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Title/Style of Cause:	Ileana del Rosario Solares Castillo, Maria Ana Lopez Rodriguez and Luz Leticia Hernandez v. Guatemala
Doc. Type:	Report
Decided by:	Chairman: Claudio Grossman; First Vice-Chairman: Juan E. Mendez; Commissioners: Helio Bicudo, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo. Commissioner Marta Altolaguirre, a Guatemalan national, did not participate in discussing and deciding on this case in accordance with Article 19(2) of the Commission's Regulations.
Dated:	4 April 2001
Citation:	Solares Castillo v. Guatemala, Inter-Am. C.H.R., Report No. 60/01, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)
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I. SUMMARY

1. On May 23, 1983, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a complaint from Mr. Clementino Solares Castillo and Mrs. Olimpia Castillo de Solares (hereinafter “the petitioners”) about the disappearance of their daughter Ileana del Rosario Solares Castillo (hereinafter “the victim”) in the Republic of Guatemala (hereinafter “the State” or “the Guatemalan State”). On September 13, 1983, the petitioners expanded their complaint to cover María Ana López Rodríguez and Luz Leticia Hernández.

2. The petitioners claim that on September 25, 1982, the victim was abducted by agents of the Guatemalan State—specifically, members of the army’s intelligence service (G2)—at the junction of 7th Street and 16th Avenue in Zone 11 of Guatemala City. This complaint was later expanded to cover María Ana López Rodríguez and Luz Leticia Hernández, who were abducted on November 21, 1982, by security forces from the Special Operations Reaction Battalion (BROE) and the Military Intelligence Service (SIM) while they were at the house located on Lot 13, Block 4E, in the Monte Real II district of Mixco’s Zone 4.

3. Ever since the victims were taken into custody their whereabouts has remained unknown, even though the applicable judicial remedies have been pursued and numerous efforts have been made to locate them. In addition, as regards the victim Ileana Solares Castillo, her parents sent several open letters to the then President of the Republic.

4. After analyzing the evidence submitted by the petitioners, and given the Guatemalan State's failure to provide information in spite of having been warned about the possible application of Article 42 of the IACHR's Regulations, this case is declared admissible. It is further concluded that the incidents that gave rise to the complaint are true and that with respect to Ileana del Rosario Solares Castillo, María Ana López Rodríguez, and Luz Leticia Hernández, the Guatemalan State violated their right to life (Article 4 of the American Convention on Human Rights), to humane treatment (Article 5), to personal liberty (Article 7), to a fair trial (Article 8), and to judicial protection (Article 25), together with the obligation of ensuring the rights protected by the Convention as set forth in Article 1(1) thereof.

II. PROCESSING BY THE COMMISSION

5. On November 4, 1983, the Commission opened this case as Number 9.111; it then transmitted the relevant parts of the complaint to the Guatemalan State and asked it to furnish information on the incidents described in that communication within a period of 90 days.

6. On September 13, 1983, the petitioners sent a note to the Commission expanding the original complaint to cover María Ana López Rodríguez and Luz Leticia Hernández. The Commission asked the petitioners for additional information about these victims, which they submitted on December 31, 1983.

7. On November 3, 1983, the Commission once again sent the Guatemalan State a request for information regarding the original complaint.

8. No reply from the Guatemalan State having been received, the Commission repeated its request for information on April 4, 1984, and granted the State an additional 60-day period in which to respond. It also informed the State that the original complaint had been expanded to cover Ms. María Ana López Rodríguez and Ms. Luz Leticia Hernández and asked it to provide information about their situation.

9. On February 19, 1985, when no reply had been received from the Guatemalan State, the Commission repeated its request for information.

10. On June 26, 1985, with no reply having been received from the Guatemalan State, the Commission wrote anew to inform it that if the information was not forthcoming in the following 30 days, it would consider the possibility of applying Article 42 of the Regulations, under which the incidents reported in the complaint would be presumed true.

11. On 2 December, 1998, the Commission asked the petitioners and the State of Guatemala to submit, within the following 30 days, any updated, relevant information that there might be pertaining to the case at hand. On that same date, the Commission made itself available to the parties to reach a friendly settlement. At the end of the allotted period, the parties did not accept the initiation of friendly settlement proceedings.

12. On February 11, 1999, at the verbal request of the Guatemalan State, the Commission sent the State a copy of this case's file.

13. On August 31, 2000, the Commission resent its requests for information to the Guatemalan State, granting it a non extendable period of 30 days in which to reply. To date, the State has not replied.

