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Decided by:	President: Juan Mendez; Second Vice-President: Jose Zalaquett; Commissioners: Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts, Susana Villaran. The Commission member Marta Altolaguirre, of Guatemalan nationality, did not participate in the discussion and voting on this report, in compliance with Article 17 (2) (a) of the Commission’s new Regulations, which entered into force on May 1, 2001.
Dated:	21 October 2002
Citation:	Finca “La Exacta” v. Guatemala, Case 11.382, Inter-Am. C.H.R., Report No. 57/02, OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2002)
Represented by:	APPLICANT: the Center for Human Rights Action
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1. The petitioners in the instant case (the Center for Human Rights Action) allege that the State of Guatemala violated the human rights of the workers on the Finca “La Exacta” (also referred to in the case file as the Finca “El Ceibal” or the Finca “San Juan del Horizonte”), in Coatepeque, Quetzaltenago, when the Guatemalan police, using extreme force, entered the estate on August 24, 1994, in an incident that left three workers dead and 11 seriously injured. The petitioners allege that the State committed other violations by failing to provide access to justice and to judicial protection for the workers of Finca “La Exacta”, in connection with the events of August 24, 1994 and other claims of the workers, based on Guatemalan law. After careful examination of these claims, the Commission concludes that the State of Guatemala violated Articles 1, 4, 5, 8, 16, 19 and 25 of the American Convention of Human Rights (hereinafter “the Convention”).

I. BACKGROUND INFORMATION

A. Allegations of the petitioners

2. According to the petitioners, in early 1994 with the help of the leaders of the Federation of Guatemalan Workers Unions (“UNSI TRAGUA”), the workers on the Finca “La Exacta” began to organize and protest against their working conditions. Neither the Guatemalan labor courts nor the estate management took any action, and on July 17, 1994 the workers occupied the estate.

3. On August 24, 1994, agents of the Guatemalan security forces invaded the estate and used excessive force against the occupiers. According to the petitioners, the agents forced their way into the estate with a tractor and began to fire their weapons and to throw teargas bombs without any provocation. Three persons were killed and 11 injured in the clash.

4. The petitioners allege that the Government of Guatemala subsequently failed to properly investigate these acts and to punish the perpetrators. They also allege that the Government of Guatemala was guilty of the denial of justice when it failed to give the workers due process, an opportunity to be heard, and adequate judicial remedies with respect to their labor demands.

B. Position of the Government

5. The Government of Guatemala has argued that the petitioners' complaint is inadmissible, because all domestic remedies have not been exhausted. It alleges that a proper investigation is being carried out and that it has not yet been completed.

6. The Government has put forward arguments in which it seeks to refute the allegations of the petitioners regarding the use of excessive force by police officers on August 24, 1994. For its part, it claims that the police team entered the estate with a court order and that the occupants were in possession of weapons.

C. Processing of the case

7. On September 8, 1994 the petitioners submitted to the Inter-American Commission on Human Rights (the "Commission") a request for precautionary measures and requested that a case be opened based on the events of August 24, 1994 on the Finca "La Exacta". On September 9, 1994, in accordance with Article 34 of the Regulations of the Commission, case 11.382 was opened and the Commission transmitted to the Government of Guatemala the pertinent parts of the complaint it had received. The Government was requested to submit such information as it considered pertinent within a period of 90 days.

8. On September 19, 1994, the Commission requested the Government of Guatemala to take provisional measures, in accordance with Article 29 of its Regulations, to protect the life and security of the 12 persons involved in the incident on the Finca "La Exacta". It also convened a hearing on the case, on September 23, 1994.

9. A hearing was held at the Commission's 87th period of sessions, at which both parties to the case were present. On that occasion the petitioners filed a formal complaint in which they repeated the information contained in the original request for precautionary measures to be taken.

