

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 13/02; Petition 11.171
Session: Hundred and Fourteenth Regular Session (25 February – 15 March 2002)
Title/Style of Cause: Tomas Lares Cipriano v. Guatemala
Doc. Type: Decision
Decided by: President: Juan E. Mendez;
First Vice-President: Marta Altolaguirre;
Second Vice-President: Jose Zalaquett;
Commissioners: Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts, Susana Villaran.
Commission Member Marta Altolaguirre, a Guatemalan national, did not participate in the discussion and voting on the instant report, in accordance with Article 17(2)(a) of the new Rules of Procedure of the Commission.

Dated: 27 February 2002
Citation: Lares Cipriano v. Guatemala, Petition 11.171, Inter-Am. C.H.R., Report No. 13/02, OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2002)
Represented by: APPLICANTS: the Human Rights Office of the Archbishop of Guatemala and the International Human Rights Law Group

Terms of Use: Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. SUMMARY

1. On June 24, 1993, the Inter-American Commission on Human Rights (hereinafter the “Commission” or the “IACHR”) received a complaint filed by the Human Rights Office of the Archbishop of Guatemala and by the International Human Rights Law Group (hereinafter “the petitioners”) alleging the responsibility of the State of Guatemala (hereinafter “the State”, “Guatemala” or “the Guatemalan State”) for violation to the detriment of Tomás Lares Cipriano or Tomás Cipriano Lares (hereinafter “the alleged victim”) of rights protected in Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 16 (freedom of association), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter the “American Convention”), in conjunction with the general obligation of the State to respect and ensure the aforesaid rights provided in Article 1(1) of the above-mentioned instrument.

2. On August 9, 2000, the Guatemalan State, through the President of Guatemala, Dr. Alfonso Portillo, acknowledged its institutional responsibility in 10 cases before the IACHR, among them the instant one.

3. After examining the arguments of the parties, compliance with the admissibility requirements, and the acknowledgement of state responsibility, the Commission decided to

declare the instant petition admissible under the provisions contained in Articles 46 and 47 of the American Convention.

II. PROCESSING BY THE COMMISSION

A. Opening and processing of the Petition

4. The petition was lodged with the IACHR on June 24, 1993. The Commission proceeded to process it as case 11.171, and transmitted the pertinent portions thereof to the State on June 25. The State conveyed information on the petition to the Commission on October 28.

5. On October 26, the petitioners sent to the IACHR additional information, the pertinent portions of which were transmitted to the State on November 5. On December 3, the State requested the Commission for an extension, in order to submit its comments on the information provided by the petitioners. On January 17, 1994, the Commission agreed to the extension request and on February 17 received the information from the State.

6. On March 7, the IACHR transmitted the observations of the Guatemalan State to the petitioners and requested them to submit their comments, which were provided to the Commission on April 15 and conveyed to the State on May 9.

7. On June 13, the State again requested the IACHR for an extension to transmit its comments on the information supplied by the petitioners. The Commission informed the State on June 15 that it was granting it an extension of 30 days, and on August 5 that the time period set had elapsed, further advising it that if it did not receive the information requested it would apply the presumption of truth provided in Article 42 of the Rules of Procedure of the IACHR.[FN2]

[FN2] Article 39 of the new Rules of Procedure of the IACHR in force as of May 1, 2001.

8. On August 22, 1994, the State sent the IACHR the information requested, which brought it to the knowledge of the petitioners on September 15. The latter, on January 23, 1995 sought an extension to submit their comments. On March 2, 1995, the IACHR granted the petitioners an extension of 30 days. On January 25, 1995, the petitioners transmitted their observations to the IACHR, which forwarded them to the State on May 8. The State transmitted its comments on July 11.

9. On December 9, 1998, the Commission again requested information from both the State and the petitioners. In reply to that request, the State applied for an extension on January 20, 1999. On February 6, the State sought a further extension from the Commission, in order to provide it information. The IACHR refused the request of the Government on April 9 and on May 25 urged it to convey the required information.

10. The State transmitted information to the Commission on June 16. In turn, on July 7, 1999, the petitioners requested the IACHR to make a decision on the merits of the case.

B. Friendly Settlement Procedure

11. On June 17, 1996, the IACHR placed itself at the disposal of the parties, in order for the matter to be submitted to a friendly settlement procedure. On July 17, the petitioners informed the IACHR of their disagreement to the matter being settled by such a procedure. The Commission informed the State of the position of the petitioners on July 24. On July 26, the State said that it would study the proposal put forward by the Commission, and that in due course it would communicate its decision as to whether or not to submit to a friendly settlement procedure. On February 9, 1998, the petitioners expressed their willingness that the matter be submitted to a friendly settlement procedure. The IACHR informed the Guatemalan Government of this position on February 16 of that year. On March 30, 1999, the State sent a communication to the IACHR, saying that it would not yet pronounce its decision whether or not to submit to a friendly settlement. The Commission advised the petitioners of this position on April 30 and requested its comments in that respect. On May 20, the petitioners requested and were granted an extension by the Commission. On March 9, 2000, the petitioners reiterated to the IACHR their willingness for the matter to be resolved by a friendly settlement, whereupon the Commission, on March 24, decided once more to place itself at the disposal of the parties to that end.