III. POSITIONS OF THE PARTIES

A. The Petitioners

14. The petitioners claim that on September 25, 1982, members of the Guatemalan security forces—specifically, members of the army’s intelligence section (G-2)—abducted their daughter, Ileana del Rosario Solares. As indicated by the complaint and other background information included in the case file, the victim was taken to a clandestine prison that was operating within the premises of the army’s Polytechnic School, where she was held along with María Ana López Rodríguez, Luz Leticia Hernández Agustín, and Ana Cruz López Rodríguez. Additional information provided by the petitioners indicates that the parents of Ileana del Rosario Solares were told that she had been sentenced to 30 years in prison by the Special Jurisdiction Courts.

15. The victim’s parents searched for her in different detention centers, hospitals, police stations, and military facilities; they also attempted to ascertain whether she had been arraigned at any court of law, but they were unable to locate her. They also filed for habeas corpus relief, but this action was never resolved by the judicial authorities.[FN2] The petitioners published four open letters, in different newspapers, addressed to the President of Guatemala at that time, Efraín Ríos Montt.[FN3] None of these efforts served to reveal the whereabouts of Ileana del Rosario Solares Castillo. As a result of their constant searching, the petitioners received threats of different kinds and suffered blackmail attempts.

[FN2] On December 5, 1983, the petitioner requested an extension of the habeas corpus action, based on new information. Part of the new information submitted to the courts stated that: “. . . in the suit for personal appearance that I have filed on behalf of my daughter Ileana del Rosario Solares Castillo, I respectfully submit the following . . . I have learned that Mrs. María Cruz López Rodríguez, detained at the Female Orientation Center, has been called on to give the Honorable Court a statement in the proceedings I have brought and that she has ratified the content of a complaint I submitted with this relief . . . informing me that she had seen my daughter in the prison that, through her declarations and those of others, was known to exist in the Polytechnic School building in this city.” In addition, “Mrs. López Rodríguez has reported and maintained that the officers who arrested her, her sister Ana María López Rodríguez, their friend Luz Leticia Hernández, and Gabriel Calaté (RIP), locked them up with my daughter in the aforesaid secret cells.”

[FN3] The petitioners published paid spreads in Guatemalan newspapers on March 3, 1983, April 15, 1983, May 2, 1983, and in February 1984. For example:

- On April 15, 1983, the newspaper El Gráfico published the following paid insert, addressed to President Efraín Ríos Montt:

Mr. President: Today marks the passage of two hundred and two long and anguish-filled days since our daughter, ILEANA DEL ROSARIO SOLARES CASTILLO, aged only 22, was

abducted by the government's security forces, during which time she has not been arraigned before any court of law, heightening the immense burden of uncertainty, sorrow, pain, and suffering that we, as responsible parents, have borne since that unhappy September 25, 1982. . . . Mr. President, ever since our daughter was abducted, we have been visiting the usual detention facilities to inquire about her situation, with regrettably fruitless results . . . we have exhausted practically every procedure and taken countless steps to cast light on our daughter's arrest and current situation, including:

1.1 Submission of a request for an audience with you on February 23, 1983; this was denied and, by means of a telegram dated February 24 and received on February 28 of this year, we were referred to the Interior Ministry.

1.2 In accordance with those instructions, on that same day (February 28) we reported to the Ministry. There we were refused a hearing, which was postponed until the following week.

1.3 Open letter to you, published on March 4, 1983, the original of which was submitted to the reception desk of the Office of the President, including, inter alia, your government's tacit recognition of our daughter's detention.

1.4 In addition, one week after February 28, we once again went to the Interior Ministry, where we were received by the first official, who asked us for, inter alia, our daughter's personal details and told us to return one week later, during which time he was going to investigate the matter.

1.5 Eight days later, Mr. President, we once again went to the Interior Ministry where the same official received us once again; he told us that he had had to leave the capital and had been able to conduct the investigation only in a few localities, and asked us to give him more time.

1.6 On March 26 we received a letter dated March 22, 1983, which read as follows: With respect to the request you have sent this Ministry, I am to inform you that it was today referred to the General Directorate of the National Police for them to conduct promptly, through the offices of the Technical Investigations Department, the relevant inquiries, the results of which will be reported to you by that agency."

2. As responsible Guatemalans, Mr. President, we understand that in certain cases the referral to the courts of people who have been arrested must necessarily be somewhat slow. Cases of individuals arrested by the security forces in which their detention is not at first admitted by those forces are common knowledge.

