facts were reported to the proper authorities and to the press.

b. Proceedings with the Commission

12. The Commission opened case 10.627 on July 17, 1990, and forwarded the pertinent parts of the petition to the State, requesting information from it. The State replied on July 10, 1991, stating that a criminal case was in progress in the domestic courts to investigate what transpired. In February 1994, the State supplied additional information. Since then no new information has been forthcoming from the parties.

13. On August 1, 2000, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement. The parties did not accept the Commission's offer.

c. The State's position

14. The State reported that proceedings had been instituted in criminal inquiry number 574-90 in the Totonicapán Court of First Instance and that the Commission should declare this petition inadmissible because the remedies under domestic law had not been exhausted.

15. In 1994 the State reported that Mr. Pedro Tau Cac:

... was a member of the Runujel Junam Ethnic Communities Council [Consejo de Comunidades Étnicas Runujel Junam] (CERJ) and a member of the Civil Patrols in 1988.

As to the instant case, it was established that Mr. Pedro Tau Cac was indeed apprehended at around 7:00 a.m. on July 2, 1990, in the place known as Chabaj in the Racana Canton in the municipality of Santa María Chiquimula, department of Totonicapan, by a group of approximately ten heavily armed men. They were wearing masks and dressed in red and green uniforms similar to those worn by soccer players. At the time, Mr. Pedro Tau Cac was working

his land in that area. José Pedro Tau Chivalan and María Tau Chivalan, children of the deceased, and Mr. Domingo Uz Lux, his son-in-law, went to the National Police in that department to file the proper complaint concerning the disappearance of Mr. Tau Cac.

On July 4, 1999, the body of an unidentified male was found in the hamlet of Chicox, Rancho de Teja canton, municipality of San Francisco El Alto, department Totonicapan. The justice of the peace for the district went to the scene and ordered that the body be moved to the morgue of the local hospital. The deceased's next-of-kin identified the body as that of Mr. Pedro Tau Cac. The next-of-kin did not file any complaint with the proper authorities at that time.

The forensic physician found signs of strangulation on the body; the feet and hands had been tied. Mr. Pedro Tau Cac died of asphyxiation by strangulation, fourth-degree closed thoracic abdominal trauma. Also, a note was found in his left pant pocket stating the following: "For betraying our organization."

3. CASE 11.198: José María Ixcaya et al

16. In the instant case, a total of 12 extrajudicial executions were alleged, all of which occurred between 1990 and 1991 in different places in Guatemala. The material authors in all the cases were alleged to be members of the PAC or military commissioners.

a. Facts alleged

José María Ixcaya Pixtay

17. José María Ixcaya Pixtay was the victim of extrajudicial execution in Sololá on May 1, 1990. On the day he was executed, José María Ixcaya left his home at around 5 a.m. He was headed for Guatemala City, where he was to participate in a May Day demonstration. As he was leaving his home, several men stepped out of the bushes and shot him, killing him instantly.

18. Prior to his death, Mr. Ixcaya Pixtay had been an active member of the Runujel Junam Ethnic Communities Council [Consejo de Comunidades Etnicas "Runujel Junam"] (CERJ) and had received numerous death threats from Jesús Chopen, chief of the local PAC, and Bernardino Samines, La Fe military commissioner. Jesús Chopen accused Ixcaya of being a guerrilla because he had resigned from the Civil Patrol and because "people like Ixcaya who get involved in human rights are the guerrilla movement's chief mouthpiece."

19. Two days after the killing, Marcela Guarcax Morales, Ixcaya's wife, was told by witnesses that Jesús Chopen, Bernardino Samines, and two members of the PAC, Gaspar Morales and Santos Vicente, were among the killers.

20. Marcela Guarcax Morales reported her husband's murder to the Human Rights Ombudsman on May 9, 1990. Pedro Ixcaya Cuc, José María's cousin, also present on the day of the killing, reported it as well. But because of the complaint they had filed, Marcela Guarcax and Pedro Ixcaya received multiple threats from Civil Patrolmen.[FN3]

[FN3] For example, Pedro Ixcaya Cuc began receiving threats immediately after reporting the murder of his cousin, José María Ixcaya. Jesús Chopen and Bernardino Samines went to the Office of the Human Rights Ombudsman after Pedro Ixcaya filed his complaint on May 14, 1990. They wanted information about the complaint and were told that Ixcaya Cuc had submitted a list of 38 people involved in his cousin's extrajudicial execution. After visiting the Ombudsman's office, Chopen and Samines called a meeting of the 38 persons whose names were on the list, along with other people and Army personnel. At the meeting, Chopen, Samines and others spoke against Pedro Ixcaya Cuc, saying he was bad and a guerrilla. Many of those at the meeting then went and surrounded Pedro Ixcaya's house, although he was not at home at the time. On May 30, members of the local Civil Patrol called a meeting to discuss the matter of Pedro Ixcaya. There, CERJ members were interrogated and admitted that Ixcaya had sought refuge in the CERJ offices in El Quiché. After the meeting, Domingo Cuc Ixcaya and José Pax and the La Fe military commissioners went to El Quiché to pick up Pedro Ixcaya.

José Vicente García

21. José Vicente García, a member of the Runujel Junam Ethnic Communities Council (CERJ), was the victim of an extrajudicial execution in San Pedro Jocopilas, El Quiché, on April 10, 1990. That day, José Vicente García had left home at 9:30 a.m., accompanied by his wife, Juana Sarat Ixcoy, their son, Pedro Vicente Sarat, and his sister-in-law, Cratina Ixchop Ixcoy. As they were approaching the San Pedro/La Montaña line, two men appeared and shot Vicente García four times in the head, killing him instantly. The two men fired several more shots, threatening the family members who were present. The death certificate lists a skull fracture and cerebral hemorrhage as the cause of death.

22. For more than three years, Mr. Vicente García had been receiving death threats from members of the local Civil Patrol (PAC), threats he had repeatedly reported to the Human Rights Ombudsman. Starting in 1987, Mr. García received a number of threats from Francisco Ixcoy and Santiago Natareno, chief of the local PAC. They accused him of being a guerrilla for refusing to serve in the PAC. In 1987, Mr. García had been detained by members of the PACs and taken to the San Pedro Jocopilas military base, where he was held for one day. There he was accused of being a guerrilla and subsequently tortured. On May 30, 1989, a group of men belonging to the PAC surrounded the victim's house and fired into the air as a way to intimidate him. José Vicente García filed complaints with the office of the Ombudsmen about every incident, but never received any response.

23. On April 11, 1990, Juana Sarat Ixcoy, Catarina Ixchop Ixcoy, Pedro Pérez López, and Cristóbal Uz López filed a complaint concerning the execution of José Vicente but received no response.

Mateo Sarat Ixcoy

24. Mateo Sarat Ixcoy was extrajudicially executed sometime around October 30, 1990. His death certificate states that "multiple machete wounds to the neck resulted in decapitation." It appears that no official investigation of the murder was ever conducted.

25. Mateo Sarat Ixcoy, of San Pedro Jocopilas, was José Vicente García's friend; the same PAC members had frequently accused him of being a guerrilla, just as they had accused García. After the killing of Mr. Vicente García in April 1990, Mateo Sarat Ixcoy went to the PAC office to confront Cristo Tau, chief of the PAC, about his friend's execution.

Celestino Julaj Vicente

26. Mr. Celestino Julaj Vicente, a member of the Runujel Junam Ethnic Communities Council (CERJ), was the victim of an extrajudicial execution on June 28, 1991. On the date of the extrajudicial execution, Julaj Vicente, his wife, María Lolmet Xam, and their daughter, had been away from home all day. When the family returned home in the evening, Celestino was attacked by an unknown assailant, who threw him to the floor and shot him.

27. Mr. Julaj Vicente had retired from the PAC on September 3, 1988. Because of that, however, shortly thereafter he began receiving death threats from Pedro López Ajiataz, chief of the local PAC.

Miguel Calel

28. In San Pedro Jocopilas, El Quiché, Mr. Miguel Calel was extrajudicially executed by members of the PAC on April 19, 1991. Before his death, Mr. Calel had received death threats from members of the PAC because he did not want to participate in these groups.

Pedro Raguez

29. Pedro Raguez, of San Pedro Jocopilas, El Quiché, dropped out of the Civil Patrols and moved to Guatemala City to avoid their harassment. He was killed by PAC chiefs on April 10, 1992, when he returned to his town to visit his family. The complaint concerning his execution was filed by Amilcar Méndez, but elicited no reaction. No official investigation has ever been conducted into this case. No one has been indicted or tried for the murder.

Pablo Ajiataz Chivalán and Manuel Ajiataz Chivalán

30. On March 15, 1991, in Santabal I, in San Pedro de Jocopilas, El Quiché, the brothers Pablo Ajiataz Chivalán and Manuel Ajiataz Chivalán were the victims of extrajudicial execution. Prior to their deaths, the two men had been harassed and had received repeated death threats from the chief of the local PAC, who accused them of being guerrillas because of their refusal to serve in the PAC.

Catrino Chanchavac Larios

31. Mr. Catrino Chachavac Larios was decapitated in the hamlet of San Pablo, San Pedro Jocopilas, El Quiché, on August 26, 1992. Before his death, he had received death threats from the patrol chief for the neighboring town, Santabal II, because of his refusal to serve in the PAC.

Miguel Tiu Imul

32. On November 30, 1991, Mr. Miguel Tiu Imul was the victim of an extrajudicial execution, just 30 meters from his home in Canton de las Montañas, Parraxtuut, Sacapulas. In July 1991, Miguel Tiu Imul had stopped serving in the patrol because he was 65 and was no longer physically fit for service.

33. Imul's family accused military commissioners and patrol chiefs Domingo Castro Lux, Pedro Ixcotoyac, Juan Lux Castro and Juan de León Peres of having committed the murder since they had sent him death threats in the past.

34. The PAC chiefs had harassed Mr. Tiu for years. In July 1987 they and the military commissioners seized him and took him to the Chiul military base where soldiers and officers tortured and interrogated him for three days. Two days later, 50 soldiers arrived at his home and beat him savagely.

Camilo Ajqui Gimon

35. Camilo Ajqui Gimon, a member of the CERJ, was executed extrajudicially in Zacualpa, on April 14, 1991. Three unknown men took him from his home that day and killed him shortly thereafter. Mr. Ajqui had once been a member of the PAC and since leaving had received multiple death threats from PAC members because he had stopped serving in the PAC and was a member of the CERJ.

Juan Tzunux Us

36. In Zacualpa on November 27, 1990, Mr. Juan Tzunux Us was extrajudicially executed by members of the local Civil Patrol. Mr. Tzunum Us had fled to the United States in the early 1980s because he had been accused of being a guerrilla and was in fear for his life and his personal safety. He was extrajudicially executed the very day he returned to Zacualpa from the United States.

b. Proceedings with the Commission

37. The Commission opened case 11.198 on December 9, 1993. The petition alleged violations of the human rights of 77 people. The Commission forwarded the pertinent parts of the petition to the State and requested relevant information from it. On December 19, 1994, the State supplied general information on the case, which was promptly forwarded to the petitioners. Guatemala also pointed out that a case had already been instituted with the Commission in the case of some of the persons named in this case. In April 1995, the petitioners made general observations on the State's response. On June 14, 1995, the State reiterated its earlier response. Since then, no new information has been forthcoming from the parties.

38. On October 6, 1995, the Commission informed the parties that it had decided to combine case 11.198 with cases that it was already hearing whose facts were the same as the facts alleged in this case. The cases in question were: case 10.857 (Manuel Ajtataj Chivalán and Pablo Ajtataj Chivalan), case 10.874 (Miguel Calel) and case 10.909 (civilian population of Canjabal).

39. On December 9, 1998, the Commission requested additional information from the parties and placed itself at their disposal with a view to reaching a friendly settlement. The parties did not supply information and did not accept the Commission's offer.

40. On December 8, 2000, the Commission, pursuant to Article 40 of its Regulations, decided to divide case 11.198 in two: case 11.198(A) for petitions alleging extrajudicial executions, and case 11.198(B) for those alleging violations of a different nature.

c. The State's position

41. On December 9, 1994, the State provided general information on the case and made allusion to the origins and nature of the Civil Patrols and the role they played within Guatemala's armed internal conflict. Guatemala asserted that:

The Government of Guatemala is petitioning the Inter-American Commission on Human Rights to refuse to admit this case for the reasons explained herein and because it does not meet the standard of exhaustion of domestic remedies. The obligation to report the commission of a crime, stipulated in both Article 331 of the repealed Code of Criminal Procedure[FN4] and Article 297 of the current Code of Criminal Procedure, was not fulfilled, which is why the proceedings required under Guatemalan law were never instituted.

[FN4] Congressional Decree 52-73, the law in effect as of the date the facts alleged were committed.