10. The Commission also announced at the hearing that it was placing itself at the disposal of the parties with a view to reaching a friendly settlement. The petitioners indicated their acceptance of the Commission's offer. After the hearing, the Commission sent a letter to the Government reiterating its offer to place itself at the disposal of the parties to negotiate a friendly settlement. The Government did not reply to this communication.

11. On September 28, 1994 the Government communicated its reply to the Commission's request for the adoption of precautionary measures. This reply was transmitted to the petitioners on October 5, 1994.

12. On November 17, 1994 the Commission received the reply of the Government in the central case. The Commission transmitted the Government's reply to the petitioners on November 21, 1994.

13. On September 6, 1995 a second hearing was held on the case at the Commission's 90th period of sessions. At the hearing, the petitioners submitted a number of documents, which were transmitted to the Government on September 7, 1995. On September 27, 1995, the Commission received a statement *amicus curiae* in connection with the case.

14. On December 4, 1995 the Commission transmitted communications to the Government and to the petitioners, placing itself once more at the disposal of the parties to begin negotiations aimed at reaching a friendly settlement. The Commission requested the parties to respond within 30 days.

15. The petitioners submitted their reply in English on December 14, 1994. On December 22, 1995 the petitioners submitted their reply in Spanish, including the arguments put forward in their original reply in English, as well as updated information on the case. The petitioners' reply was transmitted to the Government on December 29, 1995.

16. On January 23, 1996 the Government replied to the Commission's communication regarding a friendly settlement. The Government informed the Commission that it did not believe that it was appropriate to discuss a friendly settlement, because the investigations and internal proceedings in the case had not been completed. The Government also provided the Commission with updated information on the status of the investigation. The Commission transmitted the Government's report to the petitioners on January 24, 1996

17. On February 16, 1996 the Commission received the Government's reply to the reply of the petitioners. This reply was transmitted to the petitioners on February 29, 1996.

18. By letter dated August 21, 1996 the Commission, pursuant to Article 48(1) of the Convention, requested the Government to furnish documents that it considered necessary to conduct a proper examination of the case. On October 10, the Government sent the Commission a communication enclosing all of the requested documents.

II. ANALYSIS

A. Admissibility

1. Formal requirements for admissibility

19. The complaint meets the formal requirements for admissibility set out in the American Convention on Human Rights and in the Regulations of the Commission. In accordance with Article 47(b) of the American Convention on Human Rights (hereinafter “the Convention”), the Commission is competent to consider the case since the petition states facts that tend to establish a violation of the rights guaranteed by the Convention. With regard to Articles 46(1)(c) and 47(d) of the Convention, respectively, the Commission has received no information to indicate that the subject of the petition is pending in another international proceeding for settlement or that it is substantially the same as one previously studied by the Commission.

2. Friendly settlement

20. In accordance with Article 48(1)(f) of the Convention, the Commission offered to place itself at the disposal of the parties with a view to reaching a friendly settlement of the matter. The Government of Guatemala communicated to the Commission its decision not to participate in negotiations aimed at reaching a friendly settlement.

3. Exhaustion of Domestic Remedies

21. In accordance with Article 46(2) of the Convention, the requirement for the exhaustion of remedies under domestic law, which is contained in Article 46(1)(a), is not applicable in this case. Article 46(1)(a) requires that “the remedies under domestic law should have been pursued and exhausted in accordance with generally recognized principles of international law”.

22. Nonetheless, the Convention provides in Article 46(2)(b) that requirement of exhaustion of the remedies under domestic law shall not be applicable when “the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them”. In accordance with Article 46(2)(c), the requirement for exhaustion of remedies under domestic law shall not be applicable when “there has been unwarranted delay in rendering a final judgment under the aforementioned remedies”. The Inter-American Court of Human Rights (hereinafter “the Court”) has ruled on these principles, making it clear that in order to invoke the requirement of exhaustion of remedies under domestic law with a view to rejecting the jurisdiction of the inter-American system, the Government must demonstrate not only that an adequate remedy is available under domestic law, but that such remedy is “effective”. [FN2]