C. Acknowledgement of State Responsibility

12. On August 9, 2000, the Government of Guatemala, represented by the President of the Republic, Dr. Alfonso Portillo, acknowledged

[t]he institutional responsibility of the State that arises from the breach of the obligation imposed by Article 1 (1) of the American Convention to respect and ensure the rights enshrined in the Convention ... with respect to the following persons or cases:

(...)

3. Tomas Lares Cipriano (IACHR 11171)

(...)

[t]he Guatemalan Government admit[ted] the occurrence of the acts that led to the lodging of the petitions with the Commission ... and undert[ook] to engage in negotiations on those cases.[FN3]

[FN3] In addition to the President of Guatemala, the document in which the Guatemalan State acknowledged the acts and its institutional responsibility was also signed by the ... and by the then-President and Executive Secretary of the IACHR Dean Claudio Grossman and Ambassador Jorge E. Taiana, respectively.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

13. The petitioners allege in their initial communication that on February 19, 1993, 3,000 members, including Mr. Tomás Lares Cipriano, of the voluntary self-defense patrols of a number of cantons in the Municipality of Joyabaj, Department of Quiché, presented their resignation to various civil authorities.[FN4] In the document that contains the resignation, the signatories said:

[FN4] Decree Law N° 19-86, in force as of January 10, 1986, states, inter alia, “That there currently exist Civil Defense Committees, voluntarily composed of Guatemalan citizens ... to ensure the defense of their communities, their families, their property, against the effects of natural disasters ... and armed conflicts, such as the new modality of attack that the subversive groups adopted ...

That said civil organizations contribute positively to attain the levels of development, peace and tranquility currently enjoyed in the country ...

That ... it is necessary for the State to ensure the ongoing existence and operation of the aforementioned civil organizations with the assistance and under the coordination of the Ministry of National Defense, to which end the relevant legal provision shall be issued ...

Article 1 The existence is recognized of the Civil Defense Committees as organizations of a civil nature and as an expression of the available mobilizable and territorial reserves provided for by the Law, which, their organization notwithstanding, shall be assisted and coordinated by the Ministry of National Defense.

(...)

Article 4. The Ministry of National Defense ... may provide benefits to members of Civil Defense Committees who, in the exercise of their self-defense activities, sustain injuries that cause physical and/or mental disability ...”

1. That since the 1980’s we have been serving without pay in the Civil Patrol, currently known as the “Voluntary Civil Defense Committee”, which, in practice, is totally compulsory in our communities because the patrol commanders, the military commissioners of our communities, who act under the orders of the military detachment of our municipality, tell us that if we are not part of the Civil Patrol, then we are guerrillas and that we must leave our homes, that we should take our children into the mountains, otherwise one day they will murder us.

2. In addition the commanders of the Civil Patrol force us to supply firewood to the military detachment ... by means of threats and intimidation; in other words, we have been participating in the Civil Patrol to save our lives ...

(...)

4. We are so tired of so difficult a situation that we have made the decision to resign from the Civil Patrol, invoking Article 34 of the Constitution, which in its second paragraph says that:

NO ONE IS OBLIGED TO JOIN OR TO BE A MEMBER OF SELF-DEFENSE GROUPS OR ASSOCIATIONS, OR THE LIKE ...[FN5]

[FN5] This communication was addressed, inter alia, to the President of the Republic, the Minister of Defense, the Attorney-General, the Attorney for Human Rights, and the President of the Supreme Court of Justice.

14. The resignation was made public in various mass media, inter alia, El Gráfico, edition of February 24, 1993; Prensa Libre, edition of February 25, 1993; Siglo Veintiuno, editions of February 25 and 26, 1993.[FN6]

[FN6] They are contained in the record before the IACHR.

15. On March 26 of that year Messrs. Tomás Lares Cipriano, Diego Lares, Marcos Ambrosio Sacarías, Manuel Ambrosio Sacarías, and Domingo Gutiérrez presented themselves at the Human Rights Office of the Archbishop of Guatemala to report the threats made against them by members of the civil self-defense patrols of the Municipality of Joyabaj. The threats were in response to the resignation from the self-defense committees. On that occasion, Mr. Tomás Lares Cipriano and his companions said that they too had been threatened with dire consequences -which, according to the petitioners constitutes a death threat- in the event of failure to attend a demonstration of civil patrol members organized for March 28, 1993, and that to that effect a list would be drawn up of the names of absentees, who would be accused of being members of organizations linked to the Unidad Revolucionaria Nacional Guatemalteca (URNG).