The petitioners filed a complaint concerning the alleged human rights violations with the Human Rights Ombudsman. However, they never exhausted the remedies under domestic law. "The Human Rights Ombudsman is appointed by the Congress to defend the human rights that the Constitution guarantees"[FN5] and "he has legal personality, is not subordinate to any organ, institution or official in this matter, and will act with absolute independence, except where the present law stipulates otherwise." [FN6] In other words, while the Office of the Human Rights Ombudsman is an independent institution, it has no adjudicatory function since under the Constitution, that function is the exclusive and absolute purview of the Supreme Court of Justice and other courts that the law establishes.

[FN5] Article 273 of the Constitution of the Republic.

[FN6] Article 8 of the Congressional Human Rights Commission and Human Rights Ombudsman Act.

B. Cases of attempted extrajudicial execution

1. CASE 10.799: Catalino Chochoy, José Corino Teshen and Abelino Baycaj

a. Facts alleged

42. On January 31, 1991, one military commissioner and armed men in civilian dress and driving vehicles with tinted glass, shot and seriously wounded farm workers Catalino Chochoy, José Corino Teshen and Abelino Baycaj, in the municipality of Santo Domingo Xenacoj, department of Sacatepéquez, in an attempt to press them into military service. Relatives and friends immediately took the wounded to the hospital in Antigua Guatemala. According to the petition, these facts were brought to the attention of the proper judicial authorities and the local press.

b. Processing with the Commission

43. The Commission opened case 10.799 on February 27, 1991, and forwarded the pertinent parts of the petition to the State, with the request that it supply relevant information. The State supplied the requested information on September 9, 1991, which was promptly brought to the petitioners' attention. On January 8, 1993, the petitioners submitted their observations on the State's response. The State supplied additional information on March 22, 1993 and March 29, 1994.

44. On August 3, 2000, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement. The parties did not accept the Commission's offer.

c. The State's position

45. In its first communication (September 9, 1991), the State petitioned the Commission to declare the case inadmissible. It argued that the remedies of domestic law had not been exhausted inasmuch as the facts alleged in the petition were the subject of criminal inquiry number 184-91, currently before the Sacatepéquez Criminal Court of First Instance.

46. In its second communication (March 29, 1994), the State reported the following: "The crime being prosecuted was determined to be severe battery. The person charged with the crime was Juan Francisco Farelo Ortíz. The Office of the State's Attorney was present at the proceedings because it had learned of the summary inquiry ... Mrs. Catalino Chocoy and Mr. Abelino Bayjac Chile, the aggrieved parties in the forced recruitment, stated that they were shot by military commissioners, a fact corroborated in a statement that eyewitnesses to the attack gave to the mayor of the town in which the incident occurred. Although on February 18, 1993, the judge hearing the case ordered the suspect taken into temporary custody, thus far the State has been unable to apprehend the person in question. At the present time, the proceedings are in the investigative stage; prosecution of the case will continue once the suspect is brought before the court by the competent authority."

2. CASE 10.751: Juan Galicia Hernández, Andrés Abelino Galicia Gutiérrez and Orlando Adelso Galicia Gutiérrez

a. Facts alleged

47. On November 25, 1990, in the hamlet of El Chiltepe, town of Buenos Aires, department of Jutiapa, Mr. Juan Galicia Hernández and his sons Andrés Abelino Galicia Gutiérrez (22) and Orlando Galicia Gutiérrez (15) were shot and seriously wounded as they were working in the fields. Their assailants were PAC members in civilian dress, who proceeded to ransack the Galicia Gutiérrez family home. Family and friends immediately took the wounded to the regional hospital at Cuilapa, Santa Rosa. The facts were reported to the proper authorities and the press.

b. Proceedings with the Commission

48. The Commission opened case 10.751 on December 12, 1990, and forwarded the pertinent parts of the petition to the State, with the request that it supply pertinent information. The State's response of August 28, 1991, was promptly forwarded to the petitioners. On August 11, 1993, the petitioners sent their observations to the State's response. Additional information was requested from the State on August 20, 1993, September 25, 1995, and April 3, 1996, but it never responded.

49. On August 3, 2000, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement. The parties did not accept the Commission's offer.

c. The State's position

50. In its first and only communication (August 28, 1991), the State petitioned the Commission to declare the case inadmissible on the grounds that the remedies under domestic law had not been exhausted. It stated that the facts reported in the petition were being investigated by the Second Court of First Instance of the department of Jutiapa, as case 2715/90. The inquiry was instituted pursuant to a complaint filed on December 11, 1990, in which Mr. Raquel Hernández García was directly accused of being the guilty party. After this initial brief response, no further information from the State was forthcoming.

3. CASE 10.901: Antulio Delgado

a. Facts denounced

51. Military commissioners shot and seriously wounded Mr. Antulio Delgado at his home in San Rafael Pie de la Cuesta, San Marcos, May 29, 1991. Family members took Mr. Delgado to the San Marcos hospital immediately. The day before the attempt on his life, the court had ordered the victim's release when he was arrested and jailed by the very same military commissioners who then attempted his extrajudicial execution. A complaint was filed with the proper authorities and the events were reported to the press.

b. Proceedings with the Commission

52. The Commission opened case 10.901 on June 18, 1991. It forwarded the pertinent parts of the petition to the State and asked that the latter supply relevant information. The Commission repeated its request on March 5, 1992 and December 9, 1998. The State has never supplied the requested information.

53. On December 9, 1998, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement, but the offer was not accepted.

c. The State's position

54. Guatemala never supplied information on this case.

III. ADMISSIBILITY

A. Competence

55. The Commission has *prima facie* competence to take up the petitions in question. At the time the facts recounted in the petitions were alleged to have occurred, the obligation to respect and ensure the rights recognized in the American Convention was already incumbent upon the State.[FN7]

[FN7] Guatemala ratified the American Convention on Human Rights on May 25, 1978.

B. Admissibility requirements

1. Exhaustion of the remedies under domestic law and time periods for filing petitions

56. Article 46 of the American Convention stipulates that for a case to be admitted, “the remedies under domestic law [must] have been pursued and exhausted in accordance with generally recognized principles of international law.” It further stipulates a number of exceptions to the rule when domestic remedies are not available either as a matter of law or as a matter of fact.[FN8]

[FN8] 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.

57. To mount a valid challenge to the admissibility of a petition, the State in question must promptly and expressly invoke the standard of exhaustion of remedies under domestic law. Under principles of international law and international practice, the standard 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.”[FN9]

[FN9] IACtHR, Fairen Garbi and Solís Corrales Case (Merits), Judgment of March 15, 1989, Ser. C No. 6, para. 109. See also, *inter alia*, Viviana Gallardo et al Case, Judgment of November 13, 1981, N° 101/81, Ser. A, para. 26; Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, Ser. C N° 1, para. 88; Fairén Garbi and Solís Corrales Case, Preliminary Objections, Judgment of June 26, 1987, Ser. C No. 6, para. 87; Godínez Cruz Case, Preliminary Objections, Judgment of June 26, 1987, Ser. C No. 3, para. 90; Gangaram Panday Case, Preliminary Objections, Judgment of December 4, 1991, Ser. C No. 12, para. 38; Neira Alegría et al Case, Preliminary Objections, Judgment of December 11, 1991, Ser. C No. 13, para. 30.

58. In the various combined cases covered in this report, the State’s contention is that the Commission should declare them inadmissible either because the allegations made are already before the domestic courts or because no complaint was ever filed with the proper local authorities, from which it infers that in none of the hypothetical situations posited were the remedies under domestic law exhausted as required under Article 46 of the American Convention.

59. For their part, when they filed their petition with the Commission the petitioners argued that the exceptions allowed to the rule requiring exhaustion of domestic remedies applied since in “Guatemala, it is extremely difficult, if not impossible, to obtain legal redress in cases that concern human rights violations, like the ones presented here. The judiciary has shown no political inclination to prosecute those who commit such abuses.” The petitioners further note that in those cases that were reported to the judicial authorities, remedies have been ineffective.

60. Because the parties differ as to the need to exhaust the remedies under domestic law and the pertinence of those remedies, the analysis of exhaustion of domestic remedies must focus on whether the facts alleged are covered by any of the exceptions allowed under Article 46(2) of the American Convention to the rule requiring exhaustion of local remedies.

61. Article 46(2) of the Convention provides that the exception will apply if the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; if the party alleging violation of his rights has been denied access to the remedies under domestic law; or if there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

62. As noted earlier, the State’s position is that some of the cases should be declared inadmissible because they are still before the domestic courts for adjudication.

63. The information in the Commission’s possession indicates that in some of the cases covered in this report, petitions filed with the Guatemalan courts languished there for nine to ten years before a formal criminal inquiry was instituted. Nor is there any record of a final judgment

being handed down establishing the facts, determining blame and giving the affected parties redress. The amount of time that has passed since these criminal proceedings were instituted necessarily raises the question of the unwarranted delay referred to in Article 46(2)(c). While every criminal investigation poses requirements unique to it, “[t]he rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the [alleged] defenseless victim ineffective...”[FN10]. As a general rule, a criminal investigation must be conducted swiftly, not just to protect the victim’s interests but also to safeguard the rights of any person who might become a suspect during the course of the investigation. The Commission considers that the time elapsed since proceedings were instituted in the cases filed with the courts qualifies them for the unwarranted delay exception allowed under Article 46.

[FN10] IACtHR, Velásquez Rodríguez Case, Preliminary Objections, *supra*, para. 93; Fairén Garbi and Solís Corrales Case, Preliminary Objections, *supra*, para. 92; Godínez Cruz Case, Preliminary Objections, *supra*, para. 95.

64. Another factor that has to be considered is whether, at the time the events in question occurred, judicial remedies were available in Guatemala that were effective in addressing complaints of human rights violations, especially violations of the right to life. Yet another factor is how, on the whole, the Guatemalan judiciary at that time responded to cases of human rights violations.

65. In its annual reports for 1990-1991 and 1991, the Commission expressed grave concern over extrajudicial executions and torture in Guatemala and the judiciary’s inability to respond.[FN11] The Commission went on to note that the judicial proceedings in connection with such violations typically are not an “exhaustive investigation that seeks to identify and penalize the guilty parties in accordance with the gravity of the acts.”[FN12]

[FN11] See, in general, IACHR, Annual Report of the IACHR 1990-91, OEA/Ser.L/V/II.79. rev.1, Doc. 12, 22 February 1991, Chapter IV, “Guatemala”, p. 444 et seq., Annual Report of the IACHR 1991, OEA/Ser.L/V/II.81, Doc. 6 rev. 1, February 14, 1992, Chapter IV, “Guatemala”, p. 204 et seq.

[FN12] IACHR, Annual Report 1991, *supra*, p. 210.

66. The United Nations Independent Expert for Guatemala described the response of the national police and the judiciary to violations of the right to life during that period as “highly unsatisfactory.”[FN13] In the case of judicial investigations, “in most cases the courts or the security agencies did not succeed in identifying the culprits. In the few cases in which the presumed culprits are identified, no judicial penalty is imposed, thereby allowing the feeling of impunity to persist.”[FN14]

[FN13] “Report of the [United Nations’] Independent Expert, Mr. Christian Tomuschat, on the human rights situation in Guatemala” [hereinafter “Tomuschat Report 1992”], E/CN.4/1992/5, January 21, 1992, para. 189.

[FN14] Ibid, para. 140.

67. The Commission for Historical Clarification said as much when it asserted that in the 1986-1996 period “the courts were incapable of investigating, indicting, prosecuting and punishing even a handful of those responsible for the most heinous human rights crimes, or of affording the victims protection.”[FN15] It said that “because of its deliberate or provoked inefficacy, the country’s judicial system failed to guarantee compliance with the law; it tolerated and even abetted the violence...”.[FN16]

[FN15] Commission for Historical Clarification, Guatemala, Memoria del Silencio [“Memory of the Silence”, hereinafter referred to as the “CEH Report”], “Las Violaciones de los Derechos Humanos y los Hechos de Violencia” [Human Rights Violations and Acts of Violence], Vol. III, p. 151. The mandate given to the Commission for Historical Clarification at the time it was established was “to shed as objective, fair and impartial a light as possible on the human rights violations and acts of violence that have caused so much suffering among the Guatemalan people in connection with the armed conflict”, to issue a report on its investigations and findings; and “to make specific recommendations calculated to foster peace and national comity in Guatemala...”.

[FN16] CEH Report, “Conclusions and Recommendations”, para. 10.

68. As this Commission has already reported, and as other reliable sources have confirmed, during that period fear was widespread not just among the population affected by the human rights violations but also among judges and other officers of the court. The result was that aggrieved parties or their agents did not have real access to the remedies under domestic law. In its 1989-1990 report, the Commission found that “judges of this system simply do not conduct thorough investigations because they have been terrorized by what has happened to others who have performed investigations and acted bravely against terrorism. As a result, these judges have become victims...”[FN17] Similarly, the Commission for Historical Clarification found that a number of the individuals who participated in judicial proceedings were threatened and attacked, which precipitated an atmosphere of intimidation and “exacerbated the courts’ inaction and impunity.”[FN18]

[FN17] CIDH, Annual Report of the IACHR 1989-1990, OEA/Ser.L/V/II.77 rev. 1, Doc. 7, May 17, 1990, p. 157.