[FN2] Inter-American Court of Human Rights, case of Velásquez Rodríguez, Judgment of July 29, 1988. Series C N° 4, paragraph 66.

a. Exhaustion of domestic remedies with regard to the complaint of lack of judicial protection for the employment claims of the workers

23. The Commission notes that the fundamental aspect of the complaint of failure to provide judicial protection for the employment claims of the workers on the Finca “La Exacta” is based on the contention that the workers were not afforded the right to due process nor the opportunity

to be heard for the settlement of their claims, and that the labor courts of Guatemala were guilty of excessive and unwarranted delays in taking action on these claims. These allegations constitute not only a denunciation of violations of the Convention but also an argument that the requirement for exhaustion of the remedies available under domestic law was not applicable to the petitioners in this case. [FN3]

[FN3] See Inter-American Court of Human Rights, case of Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987. Series C No.1, paragraph 91.

24. The Government has limited to one sentence its argument on the question of the exhaustion of domestic remedies for the denial of justice in the case of the workers' claims. It merely states that the workers and their union leaders are putting forward their claims before the labor courts. The Government has not assumed its legal burden of demonstrating that the remedies that were pursued to settle the workers' claims are effective and are being applied, without unwarranted delays, or that further effective remedies have not as yet been pursued and exhausted. [FN4] The Commission therefore considered that the petitioners are excused from the requirement for the exhaustion of domestic remedies with respect to their complaints about the lack of judicial protection for the employment claims of the workers. The Commission will examine the grounds for the complaints about the lack of judicial protection for these claims in the section on the substance of the petition.

[FN4] .Idem, paragraph 88.

b. Exhaustion of remedies under domestic law with respect to the violations that allegedly resulted from the events of August 24, 1994

25. As regards the violations that allegedly resulted from the acts committed on August 24, 1994 the Commission considers that the petitioners are also excused from having to fulfill the requirement for exhaustion of the remedies available under domestic law. The Government has argued that the existence of the criminal proceedings now underway with respect to these acts means that the Commission does not have competence in the case.

26. The Commission nevertheless concludes that there has been an unwarranted delay in the criminal proceeding that was instituted as a result of the acts of violence of August 24, 1994. This proceeding should have been the appropriate mechanism for investigating the incidents, assigning responsibilities and, where appropriate, imposing punishment.

27. Nevertheless, more than two years have elapsed since the acts of violence without any formal accusation being made in the case. The case is still in the phase of the preliminary proceeding or investigation. The Criminal Code of Procedure of Guatemala provides that, once the defendants have been identified, the preliminary proceeding should normally last six months.

[FN5] In the present case, however, the Office of the Public Prosecutor has requested extensions of the preliminary phase on four separate occasions.

[FN5] See Criminal Code of Procedure of Guatemala, Article 323.

28. The Commission is also of the view that it has not been demonstrated that the criminal proceedings in connection with the events of August 24, 1994 constitute an effective remedy that has been adequately applied. On the contrary, it has been demonstrated that the proceeding was inadequate and ineffective. As a practical matter therefore, the victims of the acts of August 24, 1994 have been denied access to the remedies provided under the domestic legislation.

29. It became clear immediately after the police action of August 24, 1994 that no impartial investigation and prosecution of the case would take place. Senior officials immediately excused the action of the Guatemalan police units before it was possible to fully determine what had happened and without first requiring an investigation of the matter.

30. Barely two days after the incident, the then President Ramiro de León Carpio declared that the forcible eviction of the workers was a legal measure justified by the need to protect the right to property under the rule of law. [FN6] .The following day, the Attorney General, Ramses Cuestas Gómez, declared that the police did not enter the estate “acting in a repressive or illegal manner”. He said that it was likely that private security forces and not the Government police were responsible for any violence that might have taken place [FN7] .

[FN6] See “President justifies use of force in eviction” Siglo XXI, August 26, 1994.