16. The gravity of the complaint prompted the Human Rights Office of the Archbishop of Guatemala to file a writ of habeas corpus for preventive purposes with the Supreme Court of Justice on behalf of Tomás Lares Cipriano and the other persons who resigned from the Civil Self-Defense Patrol of Joyabaj. In that writ, the petitioners requested the court:

[t]o guarantee the physical integrity of the members of the self-defense patrols who refused to be members of them, in light of the threats that have been made against them...

that the necessary measures be immediately taken to protect the life, person, and freedom of said persons.

That the competent judge be ordered to go to the Municipality of Joyabaj ... on Sunday, March 28 ... and to ascertain that persons who refuse to be members of the Civil Self-Defense Patrols are not subjected to illegal arrests or threats ...

17. On April 30, at approximately 11:30 a.m., according to a communication from the Comité de Unidad Campesina [Peasant Unity Committee] (CUC), Tomás Lares Cipriano “was ambushed and murdered in a cowardly fashion, shot six times (two bullets in the left hand, one

bullet in the chest, one bullet between the eyes, one bullet in the head); his right ear was amputated, and his head was smashed in and severed”.[FN7] According to the report on the autopsy later conducted, on June 29, 1993, by the coroner, Dr. Lissette García de Crocker, the causes of the death of Tomás Lares Cipriano were cerebral trauma, multiple fragment cranial fracture, gunshot wounds, and neck wound produced by a sharp, blunt instrument.[FN8]

[FN7] Communiqué of May 4, 1993, which is contained in the record before the IACHR.

[FN8] This information is contained in a letter of July 1, 1993, addressed by the aforesaid coroner to the Human Rights Office of the Archbishop of Guatemala. That letter is in the record before the IACHR.

18. The CUC communiqué mentioned

[T]hat the General Commander of the PAC (of Joyabaj), Leonel Nogales, has ordered the abduction of Mr. Tomás Lares Cipriano ... At the same time, Messrs. Catarino Juárez and Santos Chich Us, the commander and deputy commander of the PAC of Chorraxaj canton, prepared lists of all the local people who are grouped around cooperatives, religious activities, and grassroots organizations ...[FN9]

[FN9] See footnote 7 supra.

19. On May 19, 1993, by which time the murder of Tomás Lares Cipriano was public knowledge,[FN10] the Human Rights Office of the Archbishop of Guatemala was informed of the decision of May 11, 1993, pronounced by Roderico Haroldo López Robles, titular judge of the Second Criminal Court of First Instance in and for Quiché, regarding the writ of habeas corpus filed by the petitioners. The writ, which was found INADMISSIBLE, stated that “the alleged injured parties are not in the situation provided for in Article 82 of Decree 1-86 of the National Constituent Assembly [and] that they were nowhere to be found.”

[FN10] The murder of Mr. Tomás Lares Cipriano was made public by different mass media, inter alia, Siglo Veintiuno, “Responsabilizan a PAC por asesinato” [PAC held responsible for murder], edition of May 5, 1993 and La Hora, “CERJ denuncia asesinato de activista de derechos humanos” [CERJ denounces murder of human rights activist], edition of May 4, 1993.

20. In the additional information and the observations on the reports submitted by the State in the course of the proceeding instituted before the IACHR, the petitioners said that, on May 20, 1993, Mr. Diego Lares Ambrosio had filed a formal criminal complaint against Próspero Leonel Ogaldez García, Santos Chich Us, Catarino Juárez, Diego Granillo Juárez, Santos Tzi, and Gaspar López Chiquiaja, as the alleged culprits of the murder of Mr. Tomás Lares Cipriano.

21. The petitioners also alleged that members of the civil self-defense patrol had prevented the autopsy from being carried out[FN11] and that, therefore, the Second Criminal Court of First Instance had been requested to order the exhumation and an autopsy of the corpse, which formalities were carried out on June 29, 1993. As to the reconstruction of the events, the petitioners said that the threat of an ambush by members of the self-defense patrols was the real reason why this measure had not been carried out, and not the one adduced by the State, according to which the failure to carry out said measure was due to bad weather.[FN12]

[FN11] With respect to the information provided by the Government to the effect that a mob of 400 men armed with machetes, ignoring the order to carry out the autopsy required by law, had taken away the corpse of Tomás Lares Cipriano in order to bury it, the petitioners say that those allegations are untrue.

[FN12] The petitioners make this submission in their communication to the IACHR of January 25, 1995.