[FN18] CEH Report, “Las Ejecuciones Arbitrarias” [Arbitrary Executions], Chapter II, Vol. 2, para. 356.

69. With circumstances as they were, the remedies under Guatemalan domestic law were neither adequate nor effective during the period when the events alleged occurred. A remedy is adequate when its function within the domestic legal system is suitable to address an infringement of a legal right.[FN19] As for the efficacy of a remedy, the Court has held that a remedy is effective when it is “capable of producing the result for which it was designed. Procedural requirements can make the remedy of habeas corpus ineffective: it is powerless to compel the authorities; if it presents a danger to those who invoke it; or if it is not impartially applied.”[FN20] The Court has also held that “[I]t is a different matter, however, when it is shown that remedies are denied for trivial reasons or without an examination of the merits, or if there is proof of the existence of a practice or policy ordered or tolerated by the government, the effect of which is to impede certain persons from invoking internal remedies that would normally be available to others. In such cases, resort to those remedies becomes a senseless formality. The exceptions of Article 46(2) would be fully applicable to those situations and would discharge the obligations to exhaust internal remedies since they cannot fulfill their objectives in that case.”[FN21]

[FN19] IACtHR, Velásquez Rodríguez Case, Judgment of July 29, 1988, paras. 56-68; Fairén Garbi and Solís Corrales Case, Judgment of March 15, 1989, paras. 80-88 and 90-93 92; Godínez Cruz Case, Judgment of January 20, 1989, paras. 59-70; 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 34.

[FN20] Ibid.

[FN21] Ibid.

70. As for the State’s argument that many of the situations described in case 11.198 were never reported to the local authorities and therefore the remedies under domestic law had not been exhausted, the Commission has observed that the atmosphere among the Guatemalan people at that time was one of widespread fear.[FN22] The United Nations Independent Expert for Guatemala found at the time that “the main feature of Guatemalan society today is still the state of fear in which everybody lives.”[FN23] Victims of human rights violations, their families and friends were often afraid to denounce the violations in court and, “in the few cases in which an investigation was launched, many witnesses and attorneys refused to participate in open proceedings against members of the Army or any other State institution.”[FN24] Then, too, “[m]any judges were forced to give up their independence as the first step to avoid being killed.”[FN25]

[FN22] IACHR, Annual Report of the IACHR 1989-1990, OEA/Ser.L/V/II.77 rev. 1, Doc. 7, 17 May 1990 and CEH Report.

[FN23] “1992 Tomuschat Report”, para. 184.

[FN24] Ibid, paragraphs 356-57.

[FN25] Ibid, para. 357.

71. This widespread fear of bringing complaints in courts at the time was all the greater in cases involving acts perpetrated by Civil Patrols or military commissioners, given the social phenomenon that their existence represented and the manner in which these organizations operated and acted. As will be explained later in this report, the main purpose of the PAC was to marshal the civil populace against the guerrilla movements and to gain physical and psychological control over the population.[FN26] The physical and psychological control that the PAC exerted over the communities in which they operated and their link to the army created a fear, especially in rural areas, of filing complaints with the authorities concerning the human rights violations the PACs committed. Those who did dare to report them were immediately classified as guerrilla sympathizers at best and hostile to the army; they were thought of as targets of reprisals, and frequently were.

[FN26] CEH Report, p 187, para. 1282.

72. With circumstances as they were, the victims of human rights violations, their relatives and friends who did not file complaints in the domestic courts were afraid, since it could be perilous for them. For this reason, the Commission concludes that de facto circumstances rendered the remedies ineffectual, thus triggering the exception contemplated in Article 46(2) of the Convention. The interested parties are therefore discharged from their obligation under the rule requiring exhaustion of the remedies under domestic law. The Inter-American Court of Human Rights has held that the rule requiring exhaustion of domestic remedies does not demand that a remedy be invoked when the remedy has no chance of prospering or when to do so would put the petitioner's life in jeopardy.[FN27]

[FN27] See, IACtHR, OC-11/90, *supra*, paragraphs 33-34; see, for example, IACHR, Report 6/94, Case 10.772, El Salvador, published in the Annual Report of the IACHR 1993, OEA/Ser.L/V/II.85, Doc. 9 rev., February 11, 1994, pp. 181, 185-186.

73. The Commission therefore finds that in the period during which the events occurred, the judicial system in Guatemala was not an effective tool for protecting the fundamental rights of the citizenry; instead, in many cases it became a fundamental link in creating the prevailing climate of impunity. Furthermore, at the time there was widespread fear of denouncing human rights violations, since complainants could face terrible consequences. One can conclude, therefore, that de facto circumstances were present that prevented the aggrieved and their agents from availing themselves of the remedies under domestic law. Hence, those remedies did not have to be exhausted. For that reason, and because those internal remedies that were instituted have been subject to unwarranted delay, the Commission concludes that the exception to the rule requiring exhaustion of local remedies established in Article 46 of the Convention does not apply.

2. Deadline for presentation

74. According to Article 46(1)(b) of the Convention, petitions must be lodged within six months from the date on which the party alleging violation of his rights was notified of the final judgment handed down at the domestic level. This rule guarantees legal certainty and stability once a decision is adopted. Absent a final judgment, as in the cases covered in this report, Article 46(2) stipulates that the six-month rule does not apply when there is no final judgment because due process was not afforded, access to remedies under domestic law was denied or a final judgment has been unduly delayed. In such cases, Article 38 of the Commission's Regulations stipulates that the deadline for presentation of a petition "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."

75. The Commission considers that with the climate of fear prevalent among the people at that time and because of the impunity and the inefficacy of the judicial system for investigation of the human rights violations and punishment of the guilty parties, the petitions in these cases were presented on time and within a reasonable period of time. Considering these factors, the Commission finds that the rule requiring timely presentation was fulfilled.

3. Characterization of the facts alleged

76. Under Article 47 of the American Convention, a petition is inadmissible if it does not meet the requirements stipulated in Article 46, or if it (1) does not state facts that tend to establish a violation, or (2) is manifestly groundless. Each of the cases under study concerns, *inter alia*, extrajudicial execution, unlawful detention, and an attempt against the physical integrity of one or more persons, perpetrated by Civil Patrolmen or military commissioners, organizations acting under the auspices and with the tolerance of the State, as will be shown. Because these aspects of the petitions do not appear to be without grounds or out of order, the Commission considers them admissible in accordance with the requirements established in Article 47(b) and (c) of the American Convention.

4. Duplication of proceedings and res judicata

77. Nothing in the case file suggests that the subject of the petition is pending in another international proceeding for settlement or that it is substantially the same as one previously examined by the Commission or by another international organization. Therefore, the requirements stipulated in Articles 46(1)(c) and 47(d) of the Convention are satisfied.

IV. FRIENDLY SETTLEMENT

78. In accordance with Article 48(1)(f) of the Convention, in each of the cases under examination, the Commission placed itself at the disposal of the interested parties with a view to finding a friendly settlement based on respect for the human rights upheld in the American Convention. None of the parties expressed any interest in instituting the procedure within the time frame given. Therefore, since the parties were given the opportunity to avail themselves of the procedure and effectively declined it, the Commission will now examine the merits of the matter in this report.

V. ANALYSIS OF THE MERITS

A. Initial considerations

79. As previously stated, the Commission decided to combine the cases under study in this report, since the facts alleged by the petitioners are extrajudicial executions and attempted extrajudicial executions alleged to have been committed by members of the so called Civil Patrols or military commissioners, all under similar circumstances and within the same time period. This analysis cannot discount the overall scenario as regards the right to life during the period in question and the social phenomenon that the Civil Patrols represented in Guatemala.

80. Violations of the right to life in the form of extrajudicial executions and assaults perpetrated by agents of the State were common in Guatemala from 1990 to 1992. This section is a general account of the origin, objectives and functioning of the PACs, the extrajudicial executions during that period, and a brief examination of the characteristics of that practice and the types of persons selected as victims.

1. The Civil Patrols (PAC)[FN28]

81. The Civil Patrols emerged in the early 1980s as groups of civilians organized “forcibly by the military, which wanted to isolate the guerrilla movement and control its communities.”[FN29] In April 1983, Government Agreement 222-83 legally recognized them by creating the Office of the National Chief of Civil Defense Coordination and Control.[FN30]

[FN28] For a more in-depth analysis of the Civil Patrols, see: Decree-Law 19-86, January 10, 1986; Guatemalan Congressional Decree 143-96 of November 28, 1996; Peace Agreements, 1996-1998, Agreement on the Strengthening of the Civil Authority and Function of the Army in a Democratic Society, September 19, 1996; Persecution by Proxy: The Civil Patrols in Guatemala. The Robert F. Kennedy Memorial Center for Human Rights, 1993; Institutional Violence: Civil Patrols in Guatemala, 1993-1994. The Robert F. Kennedy Memorial Center for Human Rights, 1994; Civil Patrols in Guatemala. An Americas Watch Report, 1988; Closing the Space: Country Reports on Human Rights Practices; Annual Reports of Amnesty International, 1984, 1985 and 1986; Report of the Working Group on Forced or Involuntary Disappearances, United Nations Human Rights Commission, 1993; Report of the Working Group on Forced or Involuntary Disappearances, United Nations Human Rights Commission, 1991; Commission for Historical Clarification, Guatemala, Memoria del Silencio, Human Rights Office of the Archdiocese of Guatemala, Report Inter-diocesan Project to recover the memory of the past, Guatemala Nunca Mas [hereinafter, “ODHAG, Guatemala Nunca Más”].

[FN29] CEH Report, “Las Patrullas de Auto Defensa Civil” [The Civil Patrols], Volume II, p. 182.

[FN30] In fact, the PAC have existed since 1981 and operated in conjunction and in coordination with the Army on the Victoria 82 and Firmeza 83 campaign. See Diario de Centro América, April 14, 1983.

82. Under that agreement, the PAC were hierarchically subordinate to the military authorities. The first paragraph in the preamble of the Agreement states that “to protect the

honorable and hardworking people of the country from the destruction wrought by the subversive movement, the Guatemalan Army has organized the PAC, especially among the towns in the country's interior." The second paragraph of the preamble states that "in order to regulate the organization, operation and control of the PAC, the proper head office must be created with nationwide jurisdiction. The necessary legal document so ordering must be decreed to that end." Article 2 states that the Minister of National Defense will issue a body of regulations and the orders he deems appropriate to organize and operate the head office created under that decree.[FN31]

[FN31] For its part, Decree 160-83 created the Fund for Military Protection for Civilian Defense, "for the sole purpose of providing economic assistance, in the event of death, to personnel of the PAC, provided the member dies in the line of duty, as certified by the Chiefs of Staff of National Defense."

83. In 1986, under Decree Law 19-86, the PAC came to be called "Voluntary Civil Defense Committees." As noted, "the change was in name only, since the purpose of these organizations continued to be the same; they continued to be part of the Army's counterinsurgency effort and their members remained entirely answerable to the military." [FN32] The United Nations Independent Expert for Guatemala found that "Contrary to what is indicated by the official name of the Voluntary Self-defense Committees, many inhabitants of the rural areas continue to be compelled to join the ranks of what are in fact patrols, which have become an institutionalized element of uncontrollable violence..." [FN33]

[FN32] CEH Report, "Las Patrullas de Auto Defensa Civil" [The Civil Patrols], Volume II, p. 184.

[FN33] Tomuschat Report 1992, para. 193.

84. Decree 143-96 officially disbanded the PACs in 1996, pursuant to the "Agreement on the Strengthening of the Civil Authority and Function of the Army in a Democratic Society." [FN34]

[FN34] Guatemalan Congressional Decree 143-96, November 28, 1996, rescinded Decree Law 19-86, which legally established the Civil Defense Committees; one paragraph of the preamble to that decree states the following: "Some Civil Patrols, now called the voluntary civil defense committees, have strayed from their original purpose over the years... performing missions that properly pertain to the regular organs of the State; in exceeding their authority, members of those committees repeatedly perpetrated human rights violations."

85. The PACs were thus a paramilitary force, established by law, and always answerable to the Army. "Their operations were always planned and controlled by the military." [FN35]

[FN35] CEH Report ‘Las Patrullas de Auto Defensa Civil’ [The Civil Patrols], Volume II, p. 200.

86. The main objectives of the PAC were to marshal the civilian population against the guerrilla movements and to gain physical and psychological control over the population. The PAC phenomenon thus had an enormous impact on Guatemalan social structures, especially in rural areas where the majority are indigenous people.[FN36]

[FN36] ‘Furthermore, the coercive methods used to form the PAC in the Mayan communities undermined the latters’ system of authorities and institutions, their mechanisms for social control, the rules and procedures they used to regulate society and to settle conflicts. In so doing, they altered the Mayan communities’ social, economic, religious and cultural values. Compulsory participation in the PAC, with long shifts that cut into the daily activities of the patrolmen and the communities, altered social life as a whole... As the PAC modus operandi, patrolmen were required to make lists of alleged ‘enemies’, give information, hand over suspects, turn in neighbors or family members. The effect was to break down ties of community solidarity and create conflict, thereby seriously affecting the integrity of indigenous and rural communities.’ See, CEH Report. Volume II.