[FN7] .“Ramses Cuestas: Death and violence will not go unpunished”, La República, August 27, 1994

31. The unwillingness of the police to collaborate in a serious investigation that might lead to the judicial determination of responsibilities for the acts of violence was made even clearer. Shortly after the confrontation, the Director of the National Police, Salvador Figueroa, rejected out of hand all accusations of irregularities or police responsibility. He argued that critics of the action taken by the police on Finca “La Exacta” belonged to “destabilizing groups” in Guatemala. [FN8] Later, he specifically said that the police would not carry out an investigation of the action by the police at Finca “La Exacta”. [FN9]

[FN8] “Figueroa: They are trampling on human rights”, Siglo XXI, September 1, 1994.

[FN9] See “El Ceibal: National Police Director contradicts the President on official report”, Siglo XXI, 5 September 1994.

32. As a result of the position openly taken by senior Government officials, it became clear shortly after the occurrence of the events in question and even before the Commission opened case 11.382, on September 9, 1994, that the victims were unlikely to gain access to an effective domestic remedy. The subsequent investigations and processing under domestic law of the criminal case arising from the acts of August 24, 1994 demonstrated even more clearly the ineffectiveness of the domestic remedies.

33. The Office of the Public Prosecutor and the courts have delayed considerably or have simply neglected to take statements from key witnesses and have not gathered crucial evidence. The United Nation Mission for the Verification of Human Rights in Guatemala (MINUGUA) highlighted the problems related to the proceeding in various reports. In its second report, the Director of MINUGUA stated that “after eight months, the investigation has made no progress whatsoever because of the inaction of the Public Prosecutor’s Office which, without any justification, has neglected to carry out basic inquiries”. [FN10] The third report of MINUGUA states that the case had not gone forward due to the inaction of the Public Prosecutor’s Office and the dilatory approach by the Court responsible for the case. [FN11]

[FN10] Second Report of the Director of MINUGUA, paragraph 67.

[FN11] See Third Report of the Director of MINUGUA, paragraph 65.

34. The Government has argued that these reports of MINUGUA are outdated and do not reflect the most recent initiatives of the Office of the Public Prosecutor to move forward the investigation of the case. According to the Government and the petitioners, after November 1995 the investigations were reactivated and important witnesses summoned to testify. [FN12] Nevertheless, these new investigative measures were recently adopted more than one year after the original acts of August 24, 1994 and many important investigative procedures have still not been completed. There is no evidence that a complete and adequate judicial investigation will be carried out in the near future.

[FN12] The Fourth Report of MINUGUA states that a new prosecutor has helped to reactivate the investigation. See Fourth Report of the Director of MINUGUA, paragraph 43(f).

B. The substance of the case – Proven acts and conclusions of law

1. Right to life and right to respect of personal integrity

a. Excessive use of force

35. The record shows that on August 24, 1994 no less than 215 agents of the National Police, supported by at least two helicopters, invaded the Finca “La Exacta” using teargas and firearms against the workers who had occupied the estate. The use of such force resulted in the death of Efraín Recinos Gómez, Basilio Guzmán Juárez and Diego Orozco. It also endangered the entire

group of workers and their families who were occupying the estate and who suffered from the attack. Serious injuries were sustained by 11 persons: Pedro Carreto Loayes, Efraín Guzmán Lucero, Ignacio Carreto Loayes, Daniel Pérez Guzmán, Marcelino López, José Juárez Quinil, Hugo René Jiménez López, Luciano Lorenzo Pérez, Feliz Orozco Huinil, Pedro García Guzmán and Genaro López Rodas. The Commission will examine whether the force used was excessive and therefore a violation of the Convention.