22. The petitioners further say that on July 29, 1993, an arrest warrant was issued for the accused, but that only Catarino Juárez and Gaspar López Chiquiaja were actually arrested and that Próspero Leonel Ogaldez García had given himself up voluntarily to the Second Criminal Court of First Instance in Charge of Preliminary Investigations in and for Quiché. In the statements they submitted during the preliminary investigation, the aforementioned denied being members of the self-defense patrols. According to the petitioners, the connection is duly attested by documentary evidence and witness testimony contained in the record, as well as publicly. The court only took into account the testimony of the accused and of the witnesses presented by them, while overlooking other evidence. As a result of the foregoing, the judge decided not to revoke the orders of release and of release under personal recognizance issued in favor of Próspero Leonel Ogaldez García and Catarino Juárez, respectively. As to Gaspar López Chiquiaja, the petitioners said that the judge had ordered his release despite contradictory testimony from different witnesses. According to the petitioners, the plaintiff did not have the opportunity properly to cross-examine the defense witnesses, and other procedural anomalies were also alleged.[FN13]

[FN13] The petitioners mention the measures that were requested of the court, inter alia: personal identification of the accused so that they might be recognized by the witnesses who testified in the proceeding; transmission, by the Commander of Military Zone N° 20, based in Santa Cruz del Quiché, of the records of the taking of office of the Patrol Commanders of the Municipality and the list of civil patrol members, as well as his testimony as a witness; and examination in evidence proceedings of the witnesses for the plaintiff. According to the petitioners, all of these measures were refused by the court, except for the testimony of the military commander, who later declined to present it.

23. As regards the warrant of arrest for Santos Chich Us, Diego Granillo Juárez, and Santos Tzi, issued on July 29, 1993, the petitioners said that it was executed, even though those

individuals remained in their communities. In the opinion of the petitioners, the aforesaid warrant was not executed because the police authorities were fearful of threats made against them by members of Military Zone N° 20. According to the petitioners, the Chief of Police of Quiché is alleged to have said that he would rather go to prison for disobedience than be killed.

24. The petitioners further stated that in January 1994, a new judge took office at the Second Court of First Instance in and for Quiché, as the previous one had been dismissed on charges of corruption. They further mentioned that the court archives had been burned on January 19, and that the judge said that the incident could have been caused by patrol members and that he himself was the target of threats from said individuals. The petitioners added that both the Army of Guatemala and, in particular, the Commander of Military Zone N° 20 in Quiché, were involved taken part in planning and concealing the acts that took place.

25. Finally, the petitioners added that the State had not adopted the necessary measures to execute the arrest warrants[FN14] outstanding for more than six years for three of the principal suspects accused of killing of Tomás Lares Cipriano and that said failure constituted an omission attributable to the State that gave rise to its international responsibility by causing denial of justice.

[FN14] The aforesaid warrants, for Diego Granillo Juárez, Santos Tzit, and Gaspar Chiquiaj, were issued by the Criminal Court of First Instance on July 30, 1993 and were reissued on May 6, 1995.

B. Position of the State

26. In its initial reply, the State of Guatemala said that an investigation had been opened under proceeding N° 79-93 before the Second Criminal Court of First Instance and that various steps were pending therein designed to clarify the matter. It further reported that the Ministry of National Defense and the Office of the Attorney General had been instructed to carry out the necessary investigations and to expedite the process.[FN15]

[FN15] Information provided to the IACHR on October 28, 1993.

27. The State later supplied more detailed information and said that, according to its initial investigations, it had determined that Mr. Tomás Lares Cipriano had resigned from the Civil Self-Defense Patrols on March 26, 1993, and that on the 28th of that month had taken part in an organized demonstration in favor of dissolving said organizations, for which reason he received death threats from members of those groups.[FN16]

[FN16] Information supplied to the IACHR on February 17, 1994.

28. With reference to judicial proceedings, the State informed that on May 1, 1993, the Justice of the Peace for the Municipality of Joyabaj had issued an initiating order to open an enquiry into the facts and requested the National Police to begin the necessary investigations. On May 3 of that year, the aforementioned judge disqualified himself from the case because he no longer had jurisdiction and referred the proceeding to the Second Criminal Court of First Instance in Charge of Preliminary Investigations. On May 12, a representative of the Attorney-General's Office attended the proceedings in response to a petition lodged by the son of Mr. Tomás Lares Cipriano.