87. The Guatemalan population was heavily involved in the PAC system. ‘There are no official figures on the number of men in the PAC. However, around 1982-1983 they numbered some 900,000 campesinos between the ages of 15 and 60; this was some 80% of the male population in indigenous rural areas. Under the administration of Vinicio Cerezo (1986-1990) PAC membership dropped to 500,000, and was at around 375,000 by the time of their dissolution.’[FN37]

[FN37] Human Rights Office of the Archdiocese of Guatemala, Report Interdiocesan Project to Recover the Memory of the Past, Guatemala Nunca Más (hereinafter ‘ODHAG, Guatemala Nunca Más’), Volume II, p 119.

88. The members of the PAC, known as ‘patrulleros’ [patrolmen], were answerable to the patrol officer or chief. The vast majority of these patrol officers or chiefs were appointed by the military commanders in their jurisdictions. Pro-military communities nominated their own patrol chiefs. In either case, however, ‘the appointment had to be cleared by the military commander for the area.’ ‘Patrolmen were registered by means of an identification card issued at the military posts.’ The army supplied the patrolmen with military instruction, ideological indoctrination and arms. The patrolmen worked with the army as informants, in pursuits, in counterinsurgency operations, captures, interrogations, torture and extrajudicial executions.[FN38]

[FN38] The PAC were also a low-cost system of surveillance and repression since they represented little in the way of cost to either the Army or the State: scant weaponry in many cases, no salaries, and so on. Furthermore, in many places they were used as a form of forced labor, especially for jobs involving provisioning, infrastructure works, and the like. See, “ODHAG, Guatemala Nunca Más”, Volume II, p. 119.

89. The Inter-American Court of Human Rights has stated the following in this regard:

... the civil patrols enjoyed an institutional relationship with the Army, performed activities in support of the armed forces' functions, and, moreover, received resources, weapons, training and direct orders from the Guatemalan Army and operated under its supervision. A number of human rights violations, including summary and extrajudicial executions and forced disappearances of persons, have been attributed to those patrols.[FN39]

[FN39] IACtHR, Blake v. Guatemala Case, Judgment of January 24, 1998, para.76.

90. While on paper membership was voluntary, in practice recruitment was often done by force; PAC membership at times became a survival mechanism for the civilian population.[FN40] “People were pressured into joining the PAC by means of coercion, accusations and death threats, even against family members. These threats were the most effective mechanism in enlisting men from the communities and then using those men to put into place a system for controlling families. The system that controlled daily life made it very difficult for people to resist PAC membership.”[FN41]

[FN40] The following has been said in this regard: “Despite the intrusion in a daily routine that the PAC represented (lost days of work, dangerous tracking operations, internal mistrust, and the like), in much of the testimony compiled personal and family safety and the chance of surviving in an environment hostile to any criticism of the imposed military system were among the main reasons cited for participating in the PAC.” See “ODHAG, Guatemala Nunca Más”, Volume II, p. 126.

[FN41] “ODHAG, Guatemala Nunca Más”, Volume II, p. 124.

91. The Civil Patrols gained enormous physical and psychological control over their members and the communities as a whole. The Commission has stated the following in this regard:

Firstly, in most cases ... they [the PAC] are neither answerable to nor controlled by the community's democratically elected civilian authorities, which makes them an alternative power that heightens tension and the internal division within a community.

Secondly, when they are beyond the control of the democratic power structure, they become alternative centers of local power and favoritism, engage in unlawful activities and illegally usurp powers for their own personal prestige or advantage, relying heavily on their real or purported connection with army authorities or security forces. Rather than creating a sense of calm, they become a cause for fear and anxiety in the community. In remote areas where armed irregular movements are still active, the civilian reaction against the self-defense patrols reduces the civilian population's support of counter-insurgency operations and traps the people between two opposing sides. The Army interprets the half-hearted support it gets as evidence of collaboration with the guerrillas and punishes the people.[FN42]

[FN42] IACtHR, Fourth Report on the Situation of Human Rights in Guatemala, 1993, p. 60.

92. In this same vein, the report of the Commission on Historical Clarification states the following: "As part of a model of total control, the Army gave discretionary authority to patrol chiefs. The conduct and lives of the other patrolmen and of the population as a whole depended on the military authority, whether through the soldiers themselves or through the patrol chiefs and commissioners. The sanctions system was part of that control model and a way for patrolmen to learn torture techniques, which they then inflicted upon the population." [FN43] Thus, "punishment was used repeatedly in hundreds of Guatemalan communities, where the patrolmen themselves replicated the torture methods learned from the military. The intimidation, threats and cruel treatment were used in the communities as a warning to those who refused either to do their respective patrol time or to join the PAC..." [FN44] Also, "the human rights violations were intended to instill terror in the population and were part of the State's counter-insurgency strategy. The patrolmen's activities fit into the counter-insurgency strategy. In general, they acted on express orders from the military or exercised the discretionary authority that the Army delegated to them for surveillance and policing, arrests and armed operations. Their activities even included the killing and torture of persons, the destruction of communities, rapes and inhumane acts targeting former combatants, to name only some of the violations of human rights and international humanitarian law." [FN45]

[FN43] CEH Report, "Las Patrullas de Auto Defensa Civil" [The Civil Patrols], Volume II.

[FN44] Ibid.

[FN45] Ibid.

93. The Commission will briefly mention the military commissioners, as they are closely linked to the PAC. The institution of "military commissioners" was created in July 1938. [FN46] When the PAC were created (1981) the military commissioners, because of their close ties to the army, generally took on the functions of Civil Patrol chiefs as well. Some of the activities performed included "collaborating in military recruitment, the army information network, control and surveillance of the civilian population, pursuit of criminals, apprehension of the victims, interrogations and torture, execution of women and children, participation in counter-insurgency

operations, use of secret graveyards, collaboration with landowners, resolution of personal problems, and the like.”[FN47]

[FN46] See, Diario Oficial [Official Gazette], Guatemala, volume XXIII, No. 19, July 20, 1938. It reports that they are “agents of the military authority who discharge their mission within the villages, hamlets and towns where the organization of the militia necessitates their presence.” Article 1 states that “They shall carry out the orders they receive from their immediate superiors in all matters pertaining exclusively to call-ups, summons, recruitment, apprehension of criminals, cases of persons who fail to respond to summons, deserters and, in general, military orders.”

[FN47] CEH Report, “Los Comisionados Militares” [The Military Commissioners], Chapter V, Vol II, p. 169.

94. We thus maintain that, as the Court held, “the acquiescence of the State of Guatemala in the perpetration of such activities by the Civil Patrols indicates that those patrols should be deemed to be agents of the State and that the actions they perpetrated should therefore be imputable to the State.”[FN48] In that same vein, the CEH found that:

Regardless of patrolmen’s conduct and their culpability as the immediate authors of the violations committed against the people, Guatemala is responsible for the human rights violations committed by the Civil Patrols because it promoted and legitimized them. By way of the Guatemalan Army, the State established patrols in those areas where the guerrilla presence was greatest, thus involving the civilian population in the armed conflict.

The State is responsible for the violations committed by the PAC in that the latter were organized by the State, acted on its orders, by the authority it delegated to them, or with its acquiescence, knowledge or tolerance, and were under the State’s hierarchical control and oversight. The testimony received by the CEH indicates that PAC members’ involvement in many acts of violence was mandatory and refusal to participate could lead to a patrolman’s death or torture. The absolute authority that the Army gave to the patrolmen as part of the strategy of terror led them to commit violations of all types. The State is also to blame for the failure to investigate, prosecute or punish the individuals responsible in each case.[FN49]

[FN48] See, Blake v. Guatemala Judgment, para. 78.

[FN49] CEH Report, “Los Comisionados Militares” [The Military Commissioners], Chapter V, Vol. II.

2. Characteristics of extrajudicial executions in Guatemala in 1990-91

95. Extrajudicial execution was used in Guatemala during the armed conflict:

Though the systematic practice of arbitrary execution, agents of the State physically wiped out its opponents. In both rural and urban areas, its goal was to use terror to suppress, silence and control the population as a whole.[FN50]

[FN50] CEH Report, “Ejecuciones Arbitrarias” [Arbitrary Executions], Chapter II, Vol. 2, para. 223.

96. As will be explained, these types of executions were a regular occurrence in Guatemala in 1990 and 1991. The procedures followed were similar and identifiable.

97. Reports from this period reveal that Guatemala offered little protection of and few guarantees for the right to life. In its Annual Report 1989-90, the Commission underscored the fact that the period covered in that report witnessed “the most serious increase in violence and human rights violations during the term of President Cerezo.”[FN51] The Commission cited the many petitions it had received and the number of reported abductions, disappearances and extrajudicial executions recorded almost daily, in some cases involving multiple victims.[FN52] In its Annual Report 1990-91, the Commission reported that the human rights situation in Guatemala had deteriorated,[FN53] and that most of the Guatemala-related cases that the Commission was processing were petitions alleging extrajudicial executions, disappearances and unlawful detentions.[FN54] At the national level, the Human Rights Ombudsman reported that 556 petitions related to extrajudicial executions were processed in 1990 and 432 in 1991.[FN55] The figures on extrajudicial executions reported by nongovernmental organizations either matched the Ombudsman’s figures or were significantly higher.[FN56]

[FN51] IACHR, Annual Report of the IACHR 1989-90, supra, p. 161.

[FN52] Ibid, p. 150-151.

[FN53] IACHR, Annual Report of the IACHR 1990-91, supra, p. 452.

[FN54] Ibid, pp. 445-446.

[FN55] Human Rights Ombudsman, Los Derechos Humanos: Un Compromiso por la Justicia y la Paz [Human Rights: a commitment to justice and peace] (1992), p. 24.

[FN56] See IACHR, Annual Report of the IACHR 1990-91 supra, p. 445; Annual Report of the IACHR 1991, p. 206.

98. While some executions were indiscriminate, i.e., no distinction was made for the victim’s sex, age, ethnic origin, political opinion or any other factor, “the trend of the late 1980s, which was selective arbitrary executions, continued in the period from 1990 to 1996....[FN57] Selective executions were those that occurred “when the victim was predetermined or unmistakably and specifically selected ... be it an individual, a community or a sector...”.[FN58]

[FN57] CEH Report, “Las Ejecuciones Arbitrarias” [Arbitrary Executions], Chapter II, Vol. 2, paras. 127,155.

[FN58] Ibid, para. 127.

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

They are carried out openly at any time of day or night, in any place in Guatemala, and without any concern for eyewitnesses. The kidnappers use cars or trucks without license plates or with stolen plates. Nobody, and even less the police, does anything to prevent such acts. The investigations do not lead anywhere and the responsible organs blame each other for the failure of the investigation.[FN59]

[T]he corpses found were located in different parts of the country, the majority with bullet or knife wounds, some with signs of torture...[FN60]

[FN59] IACtHR, Annual Report of the IACtHR 1989-90, supra, p. 154.

[FN60] IACtHR, Annual Report of the IACtHR 1990-1991, supra, p. 445.

100. Generally speaking, the arbitrary executions were carried out in two ways. In some cases, a group of unidentified, armed men, in civilian dress or occasionally in uniform, approached the victim at his home, workplace or on the street, and frequently in the presence of witnesses, and attacked the victim right there. In other cases, the victim was abducted from these places, again often in the presence of witnesses; the body was discovered later, within hours or days, frequently showing signs of torture.[FN61] Also, as the CEH reported, “[m]ost arbitrary executions committed by State agents were combined with other actions and stratagems intended to obstruct a judicial inquiry, thereby heightening the atmosphere of impunity.”[FN62]

[FN61] “Report of the Independent Expert, Mr, Christian Tomuschat, on the human rights situation in Guatemala” [“Tomuschat Report 1991”], E/CN.4/1991/5, January 11, 1991, para. 115.

[FN62] CEH Report, “Ejecuciones Arbitrarias” [Arbitrary Executions], para. 264.

101. The PAC carried out numerous extrajudicial executions in their own and neighboring communities.[FN63] The arbitrary executions carried out by the PAC were done, in some instances, when an individual was either accused or suspected of being a guerrilla, while on patrol with army soldiers or without them, when someone refused to go on patrol or to join the PAC, when someone violated the PAC disciplinary code or simply for personal reasons, given the enormous power and impunity that the PAC members had within the communities.[FN64] “Witnesses say that most often, those actions were carried out even though there was nothing in the victim’s history to implicate him in guerrilla military actions. Some victims may have been members of the guerrilla infrastructure in many communities (FIL); all the same, the executions

were indiscriminate vis-à-vis any suspected person. They were a show of force staged when victims were completely defenseless and often in the presence of their families.”[FN65]

[FN63] CEH Report, “Las Patrullas de Auto Defensa Civil” [The Civil Patrols], p. 347.

[FN64] Ibid.

[FN65] “ODHAG, Guatemala Nunca Más” Volume II, p. 134.