36. Several observers in Guatemala concluded immediately after the events that the force used by the security forces was excessive. The Bishops of Quezaltenango issued a statement shortly after the invasion indicating that the incursion “was characterized by an irrational use of force that bordered on brutality and savagery”. [FN13] The Counsel for Human Rights of Guatemala, Dr. Jorge Mario García La Guardia, after conducting a careful investigation of the incident, reached a similar conclusion. Officials of the Office of the Counsel for Human Rights visited Finca “La Exacta” and the hospital to which a number of wounded persons had been taken on the same day of the events to gather evidence. They also interviewed witnesses and examined relevant documents. The final conclusion of the report of the Counsel for Human Rights, which was issued after these extensive investigations, was that the police agents had used “excessive and unnecessary force.” [FN14]

[FN13] Statement by the Dioceses of Los Altos-Quezaltenango, August 29, 1994. The text of the pertinent parts of this statement is transcribed below:

At 11:am, without any provocation whatsoever or apparent motive on the part of the workers, anti-riot squad officers arrived at the perimeter of the estate, broke down the gate with a tracked-wheel caterpillar tractor and began shooting at the workers and throwing teargas bombs.

During the operation, a number of officers were struck and three helicopters were observed flying at a very low altitude directing the police officers and inciting them to “finish-off” the workers. Persons who witnessed the incident declared that it was characterized by an irrational use of force bordering on brutality and savagery.

...

We therefore insist that:

1. State agencies and public officials base their public statements on truthful information that is neither manipulated nor partial;
2. The legal responsibility of the anti-riot squad officers be ascertained for the excessive violence and abuse of authority and for the Office of the Public Prosecutor to launch the appropriate investigation of the crime of murder;
3. The Ministry of Labor through the Office of the General Inspector should investigate the failure of the employer to pay the workers of the Finca San Juan El Horizonte the minimum wage and other legal benefits and to strictly impose the appropriate penalties;
4. The employers should respect the right of field workers on the estate to freely organize themselves and should fulfill their obligations as employers.

[FN14] . Report of the Human Rights Attorney of Guatemala, September 6, 1994, page 4.

37. The Government has maintained that the police agents conducted the raid on the Finca “La Exacta” carrying with them various arrest warrants issued against 111 workers. The

Government has placed a great deal of emphasis on the fact that the workers occupying the estate had been accused in court for crimes of illegal occupation and coercion. It has argued that police action was necessary to protect the private property of the estate owners.

38. The Commission has no reason to ascertain—nor does it propose to do so—whether the occupiers of the estate committed one or more crimes that justified the issuance of the arrest warrants. [FN15] Even if a crime might have been committed and private property endangered, the law enforcement officials would be required to effect the arrests and punishment in accordance with the law and due process and with respect for the human rights guaranteed in the Convention. Police agents cannot act in a wholly discretionary manner when carrying out their functions to enforce the law.

[FN15] Nor is the Commission required to examine the statements of the petitioners that the occupation, although illegal, was justified by the fact that neither the owners of the estate nor the Courts of Guatemala responded in a timely manner to their labor dispute. The Commission wishes to note specifically that the examination which it carried out in this report should in no way be interpreted as approval of the occupation of estates. The Commission did indeed examine the reaction of the Courts of Guatemala to the labor demands of the workers of the estate in its analysis with respect to Articles 8 and 25 of the Convention.

39. The Court's jurisprudence clearly demonstrates that agents of the State have the right and responsibility to enforce the law and to maintain public order even though death or bodily injury may take place in some cases. [FN16]

[FN16] See Inter-American Court of Human Rights, the case of Neira Alegría et al, Judgment of July 19, 1995, paragraph 61; case of Velásquez Rodríguez, Judgment of July 29, 1988, paragraphs 54, 74. Unlike the European Convention on Human Rights, the American Convention does not expressly permit the use of necessary force, including force that results in death, to control crime and violence. See European Convention on Human Rights, Article 2. Nevertheless, the jurisprudence of the American Convention seems to establish a framework similar to the one in the European Convention. State agents must respect the life and personal integrity of individuals and cannot arbitrarily deprive anyone of life. Nevertheless, they are allowed to use force, even when such force deprives individuals of life or affect their physical integrity, in pursuit of legitimate objectives, provided that the force used is not excessive.