4. Mr. President, we repeat our concern and we deeply regret that our daughter ILEANA DEL ROSARIO has been mentioned in connection with the kidnapping of your nephew Jorge Mario Ríos Muñoz, since that must have further complicated the already difficult situation surrounding our daughter.

5. On previous occasions we have stated that our daughter suffers from serious health problems. That situation requires the permanent administration of medicine and effective control at the hands of specialists (a gastroenterologist and a neurologist), and if that attention and those drugs are not given to her, at the very least she will suffer injuries that will affect her for the rest of her life.

6. Mr. President, we believe that the time that has gone by since our daughter's arrest is enough to have conducted the necessary investigations. So, if in the past she did take actions that were against the law (the product of idealism and driven on by the moral decay and abject behavior of previous regimes), in this New Guatemala she has the right to be brought before a court of law, thus putting into practice the principles of justice expressed by your government.

- On May 2, 1983, a paid insert (open telegram), addressed to President Efraín Ríos Montt, was published. Its claims included the following: . . . Two hundred and twenty days have gone by since our daughter was, as has been tacitly acknowledged by your government, arrested without being taken before a judge: an extremely long, anguish-filled, and unjustifiable period of time.

- In February 1984 a Guatemalan newspaper published the following paid insert:

Secret Prisons Do Exist In Guatemala!

Today marks the passage of one year and 88 days since our daughter Ileana del Rosario Solares Castillo was detained by government security forces and, in spite of the time that has gone by, she still has not been brought before a court of law or released in accordance with the law. 435 days during which our daughter has been illegally detained and kept incommunicado in a sinister illegal prison, representing a clear and total abuse of power by those who mock the national laws that they swore to uphold faithfully. 435 days during which the statements made about unconditional respect for human rights have run contrary to the facts and must now be seen as hypocritical pronouncements, lacking in content and, consequently, in credibility. 453 days during which we have presented clear, conclusive, and reliable proof of our daughter's abduction and detention, including:

1. The government's tacit acknowledgment of our daughter's abduction.
2. The testimony of Mrs. María Cruz López Rodríguez, stating that at the secret prison where she was detained, before being taken before the special jurisdiction courts, she was confronted with our daughter ILEANA DEL ROSARIO, who was being held there.
As responsible, aware citizens who have always, throughout their lives, behaved in total accordance with the law and truth, we now denounce the existence of secret prisons: we also denounce the illegal and arbitrary arrest of our daughter and of other people at this time.
3. It is clear that Mrs. María Cruz López Rodríguez WAS DETAINED IN A SECRET PRISON, along with her sister María Ana López Rodríguez and Luz Leticia Hernández, THE SECRET PRISON IN WHICH OUR DAUGHTER ILEANA DEL ROSARIO WAS ALSO HELD AND WITH WHOM THOSE PERSONS WERE CONFRONTED.
4. More than one year after the arrest of our daughter Ileana del Rosario Solares Castillo, of Luz Leticia Hernández, and of María Ana López Rodríguez, during which they have not appeared at any regular detention center, there can be no doubt about the existence of secret prisons in our country, a fact that renders the habeas corpus relief provided for in our legislation and recognized universally both invalid and academic. . . .
- 6.... the time has come for those responsible for administering justice in our country to do so in practice, restoring the full and legitimate exercise of our daughter's rights, initiating criminal action against those responsible for the continued concealment of our daughter Ileana del Rosario, of Luz Leticia Hernández, and of María Ana López Rodríguez, be they officials of the executive branch, officers of the security forces, or members of the special courts. In addition, as was requested, the EXPANSION OF THE PRESENTATION REMEDY filed on December 5, 1983, should also be carried out.

16. On November 21, 1982, the other victims, María Ana López Rodríguez and Luz Leticia Hernández Agustín, were abducted from the house located on Lot 13, Block 4E, in the Monte Real II district in Zone 4 of Mixco.[FN4] They were taken into custody along with María Cruz López Rodríguez[FN5] and Gabriel Calaté Temú (who, as indicated by the evidence, later died).

This arrest was carried out by members of the Military Intelligence Service (SIM) and of the Special Operations Reaction Battalion (BROE).

[FN4] The case file contains a habeas corpus suit, submitted on December 15, 1983, by Luz Leticia Hernández Agustín's father, in which he indicates that his daughter was arrested on November 21, 1983, by members of the military and taken, along with María Cruz López Rodríguez and Ana María López Rodríguez, to the clandestine prison located on the premises of the Polytechnic School.