3. Participation of State agents

102. Although the judicial branch of government was derelict and did not respond with an appropriate and effective investigation of activities involving suspected extrajudicial executions, the participation of State agents in the extrajudicial executions has been established because of the characteristics of the executions and their modus operandi, complaints and eyewitness statements, the abundant testimony gathered and analyzed by various national and international organizations, and reliable investigations whose reports have been made public.

103. In ascertaining how and to what extent the State is responsible for this practice during the conflict period, the Commission for Historical Clarification concluded that “the State repeatedly and systematically committed violations of the right to life ... made all the worse in many cases by terrible brutality, as happened, for example, when abandoned bodies showed obvious signs of torture, mutilation, multiple bullet wounds or burns.” Overall, according to that Commission’s data, “the Army was responsible for 86% of all arbitrary executions.”[FN66] “The PAC were responsible for 21%, and the military commissioners for 11%”. “Other State security forces (the National Police, Treasury Guard, and others) accounted for 4%.”[FN67] (This percentage is figured on the total number of arbitrary executions, without factoring in whether the executions were the work of one or more than one individual).

[FN66] CEH, “Las Ejecuciones Arbitrarias” [Arbitrary Executions], Chapter II, Vol. 2, para. 161; see, in general, paras. 171-191 (where the various types of executions perpetrated by the Army are described).

[FN67] Ibid, paras. 161-62; see, in general, paras. 192-210 (where the various types of executions carried out by the PAC and the military commissioners are described); paras. 211-16 (describing executions by the National Police and Treasury Guard); and paras. 217-22 (where executions by the Army-linked death squads and police are described).

104. These general findings are consistent with the patterns of the executions and the reports for the specific period under study. For example, in July 1990 the Human Rights Ombudsman reported that “...the majority of the complaints at the Ombudsman’s Office were allegations against the Army, the National Police and the Civil Patrols.”[FN68] In its 1991 Annual Report, the Commission expressed concern over the number of petitions received alleging violations of the right to life by the Army and Civil Patrols, and the inability of the proper authorities to

control or punish members of the security forces that appeared to have had a direct hand in a number of human rights violations.[FN69] The United Nations Independent Expert for Guatemala reported that “the perpetrators of such crimes, who allegedly belong or are linked to the armed forces, enjoy almost total immunity from prosecution.”[FN70]

[FN68] IACHR, Annual Report of the IACHR 1990-91, *supra*, p. 445.

[FN69] IACHR, Annual Report of the IACHR 1991, *supra*, p. 205.

[FN70] Tomuschat Report 1991, para. 126; see also Tomuschat Report 1992, para. 105 (noting the role torture plays in the violent deaths denounced and, in a number of cases, the evidence of the security forces’ involvement).

105. One key enabler of this practice was the fact that the appropriate authorities were unable or unwilling to respond to the executions as the law required. The Commission found that during the period the organs for the administration of justice called upon to investigate human rights violations and punish those responsible did nothing, revealing how ineffective they were in preventing or responding to those violations.[FN71] The judicial inquiries instituted into the repeated complaints of summary executions “have in practice yielded no tangible results, as in most cases the courts or security organizations have failed to identify the perpetrators of the acts of violence.”[FN72] The few people who have appeared before the courts charged with involvement in violations of the right to life were not punished, “on some occasions because of a lack of political will and on others because of shortcomings in the administration of justice.”[FN73]

[FN71] *Ibid.* pp. 163 and 167; see, in general, “Conclusions and Recommendations”, Conclusions, paras. 10, 56, 94 and 95; “Denial of Justice”, para. 434.

[FN72] Tomuschat Report 1991, para. 122.

[FN73] *Ibid.* para. 126; see also, Tomuschat Report, paras. 140-41.

4. Selection of victims

106. Many of the victims of the selective extrajudicial executions committed during 1990-91 were chosen because of their participation in social and political organizations.[FN74] During that period, the Commission and other sources reported the unrelenting campaigns of violence and intimidation targeted against human rights activists,[FN75] especially members of the Runujel Junam Ethnic Communities Council (CERJ);[FN76] members of unions and organized labor;[FN77] members of the university communities;[FN78] the indigenous population, particularly in rural areas;[FN79] the campesinos;[FN80] the press;[FN81] members of the political parties and persons somehow connected to the country’s political life; [FN82] members of community services and religious organizations,[FN83] and judicial personnel. [FN784] In many cases, those executed and/or persons close to them had been threatened in the past. [FN85] In other cases, the threats were carried out despite the precautions taken—which in some cases even included going into self-imposed exile for a time.[FN86]

[FN74] See, in general, CEH Report, “Las Ejecuciones Arbitrarias” [Arbitrary Executions], Chapter II, Vol. 2, para. 155; Tomuschat Report 1991, paras. 117-20.

[FN75] See IACHR, Annual Report of the IACHR 1989-90, *supra*, p. 150; Annual Report of the IACHR 1990-91, *supra*, p. 449; Annual Report of the IACHR 1991, *supra*, p. 206; Tomuschat Report 1991, p. 120.

[FN76] “The first organization established to defend the rights of Guatemala’s Mayan population, CERJ’s mandate was to disseminate knowledge among the Indian communities of the rights specified in the Guatemalan Constitution ...” It served as a means of preserving “ethnic culture and identity.” See IACHR, Annual Report 1990-91, pp. 448; Annual Report 1991, pp. 206-208; Tomuschat Report 1992, para. 90.

[FN77] See IACHR, Annual Report 1989-90, p. 150; Annual Report 1991, pp. 206-208; CEH, “Las Ejecuciones Arbitrarias” [Arbitrary Executions], Chapter II, Vol. 2, para. 308; Tomuschat Report 1992, para. 91; Tomuschat Report 1991, para. 117.

[FN78] See IACHR, Annual Report 1989-90, p. 150 and 151; CEH Report, “Las Ejecuciones Arbitrarias” [Arbitrary Executions], para. 308; Tomuschat Report 1992, para. 92; Tomuschat Report 1991, para. 117.

[FN79] See IACHR, Annual Report 1991, pp.206-208.

[FN80] See CEH, “Las Ejecuciones Arbitrarias” [Arbitrary Executions], para. 308; Tomuschat Report 1992, para. 94; Tomuschat Report 1991, para. 117.

[FN81] See IACHR, Annual Report 1989-90, pp. 156-157; Annual Report 1991, pp. 206-208.

[FN82] See IACHR, Annual Report 1990-91, pp. 440-51; CEH Report, “Las Ejecuciones Arbitrarias” [Arbitrary Executions], para. 308; Tomuschat Report 1991, paras. 117, 119.

[FN83] See IACHR, Annual Report 1991, pp. 206-208, 210; CEH Report, “Las Ejecuciones Arbitrarias” [Arbitrary Executions], para. 308; Tomuschat Report 1992, para. 93.

[FN84] See CEH Report, “Las Ejecuciones Arbitrarias” [Arbitrary Executions], paras. 356-360.

[FN85] See, in general, *Ibid*, paras. 224-36.

[FN86] See *Ibid*, para. 235.

107. Selectiveness was part of a broader strategy aimed at instilling terror in the public. As the Commission for Historical Clarification pointed out in connection with the country’s urban areas:

One of the preferred State terrorism tactics appears to have been killing, a fact widely known [and] understood ... This tactic is preferred for the simple reason that it instills more fear. The assassination or disappearance of leaders can heighten the sense of vulnerability, the sense that leadership and direction are lacking and, of course, confusion.[FN87]

[FN87] *Ibid*, para. 236 (citing Carlos Figueroa Ibarra, *El Recurso del Miedo: Ensayo sobre el Estado y el terror en Guatemala*, Programa Centroamericano de Investigaciones, first edition, San José).

108. The same terror tactics were used in rural areas. “In the country’s interior, the systematic elimination of the traditional leaders, religious and cooperative leaders, created disarray, a sense of vulnerability and disorder within the community.”[FN88]

[FN88] Ibid, para. 240.

109. In other cases, the violations were less selective, as victims could be men, women, the elderly or children.[FN89] The great majority of those executed during the course of the conflict, approximately 86.5% of the victims, were from the Mayan population.[FN90] A large percentage of the victims were members of the rural communities, including farm workers and campesinos.[FN91] During the armed conflict, thousands of people were summarily executed based on accusations that they had some connection to the guerrilla movement, although the charge was never proven.[FN92] Others were summarily executed because they did not want to join the PAC patrols or had stopped participating.[FN93] Victims were not always selected for their alleged activities; some were singled out because of family members’ political or social activities or simply because they were present when unknown armed persons appeared in the home or work place in search of a family member.[FN94] Conversely, some were selected precisely because they were apolitical. Here again, the purpose was to instill terror, to provoke a reaction: ‘if they’d kill someone like that, they’ll kill anyone.’[FN95]

[FN89] See, in general, Ibid, para. 295.

[FN90] See Ibid, para. 293, and graph 19.

[FN91] See Ibid, para. 308; Tomuschat Report 1992, para. 94.

[FN92] See CEH Report, “Las Ejecuciones Arbitrarias” [Arbitrary Executions], paras. 173-78; 205-08.

[FN93] Ibid, p. 347.

[FN94] See, in general, Ibid, para. 299.

[FN95] Ibid, para. 237.

B. Facts established with regard to the six cases under study

1. Weighing the evidence

110. In weighing the evidence and establishing the facts, the Commission has taken into account all the information supplied by the parties, in particular the statements of witnesses and family members and any judicial inquiry there might have been, as well as the information mentioned earlier concerning the origin, functioning and modus operandi of the PAC, military commissioners and the practice of summary executions in Guatemala at the time the events occurred. As the Inter-American Court held, when a governmental practice of violations has been shown, “direct evidence, whether testimonial or documentary, is not the only type of evidence that may be legitimately considered ... circumstantial evidence, indicia, and

presumptions may be considered, so long as they lead to conclusions consistent with the facts.”[FN96]

[FN96] IACtHR, Velásquez Rodríguez Case (Merits), *supra*, paras. 127-30; Godínez Cruz Case (Merits), Judgment of January 20, 1989, Ser. C No. 5, paras. 133-36; Fairén Garbi and Solís Corrales Case (Merits), Judgment of March 15, 1989, Ser. C No. 6, paras. 130-33; Gangaram Panday Case (Merits), Judgment of January 21, 1994, para. 49.

111. Thus, in those cases where a pattern of conduct is present, circumstantial evidence, indicia and conclusions drawn from the evidence may be particularly significant in establishing the international responsibility of a State for violation(s) committed by its agents.[FN97]

[FN97] See, in general, Velásquez Rodríguez Case (Merits), *supra*, paras. 134, 172-73.

112. As shown with the preceding analysis, the practice of extrajudicial executions in Guatemala was compounded by the climate of impunity prevailing during the period and the judiciary’s unwillingness to conduct serious and effective investigations into the complaints of human rights violations filed with the courts and to punish those responsible.[FN98] In this way, if a pattern or practice can be shown to have been carried out by the State or done with its acquiescence, and if the violation alleged in a specific case can be linked to that practice, then that link further defines the nature and scope of the petitions brought,[FN99] and helps establish the veracity of the facts alleged.[FN100]

[FN98] CEH Report, para. 264.

[FN99] See, IACtHR, Report 5/97 (On Admissibility), Case 11.227, Colombia, published in Annual Report of the IACtHR 1996, OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997, paras. 26-38.

[FN100] With respect to the crime of forced disappearance, the Inter-American Court ruled that if it is shown that a State either carried out or tolerated this practice and if a specific case can be linked to that practice, the allegations in that case will have been proven, so long as the evidence presented on both points meets the standard of proof required in such cases. See, in general, Velásquez Rodríguez Case (Merits), *supra*, para. 126; Godínez Cruz Case (Merits), *supra*, para. 132; Fairén Garbi and Solís Corrales Case (Merits), *supra*, para. 129.

113. The first consideration in weighing the evidence and establishing the facts in the cases under study is that fifteen people named as victims died violently when they were extrajudicially executed. Another seven were the victims of attempted extrajudicial executions and were gravely wounded. Had it not been for the prompt aid they received from the relatives and friends who took them to the hospital, they would have died. The State never challenged these allegations; in some cases, the information it supplied corroborated the cause of death claimed in the petitions.

2. Facts presented and their connection to the practice of extrajudicial executions

114. As described earlier, in 1990 and 1991 hundreds of people were victims of extrajudicial executions in Guatemala. The pattern of the executions was similar: they were carried out systematically, and victims were typically selected because of their social or political activities. It was known that the executions were carried out by members of the security forces or by persons acting in their name or with their acquiescence, whether it was the PAC or military commissioners. Then, too, the Guatemalan judicial system as a whole was not an effective tool to guarantee respect for human rights, especially the right to life.