Nevertheless, the Court clearly stated also that the force used should not be excessive. [FN17] When excessive force is used, personal integrity is not respected and any resulting deprivation of life is arbitrary. [FN18] The question before the Commission is therefore to determine whether the police agents who invaded the estate to enforce the arrest warrants used excessive force, thereby violating the Convention. The Commission concludes that excessive force was used in this case.

[FN17] See: Neira Alegria et al, Judgment of January 19, 1995, paras. 74-75.

[FN18] See: Report on the situation of human rights in Chile, OAS/Ser.L/V/11.66, doc.17, September 27, 1985, pp. 67-68 (the Commission considers to be extrajudicial deaths by execution caused by the disproportionate use of force by law enforcement officials to suppress riots).

40. In accordance with the international norms developed to govern the use of force by law enforcement officials in the performance of their duty, the use of force should be necessary and proportionate to the needs of the situation and the objective to be achieved. [FN19] The United Nations Code of Conduct for Law Enforcement Officials expressly provides that “the use of firearms is considered an extreme measure”. [FN20]

[FN19] See Code of Conduct for Law Enforcement Officials adopted by the United Nations General Assembly in resolution 34/169 of 17 December 1979, Article 3 (hereinafter referred to as “Code of Conduct”); Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Articles 4-5 (hereinafter referred to as “Basic Principles”).

[FN20] Code of Conduct, Article 3.

41. The possibility that the workers occupying the estate might have committed a crime against property and the existence of arrest warrants against them could not in themselves justify the use of lethal force, including the use of firearms. The crimes for which orders of arrest were issued did not even necessarily include an element of violence. [FN21] Nor does the criminal complaint that gave rise to the judicial proceeding, based on which the arrest warrants were issued, allege facts involving acts of violence. [FN22] The use of lethal force merely to carry out orders of arrest was unnecessary and disproportionate.

[FN21] Criminal Code of Guatemala, Articles 214 and 256.

[FN22] See: Complaint filed with the Office of the Attorney General and the Office of the Public Prosecutor by José Alvaro Blanco Aguirre, July 19, 1994.

42. The Commission notes once again the content of the international norms which provide that firearms should not be used against persons, except where there is danger to life:

Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape. [FN23]

[FN23] Basic Principles, Article 9.

43. The Government has offered no evidence to show that the police agents had reason to believe that their lives or the lives of third parties, were in danger. The lethal force that was used, including the use of firearms was therefore disproportionate to the danger that existed.

44. The Government has maintained that the persons who occupied the estate were in possession of lethal weapons. As proof of this, it cites the fact that certain weapons, including firearms and bombs, which were allegedly under the control of the occupants of the estate, were handed over to the courts on the day of the incursion.

45. The Commission concludes that, despite this evidence, the record does not show that the occupants possessed these types of weapons. First, none of the more than 40 persons arrested after the raid had weapons in their possession.

46. Second, several of the persons who were arrested after the raid of August 24, 1994 declared that the occupants had no weapons other than sticks and stones. [FN24] One of these eyewitnesses stated that he had seen police agents opening an office on the estate and taking out the weapons that were then handed over to the courts. [FN25] Another witness also stated that the arms had been clandestinely brought in by the police. [FN26]

[FN24] See statement of Enrique Guzman Monzon, August 25, 1994, p. 3; statement of Ricardo Guzmán Juárez, August 25, 1994, p. 4; statement of Demetrio Trinidad Delfino González Sánchez, August 25, 1994, p. 4; statement of Juan Guzmán Huinil, August 25, 1994, p. 2;

[FN25] See statement of Enrique Guzmán Monzón, p. 3.

[FN26] See statement of Juan Guzmán Huinil, p. 2.

47. The testimony of these witnesses about the absence of weapons is corroborated by observers from outside the area who arrived on the scene immediately after the raid. The Bishops of Quetzaltenango issued a statement in which they asserted that the occupants did not have weapons. [FN27]

[FN27] See statement by the Diocese of Los Altos-Quetzaltenango, August 29, 1994.