[FN5] A judicial ruling included with the case file indicates that Mrs. María Cruz López Rodríguez was sentenced by a Special Jurisdiction Court to a 30-year prison term for possessing and bearing arms and for her responsibility in the kidnapping of Jorge Mario Ríos Muñoz, nephew of Guatemalan President Efraín Ríos Montt.

17. Chapter III of the Commission's 1985 "Report on the Situation of Human Rights in Guatemala" states that: "the problem of the ineffectiveness of writs of habeas corpus is especially acute in Guatemala. The gravity of the situation is confirmed by the hundreds of disappeared persons that were ignored by the Guatemalan judiciary during the administration of General Mejía Victores." This report also lists a series of habeas corpus remedies that had been presented but had not borne fruit, including those filed on behalf of Luz Leticia Hernández Agustín (submitted on March 29, 1984), María Cruz López Rodríguez (May 15, 1984), and Ileana del Rosario Solares Castillo (April 19, 1984).[FN6]

[FN6] In this list, the habeas corpus action brought on behalf of Rosario Solares Castillo is marked with an asterisk; according to the Report, this means the following: ". . . in which the names of persons contained in earlier complaints are marked with an asterisk, transmitted to the Guatemalan government by means of an IACHR communication of January 3, 1985, the contents thereof having been reiterated by means of a communication of April 2 of that year, for it to explain the reasons for it not having been implemented. To date no response regarding this matter has been received."

18. Ever since the victims were taken into custody by state agents, their whereabouts has remained unknown; the last time they were seen was during their detention in the clandestine jail that operated inside the army's Polytechnic School.

B. Position of the State

19. The Guatemalan State has never submitted any information regarding this case, in spite of requests being made on three occasions. On one occasion the Guatemalan State was told that if it failed to supply information regarding the allegations of this complaint, the Commission could invoke Article 42 of its Regulations, which rules that the Commission can presume facts to be true when the state in question fails to provide information about them.[FN7]

[FN7] Article 42 of the Statute of the Commission provides: “The facts reported in the petition whose pertinent parts have been transmitted to the government of the State in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 34 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.”

IV. ANALYSIS OF ADMISSIBILITY

A. Competence

20. The Commission is, *prima facie*, competent to examine this complaint. The incidents alleged in the petition took place when the obligation of respecting and guaranteeing the rights enshrined in the American Convention was already in force for the Guatemalan State.[FN8]

[FN8] Guatemala ratified the American Convention on Human Rights on May 25, 1978.

B. Admissibility Requirements

1. Exhaustion of Domestic Remedies and Timeliness of the Petition

21. The information submitted indicates that with respect to Ileana del Rosario Solares Castillo, her parents presented at least two suits for habeas corpus relief, which were fruitless. They also pursued other measures to discover her whereabouts, such as visiting different courts of law and detention centers, paying for insertions to be published in newspapers, visiting police facilities and ministries, none of which bore fruit.

22. Regarding the other victims, María Ana López Rodríguez and Luz Leticia Hernández Agustín, the information indicates that their families filed habeas corpus remedies to reveal their whereabouts, which were similarly fruitless.

23. The State of Guatemala has not replied to any of the Commission’s requests for information on the exhaustion of domestic remedies. The rule requiring that domestic remedies be exhausted is intended to allow the State to resolve the problem under its domestic law before having to face international proceedings. The silence of the Guatemalan State leads the Commission to assume that it has tacitly waived the exhaustion rule.

24. Above and beyond this waiver of the requirement that domestic remedies be exhausted, the Commission believes that at the time these incidents occurred, the remedies provided by domestic law in Guatemala were not effective and did not satisfy the minimum guarantees of due legal process.[FN9] These exceptional circumstances, set forth in Article 46(2) of the Convention, also preclude enforcement of the requirement that domestic remedies be exhausted contained in Article 46(1)(a).

[FN9] The Commission, in its 1985 Report on the Situation of Human Rights in Guatemala, said: “It is a common fact that when a country experiences illegal detentions, kidnappings and disappearances, these are neither investigated nor prosecuted while the writ of habeas corpus is rendered virtually useless in combating these violations. This has been the case in Guatemala for many years where the writ of habeas corpus, the only legal instrument available under the Constitution, the Fundamental Government Statute, to protect the liberty, security and life of individuals, has become totally ineffective and inefficacious.”