115. The extrajudicial executions alleged in all the cases were committed in rural areas where the Civil Patrols had a heavy presence and wielded enormous power. In all cases the victims, before being killed, had received threats from members of the PAC, either because they refused to join the patrols or had left them. Of the fifteen victims of extrajudicial execution, at least nine were indigenous men. Also, of the fifteen victims of extrajudicial execution, at least seven were members of the CERJ, consistent with the pattern at that time, which was to persecute and intimidate members of human rights organizations, especially members of the CERJ.[FN101] Similarly, eight of the extrajudicial executions occurred in San Pedro de Jocopilas. In almost all the cases, the crime was perpetrated by a group of persons in civilian dress, always heavily armed and acting with apparent impunity. In all these cases, the modus operandi of the perpetrators of the extrajudicial executions was to go to the place where the intended victim was and execute him immediately, even if others were present.

[FN101] In its 1990 Annual Report, the Commission pointed out that members of the CERJ “have been under attack since its creation in 1988, and to the present some 13 members have been murdered or disappeared.”

116. In the case of Pedro Tau Cac, the modus operandi was to abduct the victim first and then take him to a place unknown. Days later, the body was found in a public place. In the case of Remigio Morales and Rafael Sánchez, the victims’ bodies showed obvious signs of having been tortured before being executed.

117. The modus operandi in the cases alleging attempted extrajudicial execution are those characteristic of extrajudicial executions in the 1990-1991 period. Catalino Chochoy, José Corino and Abelino Baycaj were gravely injured when an attempt was made to impress them into military service. In the case of Antulio Delgado, the accused perpetrators are military commissioners. Juan Galicia Hernández, Andrés Abelino Galicia Gutiérrez and Orlando Adelso Galicia Gutiérrez were doing farm work when members of the PAC appeared dressed in civilian clothes.

118. According to the records in the Commission’s possession, in not one case were the events properly investigated, the culprit(s) punished or the victims compensated. This, too, is consistent with the chronic inability of the juridical branch of government to respond with proper

investigation, prosecution and punishment of the human rights violations during the period in question.

119. As the Inter-American Court has held, “it is not necessary to determine the perpetrators’ culpability or intentionality in order to establish that the rights enshrined in the Convention have been violated, nor is it essential to identify individually the agents to whom the acts of violation are attributed. The sole requirement is to demonstrate that the State authorities supported or tolerated infringement of the rights recognized in the Convention. Moreover, the State’s international responsibility is also at issue when it does not take the necessary steps under its domestic law to identify and, where appropriate, punish the authors of such violations.”[FN102]

[FN102] IACtHR. Paniagua Morales et al Case (Merits), Judgment of March 8, 1998, Ser. C No. 37, para. 91.

120. In cases 10.626, 10.627 and 11.198, the fifteen people who were extrajudicially executed fit the pattern of summary executions used in Guatemala in 1990 and 1991. These executions were the work of Civil Patrolmen or military commissioners who, as analyzed in previous paragraphs, were agents of the State. Cases 10.799, 10.751 and 10.901, involving attempted extrajudicial executions that resulted in serious injuries, also fit the pattern and were also carried out by members of the Civil Patrols or military commissioners, in other words, agents of the State. This practice was inflamed by the atmosphere of impunity at the time, a consequence of the judiciary’s unwillingness to conduct effective and serious inquiries into the human rights violations reported to it. On the basis of direct and circumstantial evidence, therefore, the Commission concludes that the State is responsible for the acts denounced in all these cases and will proceed to detail the nature and specific consequences of that responsibility.

C. Considerations of law

The right to life

121. Article 4(1) of the American Convention on Human Rights declares that “Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.” International human rights law, both conventional and customary, and the 1985 Guatemalan Constitution guarantee the right to life.[FN103]

[FN103] Thus, Article I of the American Declaration of the Rights and Duties of Man and Article 3 of the Universal Declaration of Human Rights provided that “Every human being has the right to life, liberty and the security of his person.” Article 3 of the 1985 Guatemalan Constitution reads as follows: “Right to life. The State guarantees and will protect human life from the time of its conception, and the integrity and safety of the person.”

122. The right to life is of paramount importance because it is the essential premise for the other rights. The right to life is fundamental within the Convention's system of guarantees; therefore, its provisions must be strictly interpreted. Protection of this right has two dimensions: on the one hand, it presupposes that no one may be arbitrarily deprived of life; on the other hand, it requires that States take the measures necessary to guarantee life.

123. The State's duty must be to guarantee the inviolability of the life of all persons subject to its jurisdiction and the right not to be arbitrarily deprived of life. This implies reasonable prevention of situations that could lead to the suppression of that right. Due diligence makes reasonable prevention the duty of States in those situations that could, even by omission, lead to the suppression of this right.

124. The duties that the right to life creates for the State are both preventive and corrective in nature. In cases of extrajudicial executions, Guatemala did not provide either. The cases of extrajudicial execution covered in this report show that the State did not protect these victims against the arbitrary executions committed by its agents or by those acting in the State's name or with its acquiescence. The pattern of extrajudicial executions at that time, which posed a grave threat to the right to life, was allowed in these cases and in some sense incited by the unwillingness or inability of the authorities to react to the situation.

125. The system of legal guarantees that the State should have put in motion to control the conduct of the State agents implicated was neither adequate nor effective; it was illusory. The State did not react as it should have to investigate those violations. International and inter-American human rights law has established that any violation of the right to life requires that the State undertake a judicial investigation by the criminal court designated to prosecute, try and punish those found responsible for those violations.[FN104] In some cases where the State failed to properly investigate the complaints of arbitrary killings, it was found to have incurred international responsibility for violation of the right to life, even though the circumstances surrounding the killings were not fully clarified.[FN105] As this analysis will show, the information supplied by the State in connection with the cases under study does not indicate that effective investigations were ever undertaken to ascertain the facts or identify those responsible for the killings.

[FN104] United Nations Human Rights Committee, *Bautista v. Colombia*, Decision of October 27, 1995, para. 8.6; see IACtHR, Reports N° 28/92 (Argentina) and N° 29/92 (Uruguay), published in IACtHR Annual Report 1992-93, OEA/Ser.L/V/II.83, doc. 14, corr. 1, March 1993, pp. 41, 154.

[FN105] See, for example, European Court of Human Rights, *Kaya v. Turkey*, *supra* (where the issue was to determine whether the death of a civilian at the hands of security forces was deliberate); UN Human Rights Committee, *Dermit Barbato v. Uruguay*, N° 34/1981, para. 9.2 (where the case was whether the death of an individual in custody was murder or, as the State argued, suicide).

126. In the case of persons deprived of their freedom prior to their execution, “a death in any type of custody should be regarded as *prima facie* a summary or arbitrary execution and appropriate investigations should immediately be made to confirm or rebut the presumption.”[FN106]

[FN106] Report of the United Nations Special Rapporteur on summary or arbitrary executions, E/CN.4/1986/21, para. 209.

127. It is the Commission’s view that in cases 10,626, 10,627 and 11,198, which involve a total of fifteen people, all were executed extrajudicially, some immediately and others within hours or days of being seized. The perpetrators were members of the Civil Patrols, military commissioners or private persons acting with either the State’s tolerance or consent. The killings were part of a pattern of extrajudicial executions previously identified by this Commission. The State failed to take the measures needed to end the practice of summary executions used at that time and did not respond to these specific executions with the necessary due diligence. Hence, the Commission concludes that under Article 4 of the American Convention, the State of Guatemala is responsible for violation of the right to life of Remigio Domingo Morales, Rafael Sánchez, Pedro Tau Cac, José María Ixcaya Pixtay, José Vicente García, Mateo Sarat Ixcoy, Celestino Julaj Vicente, Miguel Calel, Pedro Raguez, Pablo Ajijataz, Manuel Ajijataz Chivalan, Catrino Chanchavac Larios, Miguel Tiu Imul, Camilo Ajquí Gimon and Juan Tzunux Us.

The right to personal liberty

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

129. The allegations in the cases of Remigio Domingo Morales, Rafael Sánchez, Pedro Tau Cac and Camilo Ajqui Gimon are that the victims were unlawfully apprehended. These victims were alleged to have been held in custody for periods ranging from one hour to several days. There is no record or information to suggest that any of the victims was taken into custody by order of a competent authority or in accordance with the law. Quite the opposite, the events described follow the modus operandi typical of many summary executions in that period.

130. The abduction of a person is an arbitrary deprivation of liberty, an infringement of a detainee’s right to be taken without delay before a judge and to invoke the appropriate procedures to review the legality of the arrest....[FN107] The right to petition the court to determine the lawfulness of an arrest is a fundamental guarantee of the detainee’s constitutional and human rights when deprived of his freedom 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.”[FN108] Although exactly how long each victim was held in custody before being executed has never been determined, the nature of these detentions was such that the victims were effectively denied access to even the most essential safeguard of judicial protection.

[FN107] Velásquez Rodríguez, Merits, supra, para. 155.

[FN108] IACtHR, Advisory Opinion OC-8/87 of January 30, 1987, Habeas corpus in emergency situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights), Ser. A No. 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, July 1, 1981, p. 42.

131. The Commission therefore concludes that the State violated Article 7 of the American Convention and is responsible for the acts of its agents or of persons acting in its name or with its acquiescence, by unlawfully depriving Remigio Domingo Morales, Rafael Sánchez, Pedro Tiu Tac and Camilo Ajqui Gimon of their freedom and denying them access to judicial protection.

The right to humane treatment

132. Article 5(1) and (2) of the American Convention on Human Rights state that “[e]very person has the right to have his physical, mental, and moral integrity respected” and that “[n]o one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment...”

133. In the cases of Remigio Domingo Morales, Rafael Sánchez, Pedro Tau Cac, and Camilo Ajqui Gimon, the victims were secretly abducted and thus denied access to any form of help or protection for the time they were held, which ranged from one hour to several days. By itself, deprivation of freedom under such conditions produces anxiety and suffering. In these cases, there are signs that the victims had been beaten before being executed. In case 10.626 (Remigio Domingo Morales and Rafael Sánchez), “they were stoned.” The State never challenged the petitioners’ descriptions of the marks on the bodies or the allegations of torture.

134. From the way in which these victims were tortured and the marks on their bodies, the intention was not to conceal these facts but rather to send a message to those who found the bodies, to family and to anyone else who saw the bodies. As was noted in the section on the characteristics of the executions during the period in question, the objective of the torture was not just to make the victims suffer but also to destroy their human dignity in the eyes of family and community and to arouse fear in anyone who knew about it.[FN109]

[FN109] See, in general, ODHAG, Guatemala Nunca Más, Volume II, pp. 50-54.

135. As in the case of the right to life, effective observance of the prohibition of the use of torture requires effective investigation of any complaint of inhumane treatment. At the time the events occurred, Guatemala was bound by the Inter-American Convention to Prevent and Punish Torture. It had deposited its instrument of ratification on January 29, 1987; the Convention entered into force for all parties on February 28, 1987. Under Articles 1 and 6, Guatemala undertook to prevent and punish any torture that might occur within its jurisdiction. Further, Article 8 provides that:

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

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

136. The circumstances of these cases and general descriptions of the marks on the victims' bodies are consistent with the treatment that victims during the period received, i.e., they were detained first and then extrajudicially executed. The State did not dispute the fact that the victims had been tortured, and did not present any information of proof to show that the complaints were investigated, as required under the American Convention and the Inter-American Convention to Prevent and Punish Torture. Consequently, while the precise nature of the torture and the identity of those responsible in these four cases have not been determined at the domestic level, the Commission finds sufficient evidence to conclude that the State is responsible for the acts of its agents or persons who were acting with the State's tolerance or acquiescence when they violated the rights of Remigio Domingo Morales, Rafael Sánchez, Pedro Tau Cac and Camilo Ajqui Gimon to humane treatment and to be free from torture, in accordance with Article 5 of the American Convention and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

137. As indicated previously, the modus operandi of the attempted extrajudicial executions was the same as that used in extrajudicial executions during the 1990-1991 period. The victims of the attempted extrajudicial executions were gravely injured; had it not been for the prompt assistance they received from family members or friends who took them to the hospital, they would have died and their case would have been classified as an extrajudicial execution. Therefore, the State is responsible for violation of the right that Catalino Chochoy, José Corino, Abelino Baycaj, Antulio Delgado, Juan Galicia Hernández, Andrés Abelino Galicia Gutiérrez and Orlando Adelso Galicia Gutiérrez have to humane treatment, by virtue of acts committed by State agents or private citizens acting with the State's tolerance or consent, acts that fit the pattern of extrajudicial executions already identified by the Commission.

Rights of the child

138. Article 19 of the American Convention on Human Rights provides that "Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state." Of the victims named in this report, two are minors: Rafael

Sánchez (15, the victim of an extrajudicial execution) and Orlando Galicia Gutiérrez (15, the victim of an attempted extrajudicial execution).

139. Respect for children's human rights must be a paramount concern for every State. Accordingly, Article 19 establishes special protection for children, by virtue of their vulnerability as minors.[FN110] In the instant case, the State failed to honor the guarantees established in Article 19 of the American Convention, to the detriment of Rafael Sánchez and Orlando Galicia Gutiérrez .