29. The State further informed that on 20 February, 1993, Mr. Domingo Lares Ambrosio had filed a criminal complaint against Santos Chich Us, Leonel Ogaldes, and Catarino Juárez,[FN17] as a result of which the judge issued an order to initiate proceedings, and a representative of the Attorney-General's Office again presented himself after being notified of the complaint. A series of court proceedings followed thereafter[FN18] before the plaintiff requested that an incarceration order be issued for Leonel Ogaldes García, Santos Chich Us, Catarino Juárez, Diego Granillo Juárez, Santos Tzi, and Gaspar López Chiquiaja. On August 3 Catarino Juárez was arrested, he gave a signed statement that same day, and two days later, on August 5, after the testimony of the defense witnesses was heard, was released on parole due to insufficient grounds to remand him in custody pending trial. On August 9, Próspero Leonel Ogaldes García came forward voluntarily to present his statement. After listening to the witnesses for the defense, the judge ordered his release because he found insufficient grounds to issue an incarceration order. The Attorney-General's Office filed an appeal against the decisions that granted the accused their freedom. The Court of Appeals upheld the decisions of the lower court and, furthermore, granted bail to Catarino Juárez. As for Gaspar López Chiquiaj, the State reported that he was arrested on a court order on October 17, 1993 and then taken before the court. On October 21, the court, after hearing the testimony of the accused and of the witnesses presented by him, ordered his release pending trial. This decision was challenged by the Attorney-General's Office on October 22 and the Court of Appeals upheld the challenge, revoking the order of release pending trial. Accordingly the presiding judge had to order his reincarceration.

[FN17] In the information furnished by the petitioners, it states that the above-mentioned criminal complaint was filed on May 23, 1993, and not on February 23 of that year.

[FN18] Inter alia, testimonies of witnesses and request by the plaintiff for an exhumation and autopsy, which was later performed by the Departmental Coroner, Ana Lissette García de Crocker.

30. Following an observation by the petitioners, in another communication,[FN19] the State rectified that the resignation of Tomás Lares Cipriano from the Civil Self-Defense Patrols occurred on February 19, not 26, 1993. The State further mentioned that the Justice of the Peace had ordered an autopsy on the corpse and that it was not carried out because the Deputy Mayors of Cantón Chorraxaj opposed it and the children of the deceased, together with a mob of 400 people armed with machetes, prevented it from being taken to the morgue.[FN20] Therefore, the

corpse was subsequently exhumed and an autopsy performed on it. As for the reconstruction of the events, the State said that it was not carried out owing to bad weather.[FN21]

[FN19] Submitted to the Commission on August 22, 1994.

[FN20] In the information supplied on July 14, 1995, the State ratified its position with respect to the reasons that prevented an autopsy from being performed on Tomás Lares Cipriano, saying that said reasons are shown in the record of the proceedings.

[FN21] In the information supplied on July 14, 1995, the State ratified its position with respect to the reasons that prevented the reconstruction of the events that surrounded the death of Tomás Lares Cipriano.

31. With regard to the other accused who were released, the State mentioned that those measures were adopted in accordance with the law and on the basis of a reasoned opinion in light of the evidence before the courts. By the same token, the State mentioned that it was necessary for the complainants to produce evidence at the proceedings and that said investigation was the channel provided by Guatemalan law to seek justice in accordance with the new Code of Criminal Procedure. Next, the State invoked Article 37 of the (previous) Regulations of the IACHR, saying that the complainants had, first, to exhaust the remedies under domestic law via due process.

32. In relation to the arrest warrants issued for Santos Chich Us, Diego Granillo Juárez, and Santos Tzi, the State said that the Interior Ministry and the General Directorate of the National Police had been requested to capture the aforementioned and to take them before the judge presiding over the case.

33. Regarding the information provided by the petitioners[FN22] about a fire at the archives of the court where the case was being heard, the State said that proceeding N° 127-94 had been opened in which the Prosecutor General's Office was ordered to conduct the necessary preliminary criminal enquiry, and that investigations were being carried out by the General Directorate of the National Police.

[FN22] In its communication of [date]

34. In later communications sent to the IACHR, the Government said that on May 10, 1995, the First Criminal Court of First Instance in and for Huehuetenango had issued an indictment against Santos Chich Us in case 758-93 charging him with the murder of Tomás Lares Cipriano and that, after the respective proceedings were concluded, on November 5, 1996 the aforementioned individual had been sentenced to 28 years in prison with no possibility of a reduced sentence. The judgment became final on December 4, 1996, after the Ninth Chamber of Appeals rejected a special appeal filed by the defense attorney for the convicted man.

35. Furthermore, the State said that the arrest warrants issued on July 30, 1993, and reissued on May 6, 1995, for four other persons accused of killing Tomás Lares Cipriano were pending execution. On December 28, 1998, the State, through the Presidential Commission on Human Rights, reiterated to the General Directorate of the National Police that it expedite execution of the arrest warrants for Diego Granillo Juárez, Santos Tzit, and Gaspar López Chiquiaj.

36. In the information supplied by the State to the IACHR on August 24, 1999, the Guatemalan Government repeated that domestic remedies had not been exhausted and requested the Commission to take no account of the petitioners' arguments to the effect that the delay in the execution of the arrest warrants issued for three of the accused constituted an exception to the requirement of exhaustion of domestic remedies on the ground that there was evidence of denial of justice in the proceedings in the domestic sphere. The State gave its assurances that every effort was being made to find the persons sought in the arrest warrants.