48. Moreover, the President of Guatemala, Ramiro de León Carpio, publicly acknowledged that he had erred in his original statement, made after the incident, in which he had said that the occupants were in possession of weapons and explosives. [FN28]

[FN28] See “President acknowledges errors in his statements on the El Ceibal case”, Siglo Veintiuno, August 31, 1994.

49. The version of the incident that appeared in the original police report on the events of August 24, 1994 indicates that those occupying the estate attacked the police with lethal weapons. According to that version, a group of occupiers, comprised exclusively of men, attacked the police units with heavy caliber weapons and bombs, thus posing considerable danger to the lives of the police agents.

50. Since the Commission rejected the argument that the occupiers possessed lethal weapons, such as heavy caliber guns and bombs, it must also reject this first official version of the events. This version of the events was also rejected almost unanimously by Government and non-government sources. [FN29] Further evidence of the improbability of this version is the fact that the newspaper reports of the incidents indicate that, although some three policemen were injured during the events of August 24, 1994, none of the injuries was due to firearms or explosives. [FN30] The Government has never attempted to present to the Commission as fact the account that appears in the police reports.

[FN29] See “President acknowledges errors in his statements on the El Ceibal case”, Siglo Veintiuno, August 31, 1994; “Government accepts error in report on eviction”, Prensa Libre, 31 August 1994; statement of the Bishops of Quetzaltenango.

[FN30] See “La Exacta: ODHA could institute proceedings against policemen involved in the eviction”, Siglo Veintiuno, August 30, 1994.

51. The Government has offered no other evidence to show that there was danger to life that merited a reaction by the police forces, which included the use of firearms and other lethal force. The Government has indicated that the Counsel for Human Rights of Guatemala received several complaints in early August 1994 alleging that several workers on the estate were being held captive by the workers occupying the estate. However, these complaints do not show and the Government has never claimed that the lives of these persons were in danger or that the extreme force used by the police was used to prevent harm to these persons. [FN31]

[FN31] See: complaint filed with the Office of the Counsel for Human Rights by José Alvaro Andrés Blanco Aguirre on August 1, 1994; complaint filed with the Office of the Counsel for Human Rights by David Alexander Abbott Haim and José Arturo Morales (attorneys for José Alvaro Andrés Blanco Aguirre) on behalf of Marco Tulio Aguilar, Pedro Soc, Arnulfo Velásquez, Marco Tulio Monge, Abraham Vásquez, Rafael Huinac and Agustín Zamora, on August 9, 1994.

52. The Commission considers that the most credible version of the events is that on August 24, 1994, police forces arrived at the estate with arrest warrants and attempted to negotiate at one

of the gates of the estate with the occupiers for a approximately one or two hours. When the workers occupying the estate refused to abandon it, the police forces penetrated inside using a Caterpillar tractor to force their way into the interior areas. Once they had penetrated into the part in which most of the occupiers were concentrated, they surrounded and began to attack them with firearms and with air support from no less than two helicopters. The report of the Counsel for Human Rights of Guatemala, the testimony of eyewitnesses and the reports of the Government itself confirm this version of the events. [FN32]

[FN32] See report of the Counsel for Human Rights of Guatemala, September 6, 1994, p.p. 3-4; statement of Enrique Guzmán Monzón, August 25, 1994, p. 2; statement of Demetrio Trinidad Delfino González Sánchez, August 25, 1994, p. 3; report of the Government, February 16, 1996, p. 5; reply of the Government, September 28, 1996, p. 6.

53. This sequence of events shows that the law enforcement officials who participated in the raid of August 24, 1994 did not ascertain, prior to attacking the workers occupying the estate, that it was necessary to use extreme force. According to the international norms governing the excessive use of force, law enforcement officials “may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result”. [FN33]

[FN33] Basic Principles, p. 4.