[FN110] Guatemala signed the United Nations "Convention on the Rights of the Child" on January 26, 1990, and ratified it on June 6, 1990. In so doing, it signaled its intention to comply with the goals and provisions of this Convention. The Convention on the Rights of the Child entered into force for all parties on September 2, 1990, whereupon the State's obligation to respect the Convention was finalized. The events in the case of Andrés Galicia Gutiérrez occurred after the Convention entered into force. The events in the case of Rafael Sánchez occurred subsequent to Guatemala's ratification of the Convention but before its entry into force. Under the general principles of the law of treaties, Guatemala must refrain from frustrating the object and purpose of the Convention. The terms of that Convention, in particular Article 37 concerning the right to freedom and to humane treatment, elaborate upon the requirements that must be met for children to receive the protective measures to which they are entitled.

The right to judicial protection and judicial guarantees

140. Article 25(1) of the American Convention provides that "[e]veryone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention..." It includes the principle of the effectiveness of the procedural instruments or means. It is not sufficient that the State's legal system formally recognizes the remedy in question; instead, the State has to develop the possibilities of an effective remedy that must be substantiated in accordance with the rules of due process of law.

141. Article 8(1) reads as follows:

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

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

... Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, inter alia, those responsible for human rights violations may be

prosecuted and reparations obtained for the damages suffered. ... Article 25 is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society That Article is closely linked to Article 8(1), which provides that every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, for the determination of his rights, whatever their nature.[FN111]

[FN111] Loayza Tamayo Case, Reparations, Judgment of November 27, 1998, para. 169 (quotation marks omitted). See also, Velásquez Rodríguez Case, Fairén Garbi and Solís Corrales Case and Godínez Cruz Case, Preliminary Objections, *supra*, paras. 91, 90 and 93, respectively.

143. The State's obligations must be fulfilled, not through formal measures but through substantive measures. Thus, the remedies the State offers "must be truly effective in establishing whether there has been a violation of human rights and in providing redress." [FN112]

[FN112] Advisory Opinion 9-87 of October 6, 1987, Judicial guarantees in states of emergency (Arts. 27.2, 25 and 8 American Convention on Human Rights) Ser. A No. 9, para. 24.

144. While the guarantees protected under Articles 8 and 25 are different, generalized basic flaws in the administration of justice thwarted their application during the period under study. As noted earlier, the administration of justice at the time was so defective that it was virtually inoperable.[FN113] In most cases, the investigating or judicial police never identified the perpetrators; those who were identified were rarely brought to trial. The few cases in which a lower court guilty verdict was obtained were quashed on appeal.[FN114] "[I]n cases having a political background, almost no conviction by the trial judge in first instance is upheld on appeal and becomes final. Clearly, with such results, the population has little faith in the proper administration of justice." [FN115] Complainants and witnesses in human rights cases were frightened out of participating in court proceedings by threats or intimidation or by the fate that had befallen those who did become involved in human rights cases. Judges refused to investigate human rights violations for fear that what had happened to judges who had investigated previous human rights cases would happen to them.[FN116] The State's unwillingness or inability to respond to the serious violations was also evident and exacerbated by the deep-seated structural flaws in the administration of justice.[FN117]

[FN113] See IACHR, Annual Report of the IACHR 1989-90, p. 157; Annual Report of the IACHR 1990-91, p. 449-450; Annual Report of the IACHR 1991, p. 210.

[FN114] Tomuschat Report 1992, para. 141.

[FN115] *Ibid.*

[FN116] IACHR, Annual Report of the IACHR 1989-90, p. 157.

[FN117] CEH Report, “Denegación de Justicia” [Denial of Justice], paras. 287-98, 422-23; see also Tomuschat Report 1991, para. 123.

145. The general finding of the Commission for Historical Clarification that:

The failure of the administration of justice in protecting human rights during the internal armed conflict has been clearly and fully established, based on the thousands of violations ... that were never investigated, prosecuted or punished by the State. ... In general, the judicial branch of government refrained from acting on basic procedural appeals to curb the administration in the face of the serious violations of personal liberty and security.... On numerous occasions, the courts were directly answerable to the executive branch.... All this left the public completely defenseless against the abuses of power and caused it to regard the judiciary as a tool for the defense and protection of the powerful. The court has limited or denied protection of fundamental rights, especially those of the victims of egregious human rights violations.[FN118]

[FN118] Ibid..

146. Persons seeking protection from the courts against human rights violations under the conditions prevailing at that time did not have the simple, prompt and effective recourse that the American Convention requires. While remedies were there in theory, in practice they were illusory inasmuch as they did not produce the results for which they were theoretically conceived.

147. Under the American Convention, when a protected right or freedom has been violated, “[t]he State has a legal duty ... to use the means at its disposal to carry out a serious investigation ... to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.”[FN119] At the same time, the victim or his next-of-kin has the right to seek judicial protection and reparations. The victim and/or his next-of-kin have the right to a judicial investigation by a criminal court to determine who is responsible for the violations and to impose punishment.[FN120] The investigation “must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the ... family ... without an effective search for the truth by the government.”[FN121]

[FN119] IACtHR, Velásquez Rodríguez Case (Merits), *supra*, para. 174.

[FN120] See, in general, Reports 28/92 (Argentina) and 29/92 (Uruguay) in the Annual Report of the IACtHR 1992-93, OEA/Ser.L/V/II.83, doc. 14 corr. 1, March 12, 1993, pp. 47-49, 161-65.

[FN121] IACtHR, Velásquez Rodríguez Case (Merits), *supra*, para. 177.

148. As the Commission has noted in previous cases, the Principles of the Effective Prevention and Investigation of Extra-legal, Arbitrary or Summary Executions, adopted by the United Nations Economic and Social Council in resolution 189/65, explain what is required in cases of suspicious deaths.[FN122] In such cases, the investigation must establish the cause, manner and time of death, the person responsible, and the procedure or practice that could have provoked it. Also, a proper autopsy must be conducted, all material and documentary evidence must be compiled and analyzed, and statements taken from witnesses. The investigation must distinguish between death by natural causes, accidental death, suicide and homicide.

[FN122] See, in general, Report N° 10/95, Case 10,580, Ecuador, Annual Report of the IACR 1995, OEA/Ser.L/V/II.91 Doc. 7, rev. 3, April 3, 1996, paras. 32-34; Report N° 55/97, Case 11.137, Argentina, paras. 413-24 and Report N° 48/97, Case 11.411, Mexico, paras. 109-112, Annual Report of the IACR 1997, OEA/Ser.L/V/II.98, Doc. 7 rev., April 13,1998.

149. In the specific cases under study, while the State reported that court proceedings were pending, it did not for all practical purposes report any specific investigative measure, much less results. The State virtually did not present any documentary evidence of the proceedings it claimed. In one case, it indicated that the prosecutors and judges had requested certain measures, but did not indicate whether those measures had been implemented and, if so, to what effect. In the great majority of these cases, the information that the Commission has in its possession indicates simply that judicial proceedings were instituted and are still in the investigative stage.

150. According to the information in the Commission's possession, none of the court proceedings resulted in a final decision that clarified the complaints brought and convicted and sentenced someone for the deaths of the 15 victims of extrajudicial execution and the seven victims of attempted extrajudicial execution. The Commission has stated that the obligation to investigate is not breached merely because no one was convicted in a case or because, despite the efforts made, the facts could not be established. However, in order to establish in a convincing and credible manner that this outcome was not the product of a mechanical implementation of certain procedural formalities, the State must show that it carried out an immediate, exhaustive, serious and impartial investigation.[FN123] In the present cases, the State has not met this burden of proof.

[FN123] IACR, Report N° 55/97, Case 11.137, Juan Carlos Abella, Argentina, Annual Report of the IACR 1997, OEA/Ser.L/V/II.98, Doc. 6 rev., April 13, 1998, para. 412.

151. The victims' families had and have a right to know what happened to their loved ones.[FN124] As the victims' heirs, they also had and have a right to use that information to exercise their right to compensation from the State. "The rights of victims or their families to receive adequate compensation is both a recognition of the State's responsibility for the acts committed by its personnel and an expression of respect for the human being."[FN125]

[FN124] See, for example, IACtHR, Annual Report of the IACtHR 1985-86, OEA/Ser.L/V/II.68 doc.8 rev. 1, September 26, 1986, “Areas in which steps need to be taken...”, p. 193.

[FN125] Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mr. Bacre Waly Ndiaye, E/CN.4/1997/60, December 24, 1996, para. 47.

152. For the reasons explained at length earlier in this report concerning the judiciary's unwillingness and inability to take action on human rights violations during the period in question, the Commission concludes that in the specific cases under study, the judicial proceedings instituted were not conducted by independent and impartial courts.[FN126] Moreover, nine or ten years have passed since proceedings were first instituted, but no real conclusion has been reached. The Commission therefore considers that the reasonable time of which the Convention speaks has long since passed. Consequently, because there was no effective investigation in these cases, and given other flaws in the Guatemalan administration of justice, the Commission concludes that the next-of-kin did not enjoy the necessary guarantees of due process in the determination of their rights.

[FN126] See, for example, paras. 261-62, *supra*.

153. Impunity is the result of “the failure to investigate, prosecute, take into custody, try and convict those responsible for violations.”[FN127] By virtue of the interrelated guarantees upheld in Articles 25, 8 and 1(1) of the American Convention, the State has the duty “to use all the legal means at its disposal to combat [impunity], since [it] fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives.”[FN128] As the United Nations Special Rapporteur on executions has emphasized, “Impunity continues to be the principal cause of the perpetuation and encouragement of violations of human rights, and particularly extrajudicial, summary or arbitrary executions.”[FN129] In the instant cases, it is clear from the information received that the State did not use the means at its disposal to conduct an effective investigation that could be the basis for prosecuting and punishing those responsible. The State, therefore, is responsible for having allowed these violations to go unpunished and has thus violated Articles 8 and 25 of the American Convention.

[FN127] IACtHR, Loayza Case, Reparations, *supra*, para. 170.

[FN128] *Ibid*, which cites the Paniagua Morales et al Case (Merits), *supra*, para. 173.

[FN129] Report of the Special Rapporteur, Sr. Bacre Waly Ndiaye, *supra*, paras. 46, 94.

The State's obligation to respect and guarantee individual rights

154. The analysis of the cases covered in this report shows that by its violations of the human rights upheld in Articles 4, 5, 7, 8, 19 and 25 of the Convention and in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, Guatemala has failed to discharge its

obligation under Article 1(1) of the American Convention to “respect the rights and freedoms recognized [t]herein and to ensure to all persons subject to [its] jurisdiction the free and full exercise of those rights and freedoms.”

155. Thus, the first obligation of the States, flowing from Article 1(1) of the Convention, is to respect the rights and freedoms of all persons subject to its jurisdiction. The Court has held the following where this obligation is concerned: “under international law a State is responsible for the acts of its agents … and for their omissions, even when those agents act outside the sphere of their authority or violate internal law.”[FN130] Furthermore, “in principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State.” An illegal act which “violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.”[FN131]

[FN130] IACtHR, Velásquez Rodríguez Case (Merits), *supra*, para. 170.

[FN131] *Ibid*, para. 172.

156. Following this reasoning, the Commission concludes that the extrajudicial executions of the victims whose cases are covered in this report were committed by agents of the State or by private citizens acting with the State’s acquiescence or tolerance, as part of a State practice of extrajudicial executions. In four of the cases under study, the bodies of the victims showed signs of having been tortured by their captors. The acts or omissions of those agents and those of the police and judicial personnel who prevented the families from exercising their right to know the truth of what had happened and to seek a judicial remedy, are attributable to the State.

157. The second obligation stipulated in Article 1(1) is to ensure the free and full exercise of the rights and freedoms recognized in the Convention. States parties have an obligation 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 violations of the rights recognized by the Convention.”[FN132]

[FN132] *Ibid*, para. 166.

158. Faced with an allegation of extrajudicial execution or attempted extrajudicial execution, the State has an obligation to investigate the facts and identify and punish those responsible. In the cases covered in this report, those basic obligations were not honored; worse still, the State used its structure to carry out a practice of extrajudicial executions during the period in question. The Commission therefore concludes that the State has violated Article 1(1) of the Convention

because it did not ensure the exercise of the rights and guarantees of the victims named in all the cases included in this report.

VI. DEVELOPMENTS FOLLOWING THE ARTICLE 50 REPORT

159. On December 8, 2000, under the terms of Article 50 of the American Convention, the Commission adopted Report 117/00 in connection with this case. The report was transmitted to the Guatemalan State on December 22, 2000, along with a request for it to provide information, within the following two months, about the steps taken to comply with the Commission's recommendations.

160. On March 2, 2001, after the period granted by the Commission had expired, the State of Guatemala provided information about the situations of only four victims (José María Ixcaya Pixtay, Remigio Domingo Morales, Rafael Sánchez, Catarino Chochoy, and Abelino Bayjac) from the 22 covered by this report. The information submitted by the Guatemalan State is generic in nature, fails to contribute anything new, and does not describe steps taken to compensate the victims. For example, it states that:

Respectfully and as agreed by the Commission for Strengthening Justice, we once again transmit to you the information available to COPREDEH about certain cases in which we understand that proceedings have halted for different reasons and at different points within the justice system.