2. Duplication of Proceedings

25. Nothing in the case file indicates that the substance of the petition is pending in any other international settlement proceeding or that it is substantially the same as any other petition already examined by this Commission or another international body. Hence, the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention have been met.

3. Characterization of the Alleged Facts

26. The Commission believes that the petitioners’ allegations regarding the forced disappearance of Ileana del Rosario Solares Castillo, María Ana Rodríguez López, and Luz Leticia Hernández at the hands of agents of the State, together with the failure to investigate those incidents and punish the perpetrators of that crime, could tend to establish a violation of the rights enshrined in Articles 4, 5, 7, 8, 25, and 1(1) of the American Convention. Since these aspects of the petition are not manifestly groundless or obviously out of order, the Commission deems them to be admissible in accordance with the requirements set forth in Articles 47(b) and 47(c) of the American Convention.

27. In considering the admissibility of this case, it should be noted that the State of Guatemala has never disputed the arrest, detention in clandestine jails, and subsequent disappearance of Ileana del Rosario Solares Castillo, María Ana López Rodríguez, and Luz Leticia Hernández Agustín, or the circumstances under which agents of the State carried out those actions. Ever since the relevant parts of the complaint were first transmitted to it, and in spite of successive requests being made, the State has provided no information regarding this case, thus failing to meet the international obligation set forth in Article 48 of the American Convention. The Commission therefore holds that the provisions of Article 42 of its Regulations apply: namely, that facts reported in a petition whose pertinent parts have been transmitted to the government of the state in question shall be presumed to be true if, during the maximum period set by the Commission, said state has not provided pertinent information, as long as other evidence does not lead to a different conclusion. In this case, the existing information does not indicate a version of events different from that set forth in the complaint; on the contrary, it tends to support that version.

4. Conclusions on Competence and Admissibility

28. The Commission believes that it has jurisdiction to hear the substance of the petition in this case and that, in principle, the case is admissible according to the requirements set forth in Articles 46 and 47 of the American Convention.

V. ANALYSIS OF MERITS

A. Right to Life (Article 4), Right to Humane Treatment (Article 5), and Right to Personal Liberty (Article 7)

29. The disappearance of the victims Ileana del Rosario Solares Castillo, María Ana López Rodríguez, and Luz Leticia Hernández Agustín has continued to date and the last time they were seen alive was at the clandestine prison that operated at the army Polytechnic School; further, those facts have never been disputed by the Guatemalan State.[FN10]

[FN10] The report of the Commission for Historical Clarification states the following: “Systematic and generalized torture in Guatemala led to the establishment of special, illegal detention centers, which were commonly known as clandestine prisons. These illegal interrogation centers were located in public buildings, such as police stations, military barracks, or other facilities belonging to the military or the security forces . . . the military units involved in the armed conflict arrested countless people in order to obtain information and, as has been seen, one of the most common interrogation techniques was torture. . . . These interrogation centers were intended to hold prisoners and torture victims in the closest secrecy. Efforts were even made to deny their clandestine existence to soldiers who had no direct ties to military intelligence. These places had a number of facilities intended to ‘soften up’ prisoners of war.” See: “Guatemala: Memory of Silence,” Volume II (Human Rights Violations and Acts of Violence), Report of the Commission for Historical Clarification (CEH), p. 499.

30. The section on Guatemala’s clandestine prisons in the report of the Commission for Historical Clarification reads as follows: “The old Polytechnic School was another clandestine detention and torture center, from the 1980s up until the early 1990s . . . María Cruz López Rodríguez, arrested in 1983, also testified that she had been tortured at the old Polytechnic School, where she was held along with another four detainees—her sister Ana María, Ileana del Rosario Solares Castillo, Luz Leticia Hernández, and Gabriel Calaté—all of whom are still missing. According to her version of events, she and her fellow detainees could hear the cries of other people being tortured in the building.”[FN11]

[FN11] Ibid.