37. On August 9, 2000, in Guatemala City, in the presence of the President and Executive Secretary of the IACHR, the President of the Republic, Dr. Alfonso Portillo, said that his government

[a]cknowledges the institutional responsibility of the State that arises from the breach of the obligation imposed by Article 1 (1) of the American Convention to respect and ensure the rights enshrined in the Convention ... with respect to the following persons or cases:

...

3. Tomas Lares Cipriano (IACHR 11171)

...

The foregoing acknowledgement is based on the omission by the State of its obligation to ensure the enjoyment of and respect for the fundamental rights of persons, in accordance with the Constitution of Guatemala, the American Convention on Human Rights, and other international instruments signed and ratified by Guatemala.

[t]he Guatemalan Government admits the occurrence of the acts that led to the lodging of the petitions with the Commission ... and undertook to engage in negotiations on those cases”.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence

38. The Commission considers that the recognition by the State of its institutional responsibility implies tacit acceptance of the admissibility of the petition. Without prejudice of the above, juridical certainty demands that the Commission review this petition to determine if the requisites of admissibility established in the American Convention have been met.

39. The Commission has *ratione materiae* competence to examine the instant petition because it alleges violations of rights protected in the American Convention.[FN23]

[FN23] Guatemala is a state party to the American Convention, having ratified it on May 25, 1978.

40. The Commission has *ratione personae* competence to take up the instant petition because the nature, both of the petitioners, and of the alleged victim, meets the requirements mentioned, respectively, in Articles 44 and 1(2) of the Convention.

41. The IACHR has *ratione temporis* competence to examine the instant petition inasmuch as the duty to respect and ensure the rights recognized in the American Convention was in force for the State at the time when the violations alleged in the petition are said to have occurred.

42. Finally, the Commission has *ratione loci* competence to take up the instant petition because it claims violations of rights that allegedly took place in the jurisdiction of the accused State.

B. Admissibility Requirements

1. Exhaustion of domestic remedies

43. The Commission finds in the instant matter that the petitioners and the State mentioned two types of proceedings pursued under Guatemalan domestic law. The first of these was the writ of habeas corpus filed for preventive purposes by the Human Rights Office of the Archbishop of Guatemala on March 26, 1993, and decided on May 11 of that year. The second proceeding, of a criminal nature, started with the preliminary measures ordered and the initiating order issued by the Justice of the Peace of Joyabaj on May 1, 1993. On May 3 of that year the proceedings were referred to the Second Criminal Court of First Instance in Charge of Preliminary Investigations.

44. Article 46(1)(a) of the American Convention provides that for a petition to be admitted it is required “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.” As the Inter-American Court of Human Rights has found, those “[principles refer not only to the formal existence of such remedies, but also to their adequacy and effectiveness ... Adequate domestic remedies are those which are suitable to address an infringement of a legal right.”[FN24] For its part an effective remedy is one capable of producing the result for which it was designed.[FN25]

[FN24] Inter-Am Ct. H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988. Series C, N° 4, paras. 63-64; Godínez Cruz Case, Judgment of January 20, 1989. Series C, No. 5, paras. 66-67; Fairén Garbi and Solís Corrales Case, Judgment of March 15, 1989. Series C, No. 6, paras. 87-88.

[FN25] Inter-Am Ct. H.R., Velásquez Rodríguez Case, Ibid. paras. 66-68.

45. Article 263, paragraph one of the Constitution of Guatemala, invoked in the writ of habeas corpus filed on behalf of the alleged victim, says that

Any person illegally imprisoned, detained, or otherwise prevented from enjoying their personal liberty, threatened with the loss thereof ... is entitled to request their immediate exhibition before the courts of justice, be it in order to have his liberty restored or guaranteed, to put an end to mistreatment, or to cease the coercion to which they might have been subjected.

46. The Commission finds that the writ of habeas corpus filed on March 26, 1993 and rejected on May 11 of that year, 11 days after the death of Tomás Lares Cipriano was made public by various mass media, was filed for the precise purpose to protect, not only his liberty, but also his life and physical integrity.

47. The Inter-American Court of human Rights has held that:

[h]abeas corpus performs a vital role in ensuring that a person's life and physical integrity are respected, in preventing his disappearance ... and in protecting him against torture or other cruel, inhumane, or degrading punishment or treatment.[FN26]

[FN26] Advisory Opinion OC-8/87 of January 30, 1987. Series A, para.35.

48. Accordingly, the Commission considers that the writ of habeas corpus presented by the Human Rights Office of the Archbishop of Guatemala was the adequate and effective remedy provided by Guatemalan law, since according to that body of laws, to the jurisprudence of the inter-American system of protection of human rights, and insofar as the petitioners were concerned, the purpose of the aforesaid remedy was to protect the personal liberty of Tomás Lares Cipriano, as well as his life and physical integrity.