JOSÉ MARÍA IXCAYA PIXTAY

On May 1, 1990, in Pojopil canton, Sololá municipality, Mr. José María Ixcaya Pixtay, a member of the Runujel Junam Ethnic Communities council (CERJ), was murdered. The incident took place as Mr. Ixcaya was on his way to Guatemala City to participate in a Labor Day parade.

The case was heard by the First-Instance Criminal Instructional Court of Sololá; the proceedings, with the first magistrate presiding, were classified as Nos. 402 and 628-90, in which Jesús Chopén and Bernardino Samines were accused of the crimes of murder and threatening behavior against . . . José María Ixcaya Pixtay (deceased).

The trial documents contain a statement made by Mrs. Marcela Guarcas Morales, the widow of the deceased, who, in giving that statement, made no formal accusations against any specific person.

On September 21, 1990, Mr. Jesús Chopén was brought before the presiding judge, investigated, and charged with murdering José María Ixcaya Pixtay and making threats against Pedro Ixcaya Cuc.

On September 19, 1990, he was arrested for murder at the orders of the First-Instance Criminal Instructional Court.

On October 4, the investigating judge revoked the prison order against Mr. Jesús Chopén and ordered his release on his own recognizance because there was insufficient evidence to indicate his guilt; as a precautionary measure, the judge placed him under a judicial confinement order.

The competent authorities' efforts to locate the other accused, Bernardino Samines, and take a statement from him in order to clear up his legal situation have, to date, been fruitless.

REMIGIO DOMINGO MORALES

To date the accused have not been tried because the victims' relatives failed to make formal accusations against them; consequently, the public prosecution service did not continue with its investigation of the case because of insufficient evidence.

161. After considering the information submitted by the Guatemalan State, the Commission holds that in addition to saying nothing about the vast majority of this case's victims, it also confirms the conclusion reached in this report: namely, that the State of Guatemala has not conducted an effective investigation to cast light on the incidents that affected the victims and to judge and punish the guilty.

162. The Commission concludes that the State of Guatemala has not complied with the recommendations set forth in Report 117/00 of December 22, 2000; and the recommendations set forth in its report 26/01 of March 6, 2001; it thus reaffirms its conclusions and reiterates its recommendations.

VII. CONCLUSIONS

163. Based on the above analysis, the Commission confirms its conclusion that the facts prompting the petitions are true and that the State is responsible for violating the following rights: (1) the right to life recognized in Article 4 of the American Convention, in the cases of Remigio Domingo Morales, Rafael Sánchez, Pedro Tau Cac, José María Ixcaya Pixtay, José Vicente García, Mateo Sarat Ixcoy, Celestino Julaj Vicente, Miguel Calel, Pedro Raguez, Pablo Ajataz, Manuel Ajataz Chivalan, Catrino Chanchavac Larios, Miguel Tiu Imul, Camilo Ajquí Gimon and Juan Tzunux Us; (2) the right to personal liberty recognized in Article 7 of the American Convention, in the cases of Remigio Domingo Morales, Rafael Sánchez, Pedro Tau Cac and Camilo Ajqui Gimon; (3) the right to humane treatment recognized in Article 5 of the American Convention and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, in the cases of Remigio Domingo Morales, Rafael Sánchez, Pedro Tau Cac and Camilo Ajqui Gimon, victims of extrajudicial execution, and the right to respect for one's physical integrity recognized in Article 5 of the American Convention, in the cases of Catalino Chochoy, José Corino, Abelino Baycaj , Antulio Delgado, Juan Galicia Hernández, Andrés Abelino Galicia Gutiérrez and Orlando Adelso Galicia Gutiérrez, victims of attempted extrajudicial executions; (4) the rights of the child recognized in Article 19 of the American Convention, in the cases of minors Rafael Sánchez and Andrés Abelicio Galicia Gutiérrez; (5) the right to judicial guarantees and judicial protection recognized in Articles 8 and 25 of the American Convention in the case of all the victims of extrajudicial and attempted extrajudicial execution; (6) in all these cases the State is also responsible for failing to honor its obligation

under Article 1(1) of the American Convention, which is to respect and ensure the rights and freedoms protected therein.

VIII. RECOMMENDATIONS

164. Based on the analysis and conclusions set forth in this report, the Inter-American Commission on Human Rights repeats its recommendations that the State of Guatemala should:

1. That it conduct a thorough, impartial and effective investigation to determine the circumstances of the extrajudicial executions and attempted extrajudicial executions of each victim and the attendant violations, and punish those responsible.
2. That it take the necessary measures so that the next of kin of the victims of the extrajudicial executions might receive adequate and prompt compensation for the violations herein established.
3. That it take the necessary measures so that the victims of the attempted extrajudicial executions might receive adequate and prompt compensation for the violations herein established.
4. That it effectively prevent a resurgence and reorganization of the Civil Patrols.
5. That in Guatemala the principles established in the United Nations "Declaration on the right and responsibility of individuals, groups and institutions to promote and protect universally recognized human rights and fundamental freedoms" be promoted and that the necessary measures be taken to ensure that the right of those who work to secure respect for fundamental rights is respected and that their life and personal integrity are protected.

IX. PUBLICATION

165. On March 6, 2001, the Commission sent Report Nº 26/01 to the Guatemalan State and to the petitioners in compliance with Article 51(2) of the American Convention. It also gave the State one month in which to comply with the above recommendations. That period has now expired, and the Commission has received no response from the State regarding this matter.

166. In light of the above considerations and pursuant to Article 51(3) of the Convention and Article 48 of its Regulations, the Commission decides to repeat this report's conclusions and recommendations, to publish it, and to include it in its Annual Report to the OAS General Assembly. The Commission, in compliance with its mandate, will continue to monitor the steps taken by the Guatemalan State in connection with the aforesaid recommendations until such time as they have been carried out in full.

Done and signed for the Inter-American Commission on Human Rights in Santiago, Chile, April 4 , 2001 Signed: Claudio Grossman, Chairman; Juan E. Méndez, First Vice-Chairman; Helio Bicudo, Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo, Commissioners.

RESOLUTION 1/06

APRIL 24, 2006

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

HAVING SEEN:

1. On December 8, 2000, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) approved Report on admissibility and the merits No. 117/00, in keeping with Article 50 of the American Convention on Human Rights (hereinafter “the American Convention”) and so notified the Guatemalan State on December 22, 2000.
2. In Report No. 117/00, the Commission decided, in keeping with Article 40 of its Regulations then in force, to join several cases and to refer to them in a single report. One of the cases joined was number 10.626 on Remigio Domingo Morales and Rafael Sánchez, and in the chapter on “Facts alleged” it stated as follows:

A. Cases involving extrajudicial executions

1. Case 10.626: Remigio Domingo Morales and Rafael Sánchez

a. Facts alleged

7. On June 28, 1990, in the hamlet of Tuisquián, village of Xemal, the municipality of Colotenango, department of Huehuetenango, Remigio Domingo Morales and teenager Rafael Sánchez (15 years) were seized by Civil Patrolmen and accused of being guerrillas. Once in custody, the commander of the military base at Huehuetenango ordered the local PAC to gather everyone from the hamlet to “be present when Civil Patrolmen Nicolás Godínez, Modesto Godínez and Andrés Domingo stoned them on the commander’s orders.” The victims were taken to the Huehuetenango hospital in critical condition. According to records, the victims died from the serious injuries they sustained at the hands of their captors. The events were reported to the proper authorities and to the press.

b. Proceedings with the Commission

8. On August 17, 1990, the Commission opened case 10.626 and forwarded the pertinent parts of the petition to Guatemala, requesting that the government provide pertinent information. Guatemala supplied information on July 10, 1991 and September 26, 1994. On November 6, 1995, the petitioners filed their observations to the State’s response, which were then promptly brought to its attention. Since then, no new information has been forthcoming from either party.

9. On August 9, 1998, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement. The parties did not accept the Commission’s offer.

C. The State’s position

10. The State reported that in the instant case, “the Second Court of First Instance of the Department of Huehuetenango instituted criminal inquiry number 1261-90. A number of members of the Colotenango Civil Patrol were charged with battery and unlawful arrest....” The State requested that, in keeping with Article 46 of the American Convention, the case be declared inadmissible on the grounds that the remedies under domestic law had not been exhausted.

3. On March 2, 2001, the Guatemalan State reported as follows regarding the case of Remigio Domingo Morales and Rafael Sánchez: “To date the persons accused have not been placed on trial so the family members of the offended persons did not lodge any accusation against them, thus the Public Ministry did not continue the investigations into the case for lack of sufficient elements of proof.”

4. On April 7, 2001, the Commission approved and published Report No. 59/01 pursuant to Article 51 of the American Convention, whose first conclusion reads: “Based on the above analysis, the Commission confirms its conclusion that the facts prompting the petitions are true and that the State is responsible for violating the following rights: (1) the right to life recognized in Article 4 of the American Convention, in the cases of Remigio Domingo Morales, Rafael Sánchez....”[FN1]

5. On July 21, 2004, and January 6, 2006, the Guatemalan State reported that after undertaking an investigation into the facts alleged, it was possible to verify that on June 28, 1990, Messrs. Remigio Domingo Morales and Rafael Sánchez were admitted to the Hospital of Huehuetenango to receive attention for their multiple blunt injuries, and both were discharged from the hospital July 3, 1990. In addition, the State reported that according to an investigation by officials from COPREDEH, it was possible to find that Messrs. Morales and Sánchez are alive, and, therefore, were not victims of extrajudicial execution, as stated in the report issued by the IACtHR. The State produced evidence that included a letter signed by the executive director of the Hospital Nacional de Huehuetenango dated March 23, 2004; copies of residential identification papers; affidavit signed by Natividad Morales López dated January 9, 2004; affidavit signed by Remigio Domingo Morales dated January 14, 2004; and affidavit signed by Esperanza Domingo Godínez.

6. The Guatemalan State, by virtue of the information and documents produced, asked the Commission to correct Report on the Merits No. 59/01, of April 7, 2001, in the pertinent parts, making it clear that the alleged victims were not extrajudicially executed.

7. The IACtHR, despite the efforts of the Executive Secretariat, has not been able to contact the original petitioners since January 1995.

CONSIDERING:

1. That a material error as regards the facts of the case has been shown, that became known to the Commission subsequent to the approval and publication of Report No. 59/01.

2. That the Inter-American Court on Human Rights has indicated

54. At the same time, the Court cannot ignore the possibility of exceptional circumstances that would make it permissible for the Commission to amend the aforementioned report. One such circumstance would be partial or full compliance with the recommendations and conclusions contained in the report. Another would be the existence in the report of errors of substance regarding the facts of the case. Lastly, another situation would be if facts unknown at the time the report was issued and which could have a decisive effect on its content were to come to light. This implies that there can be no re-opening of the debate over the original facts or legal considerations.

55. In any of the above cases, amendment may be requested only by the petitioners or the State. Such a request for amendment may be made only prior to publication of the report, within a reasonable period from the date of its notification. The parties should be provided with an opportunity to discuss the facts or errors that have given rise to the petition, in accordance with the principle of procedural equity.[FN2]

3. In the case at hand, the request for rectification by the State came after publication of the report. Nonetheless, the IACtHR observes that the material error is substantial and influenced the content of the decision.

4. That the material truth, within respect for juridical security and procedural equity, should prevail over procedural formalities.

5. That Report No. 59/01 should be rectified.

IN VIEW OF THE FOREGOING, THE IACtHR RESOLVES:

1. To rectify Report No. 59/01, published and approved on April 7, 2001, so as to state that on June 28, 1990, Messrs. Remigio Domingo Morales and Rafael Sánchez were detained by members of the Civil-Defense Patrols, and that same day were taken to the Hospital of Huehuetenango to receive attention for their multiple blunt injuries, and both were discharged from the hospital on July 3, 1990.

2. The Guatemalan State violated the right to physical integrity to the detriment of Messrs. Remigio Domingo Morales and Rafael Sánchez.

3. To notify the Guatemalan State and the petitioners of this resolution.

4. To publish this resolution and attach it to Report No. 59/01 in all the print and electronic publications of the IACtHR.

[FN1] IACtHR, REPORT ON THE MERITS No. 59/01; CASES: 10.626 REMIGIO DOMINGO MORALES AND RAFAEL SÁNCHEZ; 10.627 PEDRO TAU CAC; 11,198(A) JOSÉ MARÍA IXCAYA PIXTAY ET AL.; 10.799 CATALINO CHOCHOY, JÓSE CORINO

THESEN AND ABELINO BAYCAJ; 10.751 JUAN GALICIA HERNÁNDEZ, ANDRÉS ABELINO GALICIA GUTIÉRREZ AND ORLANDO ADELSO GALICIA GUTIÉRREZ; and 10.901 ANTULIO DELGADO. GUATEMALA. April 7, 2001.

[FN2] I/A Court H.R., Reports of the Inter-American Commission on Human Rights (Art. 51 American Convention on Human Rights). Advisory Opinion OC-15/97 of November 14, 1997. Series A No. 15.