31. The Inter-American Court of Human Rights has stated that the forced disappearance of human beings is a multiple and continuous violation of many rights under the Convention that the States Parties are obligated to respect and guarantee. Those violations begin with the abduction of a person, which implies an arbitrary denial of freedom and violates the detainee’s

right to be taken promptly before a judge. In most instances they also involve prolonged isolation and incommunicado confinement, which constitutes cruel and inhuman treatment, and the secret execution of the detainees without trial, followed by concealment of the bodies to eliminate any material evidence of the crime and to ensure the impunity of those responsible.[FN12] In addition, the Criminal Tribunals for the Former Yugoslavia and Rwanda have defined forced disappearance as a permanent or successively occurring crime, in that its commission continues until the victim appears, either alive or dead, and it is considered a crime against humanity. Article 7(1)(i) of the Statute of the International Criminal Court, adopted by the Rome Conference on July 17, 1998, defines it in the same terms.[FN13]

[FN12] Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 145 et seq.

[FN13] See: Report 7/00 Case 10.337, Amparo Tordecilla Trujillo, Colombia, February 24, 2000.

32. The abductions of Ileana del Rosario Solares Castillo, María Ana López Rodríguez, and Luz Leticia Hernández Agustín took place during the period of Guatemala's armed conflict when forced disappearances were at their most frequent.[FN14]

[FN14] See: "Guatemala: Memory of Silence," Volume II (Human Rights Violations and Acts of Violence), Report of the Commission for Historical Clarification.

33. Moreover, the backdrop against which these disappearances took place, the refusal of the Guatemalan State to supply information regarding this case, the fact that the last time the victims were seen alive was in a clandestine prison, and the fact that more than 18 years later their whereabouts is still unknown mean that it is reasonable to conclude that a multiple violation of the Convention took place, with respect to Articles 7, 5, and 4 thereof.

34. Article 7 of the American Convention protects the right to personal liberty and security.[FN15] According to the facts of this case, Ileana del Rosario Solares Castillo, María Ana López Rodríguez, and Luz Leticia Hernández Agustín were illegally arrested by agents of the Guatemalan State, without an arrest warrant and without being brought immediately before a judge or other competent authority, and they were incarcerated in clandestine prison cells. Those facts constitute a serious violation of Article 7 of the American Convention.

[FN15] Article 7. Right to Personal Liberty

1. Every person has the right to personal liberty and security.
2. 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.

3. No one shall be subject to arbitrary arrest or imprisonment.
 4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
 5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
 6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.
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35. Article 5 of the American Convention stipulates that “every person has the right to have his physical, mental, and moral integrity respected.”[FN16] As the Inter-American Court has ruled: “prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the [FNdisappeared] person and a violation of the right of any detainee to respect for his inherent dignity as a human being. Such treatment, therefore, violates Article 5 of the Convention, which recognizes the right to the integrity of the person.”[FN17] The facts of this case constitute a serious violation of Article 5 of the American Convention.

[FN16] Article 5. Right to Humane Treatment

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.
3. Punishment shall not be extended to any person other than the criminal.
4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.
5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.
6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

[FN17] Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 156.

36. Article 4(1) of the American Convention enshrines the right to life by saying that every person has the right to have his life respected and no one shall be arbitrarily deprived of his life.[FN18] Eighteen years after the disappearances, the victims’ whereabouts have not been

identified. Considering the time that has passed, the silence of the Guatemalan State, and the context in which these incidents took place, it is reasonable to assume that the victims are no longer alive. That fact constitutes a grave violation of Article 4 of the American Convention.

[FN18] Article 4. Right to Life

1. 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.
2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.
3. The death penalty shall not be reestablished in states that have abolished it.
4. In no case shall capital punishment be inflicted for political offenses or related common crimes.
5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.
6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

37. For the above reasons, the Commission concludes that in accordance with the facts as denounced and the silence of the State, state agents caused the victims to disappear, thus violating their right to life, liberty, and humane treatment as set forth in Articles 4, 5, and 7 of the American Convention.

B. The State's Obligation to Investigate, Judge, and Punish the Perpetrators, and the Victims' Right to Judicial Protection

38. Articles 8 and 25 of the American Convention establish the obligation of providing access to justice with guarantees of legality, independence, and impartiality, within a reasonable period and with the applicable protection mechanisms, together with the general obligation of providing effective judicial recourse following the violation of basic rights.

39. In cases involving forced disappearance, when individuals are kept incommunicado and the authorities conceal the truth about their arrest, such persons are denied legal protection. That keeps detainees from filing for habeas corpus relief, which is the normal method for securing judicial protection following an illegal arrest. Since the victim is in no fit state to pursue judicial protection, the right to file such remedies necessarily passes on to the victim's relatives or to third parties. In the case at hand, the last time the victims were seen alive was in the clandestine prison that operated on the premises of the army's Polytechnic School.