49. The IACHR further finds that the writ of habeas corpus was filed and decided before the domestic courts before the petitioners lodged their petition with the regional organ, something to which the State neither tacitly nor expressly objected in any of the communications it sent to the Commission. Therefore, the IACHR finds with respect to this proceeding that the remedies under domestic law were exhausted.

50. The State, on the other hand, on three occasions, expressly stated to the IACHR its objection of failure to exhaust domestic remedies in connection with the criminal proceeding instituted as a result of the death of Tomás Lares Cipriano.

51. The State said in its last communications[FN27] that, on November 5, 1996, in case 758-93, the accused Santos Chich Us had been sentenced to 28 years in prison for the murder of Tomás Lares Cipriano and that that judgment became final on December 4 of that year. The

State further informed that the arrest warrants issued on July 30, 1993, and reissued on May 6, 1995,[FN28] for four other persons accused of the killing of Tomás Lares Cipriano, were pending execution, even though the Presidential Commission on Human Rights had reiterated to the General Directorate of the National Police that it expedite the execution thereof.

[FN27] In that of March 29, 1999.

[FN28] In some of their communications, the State and the petitioners mention that the arrest warrants were issued and reissued, respectively, on July 30, 1993 and May 6, 1995.

52. Subsequently, the Guatemalan Government repeated that domestic remedies had not been exhausted and requested the Commission to take no account of the petitioners arguments to the effect that the delay in the execution of the arrest warrants issued for three of the accused made the rule of exhaustion of domestic remedies inapplicable, since the State was making every effort to find the persons sought in the aforesaid arrest warrants. The State further said that the fact that it had not been possible to complete their arrest was not to say that the State had not demonstrated willingness or commitment to investigate and punish those who might prove responsible for the acts.

53. The petitioners, in turn, said to the Commission that the failure to execute the arrest warrants issued on July 30, 1993, and reissued on May 6, 1995, constitutes an omission attributable to the State that gives rise to its international responsibility by causing denial of justice. In addition, the petitioners mentioned a series of acts to demonstrate that the police and judicial investigations were not conducted in a serious manner designed to achieve effective results, and that said acts, rather, prolonged an investigation that since 1993 has failed to lead to the apprehension of three of the principal suspects of the killing of Tomás Lares Cipriano.

54. The Commission has noted that one of the persons accused of the killing of Tomás Lares Cipriano, Santos Chich Us, was sentenced to 28 years in prison in November 1996. However, it has also noted that the others have not yet been caught even though court orders to that effect were issued on July 29, 1993 and reissued on May 5, 1995. The Commission is also mindful that the criminal investigation of the other persons allegedly responsible for the death of Tomás Lares Cipriano was opened on May 1, 1993, when Justice of the Peace for the Municipality of Joyabaj issued the order to initiate proceedings.

55. The Commission finds that the arguments advanced by the Government to refute the imputation made by the petitioners in the sense that the measures adopted by the State organs with respect to the other accused are ineffective and dilatory, are not sufficiently forceful to convince it that said measures have really been anything more than mere formalities.

56. Consequently, the Commission finds, as it did in a previous case submitted to it,[FN29] that the criminal investigation of the other accused that has been underway for more than eight years has not progressed beyond the initial stage, which leads it to conclude, without that constituting a prejudgment of the alleged violations of Articles 8 and 25 of the Convention, that the criminal proceeding has been subject to delays not imputable to the plaintiff and, therefore, in

accordance with Article 46(2)(c) of the Convention, it rejects the objection raised by the State that the remedies under domestic law were not exhausted.

[FN29] Report N° 33/99, Case 11.763, Plan de Sánchez Massacre, Guatemala, March 11, 1999, paras. 24-28.

57. The petitioners alleged in their initial communication that the State had violated Article 16 (freedom of association) of the Convention. In the course of the proceeding before the Commission, the State has not refuted that allegation. Moreover, on August 9, 2000, the Guatemalan State, through its President, acknowledged its institutional responsibility in the matter sub examine and admitted the occurrence of the acts that constituted a violation of the American Convention and led to the lodging of the petition with the Commission.

58. By the same token, the Commission finds that, with respect to the violation of this right, the State did not allege, expressly or otherwise, non-exhaustion of domestic remedies. The Inter-American Court has found in the Mayagna (Sumo) Awas Tingni Community Case that “in order to validly oppose the admissibility of the petition ... the State should have expressly and in a timely manner invoked the rule that domestic remedies should be exhausted”.[FN30] As to timeliness, the Court has said that “[t]he objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed.”[FN31] Therefore, the IACHR concludes that the Guatemalan State failed to make the objection that is the subject of this analysis by having tacitly waived same by not invoking it expressly and in a timely manner in any of the communications addressed to the Commission.