40. It was the duty of the Guatemalan State to conduct a serious and effective investigation into the complaint claiming that Ileana del Rosario Solares Castillo, María Ana López Rodríguez, and Luz Leticia Hernández had disappeared. The absence of an effective remedy to the violation of rights protected by the Convention in itself constitutes a violation of the Convention. Remedies and judicial mechanisms must not only be formally provided for in law; they must also be effective for establishing whether a human rights violation has occurred and for repairing its consequences.[FN19] In this regard the Court has noted that:

[FN19] See: Inter-American Court of Human Rights, Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987; Fairén Garbi and Solís Corrales Case, Preliminary Objections, Judgment of June 26, 1987, paragraph 90; and Godínez Cruz Case, Preliminary Objections, Judgment of June 26, 1987, paragraph 93.

Under the Convention, States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8(1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction.[FN20]

[FN20] Inter-Am.Ct.H.R., Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, paragraph 91.

41. Guatemala's domestic remedies have not served as an adequate and effective mechanism for enforcing the guarantees of due legal process, enabling the whereabouts of Ileana del Rosario Solares Castillo, María Ana López Rodríguez, and Luz Leticia Hernández to be determined, investigating the facts, and punishing the individuals responsible for the disappearances. In this respect, the Commission for Historical Clarification analyzed the situation prevailing in Guatemala's justice system between 1982 and 1986 and concluded that:

This was the period that saw the culmination of the executive's assumption of powers that normally belonged to the courts, including the function of handing down judgments; the result was increased human rights violations and more widespread impunity.

The CEH concludes that during the internal armed conflict, the courts proved incapable of investigating, processing, judging, and punishing even a small number of those who perpetrated the most serious human rights violations or of providing the victims with protection.

Actions and omissions by the judiciary—such as the systematic dismissal of personal appearance suits, interpretations that constantly favored the government, ineffectiveness vis-à-vis the torture of detainees, and restricting the right to a defense—were among the behaviors that underscored the lack of independence of judges and which led to serious violations of the right of due process

and major failures to comply with the State's duty of investigating, judging, and punishing human rights violations...[FN21]

[FN21] CEH, op. cit.

42. The fact that the victims were last seen in a clandestine prison, the shortcomings prevailing in Guatemala's justice system at the time, the illusory nature of the country's domestic remedies, and the State's silence on this matter justify the petitioners' claim that they are not required to pursue and exhaust the remedies offered by domestic law; moreover, they also make the Guatemalan State internationally responsible in that they constitute a violation of the right to judicial protection and the right to a fair trial, as guaranteed by Articles 25 and 8 of the American Convention.[FN22]

[FN22] Ibid.

C. Obligation of Respecting and Ensuring the Rights Enshrined in the Convention

43. Article 1(1) establishes the states parties' obligation to ensure enjoyment of the rights and freedoms recognized by the Convention. This obligation implies that they must 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, states must prevent, investigate, and punish all violations of the rights recognized by the American Convention.[FN23] Specifically, in forced disappearance cases, it is the State's duty to determine the victim's whereabouts and condition, to punish the guilty, and to make amends to the relatives. The Court has further stated that:

[FN23] Inter-Am.Ct.H.R., Velásquez Rodríguez Case, Judgment of July 26, 1988, paragraph 166.

The State has a legal duty to . . . use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.[FN24]

[FN24] Ibid., paragraph 174.

44. The Court has also said the following: "the practice of disappearances, in addition to directly violating many provisions of the Convention, . . . constitutes a radical breach of the treaty in that it shows a crass abandonment of the values which emanate from the concept of

human dignity and of the most basic principles of the inter-American system and the Convention.” During the period to which this case refers, disappearances were commonly practiced by state agents in Guatemala and the state bodies responsible for preventing, correcting, and halting that practice failed to act appropriately.

45. In the case at hand the Guatemalan State has not effectively complied with its obligations of clarifying the circumstances of the forced disappearance of Ileana del Rosario Solares Castillo, María Ana López Rodríguez, and Luz Leticia Hernández, of judging and punishing the guilty, and of making amends to the victims’ families. The Commission concludes that the Guatemalan State has failed to observe its obligation of ensuring the victims’ right to life, liberty, and humane treatment, together with the right to a fair trial of the victims and their families, pursuant to Article 1(1) of the Convention.

VI. DEVELOPMENTS FOLLOWING THE ARTICLE 50 REPORT

46. On October 5, 2000, under the terms of Article 50 of the American Convention, the Commission adopted Report 86/00 in connection with this case. The report was transmitted to the Guatemalan State on October 20, 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.

47. On January 29, 2001, after that period had expired, the Guatemalan State told the Commission that: “The actions deemed appropriate for implementing the recommendations set forth in the aforesaid confidential reports were carried out—including a search for information, records, and judicial case files—but no positive results were obtained. The Government of Guatemala therefore believes that the Commission should provide information about the names and addresses of the families and the petitioners in order to begin implementing the recommendations because, in order to conduct an exhaustive investigation and compensate the victims, their identities and locations need to be established in order to set up communications channels for furthering compliance with the recommendations contained in the aforesaid confidential reports. The Government of Guatemala regrets not having met the limit date for reporting on the confidential reports; however, this occurred because when the time allotted expired, major efforts were still being made to gather together information about those cases. In addition, the work required to attend to the cases undergoing friendly settlement proceedings meant an increased workload that made it impossible for us to communicate on date set by the honorable Commission.”

48. The Commission believes that the Guatemalan State’s comment that “the actions deemed appropriate for implementing the recommendations set forth in the aforesaid confidential reports were carried out—including a search for information, records, and judicial case files—but no positive results were obtained” confirms this report’s conclusion regarding the disappearance of Ileana del Rosario Solares Castillo, María Ana López Rodríguez, and Luz Leticia Hernández and the failure of the State of Guatemala to conduct a serious and effective investigation to reveal the victims’ whereabouts and to punish those responsible for their disappearance.

49. Furthermore, the Commission does not share the Guatemalan State's opinion that "the Commission should provide information about the names and addresses of the families and the petitioners in order to begin implementing the recommendations because, in order to conduct an exhaustive investigation and compensate the victims, identities and locations need to be established in order to set up communications channels for furthering compliance with the recommendations contained in the aforesaid confidential reports." In this regard, the Commission points out that it is the inherent duty of the Guatemalan State to initiate and pursue legal investigations and that the State cannot rely on information provided by the Commission to "conduct an exhaustive investigation" in order to reveal the whereabouts of Ileana del Rosario Solares Castillo, María Ana López Rodríguez, and Luz Leticia Hernández and to judge and punish those responsible for his disappearance. The Commission believes that the fact that more than 17 years after the events described herein the State still lacks even the most basic information about the identity and whereabouts of the victims' families reinforces all the Commission's conclusions in this report.

50. In light of the information submitted by the Guatemalan State, the Commission concludes that it has not complied with the recommendations set forth in Report 14/01 of March 2, 2001, and it reiterates its conclusions and recommendations.

VII. CONCLUSIONS

51. Based on the above factual and legal considerations, the Commission concludes that with respect to Ileana del Rosario Solares Castillo, María Ana López Rodríguez, and Luz Leticia Hernández, the State of Guatemala has violated their right to life (Article 4), to humane treatment (Article 5), to personal liberty (article 7), to a fair trial (Article 8), and to judicial protection (Article 25), in conjunction with the obligation of ensuring the rights protected by the Convention set forth in Article 1(1) thereof.

VIII. RECOMMENDATIONS

52. Based on the foregoing analysis, the Inter-American Commission on Human Rights recommends that the State of Guatemala:

- a. Conduct an impartial and effective investigation into the facts of this complaint to determine the whereabouts and condition of Ileana del Rosario Solares Castillo, María Ana López Rodríguez, and Luz Leticia Hernández, to identify the persons responsible for their disappearance, and to punish them in accordance with the rules of due legal process.
- b. Take steps to make full amends for the proven violations, including measures to locate the remains of Ileana del Rosario Solares Castillo, María Ana López Rodríguez, and Luz Leticia Hernández, the arrangements necessary to fulfill their families' wishes regarding the final resting place of their remains, and adequate and timely compensation for the victims' relatives.

IX. PUBLICATIONS

53. On March 2, 2001, the Commission sent Report N° 14/01 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. The day that the period expired, Guatemala requested two month extension to report on its compliance with the recommendations. Given the length of time that has transpired since the occurrence of the facts in this case which we brought to the Commission's attention in 1983 and given the nature of the case at hand, the Commission decided to deny the extension requested by the Government of Guatemala.

54. 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 in Santiago, Chile, on the fourth day of April 4, 2001 Signed: Claudio Grossman, Chairman; Juan E. Méndez, First Vice-Chairman; Hélio Bicudo, Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo, Commissioners.