[FN30] Inter-Am. Ct. H.R., Mayagna (Sumo) Awas Tingni Community Case, Preliminary Objections, Judgment of February 1, 2000, Series C, N° 66, paras. 54 y 55.

[FN31] Inter-Am. Ct. H.R., Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987. Series C, N° 1, para. 88; Godínez Cruz Case, Preliminary Objections, Judgment of June 26, 1987. Series C, N° 3, para. 90; Fairén Garbi and Solís Corrales Case, Preliminary Objections, Judgment of June 26, 1987. Series C, N° 2, paras. 87; Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996. Series C, N° 25, para. 40.

2. Timeliness of the petition

59. Under Article 46(1)(b) of the American Convention, the general rule is that a petition must be lodged within a period of six months “from the date on which the party alleging violation of his rights was notified of the final judgment”. According to Article 32(2) of the Rules of Procedure of the Commission, the time period provided for in Article 46(1)(b) does not apply in cases where exceptions to the requirement of prior exhaustion of domestic remedies are applicable. In such cases, the Rules of Procedure provide that the petition should be presented

within a reasonable period of time, bearing in mind the date on which the alleged violation occurred and the circumstances of each case.

60. With regard to the habeas corpus proceeding, the petition was lodged with the Inter-American Commission on Human Rights on June 24, 1993, in other words a month after the petitioners had been informed of the habeas corpus ruling of May 11 of that year. Therefore, the petition was presented within the time limit provided in Article 46(1)(b) of the Convention. Accordingly, the Commission is competent to examine the petition.

61. As for the criminal investigation, as the Commission has said on a previous occasion, “given the absence of a final judgment in the present case, the findings set forth in the preceding section concerning domestic remedies, and the petitioners’ allegations that the case involves an ongoing denial of justice, the Commission is required to establish whether the petition was filed within a reasonable time under the specific circumstances.[FN32]

[FN32] Plan de Sánchez Massacre, see note 29 supra, para. 30.

62. In the course of the proceeding before it, the Commission has received on repeated and successive claims from the petitioners alleging irregularities, delays, and inaction in the criminal investigations initiated following the murder of Tomás Lares Cipriano. Accordingly, it finds that complaints connected with this particular aspect of the petition have been presented within a reasonable time.

63. As to timeliness of the complaint concerning the alleged violation of the right of freedom of association, the Commission finds that the requirement as regards reasonable time was also met, since that allegation was made in the original petition, in other words within six months after the events that befell Tomás Lares Cipriano occurred.

C. Duplication of proceedings and res judicata

64. The record does not show that the subject matter of the petition is pending in another international proceeding, or that it is the same as a petition previously studied by this organ or by another international organization. Therefore, the requirements set down in Articles 46(1)(c) and 47(d) of the Convention have been met.

D. Nature of the alleged violations

65. The Commission finds that the allegations made by the petitioners regarding violation of the right to life, humane treatment, fair trial, freedom of association and judicial protection could tend to establish violations of the rights recognized in Articles 4, 5, 8, 16, and 25 of the American Convention, in conjunction with the general obligation of the State to respect and ensure the aforesaid rights provided in Article 1(1) of the above-mentioned instrument.

66. With reference to the alleged violation of Article 5 (humane treatment) of the American Convention, the Commission notes that the petitioners did not allege specific acts of torture or inhuman treatment that might have been inflicted on the alleged victim before his murder. Nor does the report prepared by the coroner show that the mutilation of the right ear and other injuries sustained by Tomás Lares Cipriano might have been inflicted before his life was taken. Consequently, the Commission, in accordance with Article 47(c) of the Convention, finds that the allegation with respect to the violation of this particular right is unfounded.

67. In relation to the alleged violation of Article 7 (personal liberty) of the American Convention, the Commission notes that the petitioners, in their complaint, said that Tomás Lares Cipriano was ambushed and later murdered.[FN33] There is no evidence in the record before the IACHR that the deceased might have been deprived of his personal liberty before being murdered. Consequently, the Commission, in accordance with Article 47(c) of the Convention, finds that the allegation with respect to the violation of this particular right is unfounded.

[FN33] See para. 17 supra.

68. The Commission concludes that it is competent to take up the instant petition and that it is admissible, in accordance with Articles 46 and 47 of the American Convention, as regards the rights protected in Articles 4, 8, 16, and 25 of the Convention, and inadmissible with respect to Articles 5 and 7 of said instrument.

69. Based on the factual and legal arguments given above and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case admissible as regards the alleged violations of Articles 4, 8, 16, 25, and 1(1) of the American Convention.
2. To declare the instant case inadmissible as regards the alleged violations of Articles 5 and 7 of the American Convention.
3. To continue with its analysis of merits in the case.
4. To publish this decision and to include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 27th day of the month of February, 2002. (Signed): Juan E. Méndez, President; José Zalaquett, Second Vice-President; Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts, and Susana Villarán, Commissioners.