54. In the case of the court orders, the police forces negotiated with the occupants for only a few hours before launching a violent incursion. During this period, the police agents could not have known if it would be impossible to execute the arrest warrants without recourse to the use of extreme force, including the use of firearms. The police agents could have waited some time more to see whether the persons named in the arrest warrants would surrender or leave the estate so that they could be arrested. This failure proves that the police agents did not postpone the use of force until it was clear that other means of achieving their objective would be ineffective.

55. The way in which the police agents entered the estate and attacked the occupants also proves that the force used was not proportionate or strictly necessary to achieve the objective of executing the arrest warrants. The use by the law enforcement officials of a tractor and air support together with heavy weapons to surround the occupants and then open fire against them proves that the operation was much more like an attack and an effort aimed at the forcible eviction of the families occupying the estate than the arrest of the persons named in the arrest warrants. The record does not show that the judicial authorities authorized a forcible eviction. On the contrary, the orders which the police had when they carried out the raid provided, specifically and exclusively, for the “detention” of certain persons. [FN34] Since the eviction was not a legitimate objective of the law enforcement officials, the force used to achieve that aim was not strictly necessary.

[FN34] See arrest warrant issued by the Second Criminal Investigation Court of First Instance of Coatepeque, August 1, 1994; arrest warrants issued by the Second Criminal Investigation Court of First Instance of Coatepeque, August 16, 1994. The arrest warrant specifically provided that the law enforcement officials executing the orders were obliged to guarantee that unnecessary force was not used.

56. The Commission considers it important to also point out, with regard to its conclusion that the police units used excessive force, that the group of workers occupying the estate who were attacked included children. The United Nations Code of Conduct for Law Enforcement Officials expressly provides that every effort must be made to exclude the use of firearms against children. [FN35] With reference to the court orders, the police forces attacked the occupants using firearms and other weapons without taking any special precautions so as not to fire on children.

[FN35] See Code of Conduct, Article 3, Commentary (c).

57. Lastly, the Commission points out that the record in this case includes the plan of action which the police forces prepared prior to the events of August 24, 1994 (the “Montaña plan”). [FN36] The European Court of Human Rights has determined that a plan for a law enforcement operation may not provide adequate protection against the use of excessive force and consequently may create a situation in which the use of excessive force is likely. Consequently, the plan represents an important indicator of whether excessive force was used when the law enforcement activity was carried out. [FN37] The Commission is of the view that these considerations are also applicable to the case of court orders in the inter-American system.

[FN36] See Plan of Operations No 121-94 “Montaña”, prepared by the National Police, August 18, 1994 [hereinafter referred to as the “Montaña Plan”].

[FN37] See European Court of Human Rights, McCann et al versus United Kingdom, Judgment of September 27, 1995, Series A., vol. 324, paragraphs 201, 202, 205.

58. The police plan prepared in this case provides for the use of extreme force and sufficient safeguards were not provided to ensure proportionality and the necessity for the force used. The Montaña plan was subsequently executed, with the consequent use of excessive force.

59. The plan provides for the “eviction” of the “invaders”. It begins by explaining that the occupiers would provoke a confrontation with law enforcement officials. The plan then describes as “enemy forces” the organized workers on the estate. The plan also mentions “destabilizing political leaders” and “subversive groups” as other possible “enemy forces” that may turn up to support the occupiers.

60. The plan then presents a list of “assumptions”. These include a scenario in which the occupiers possessed weapons, threw bombs upon the arrival of the police and planted land mines in the occupied area.

61. The extremely strong text used in the plan and the assumptions made envisaged a scenario that required the police units to use extreme force. Nevertheless, neither the plan nor any other court order indicates that any police investigation or other information concerning the situation at Finca “La Exacta” supported the assumptions made by the police forces. Consequently, the plan contained incitement to use unnecessary and disproportionate force.

62. In its reply of February 16, 1996 in the case now before the Commission, the Government acknowledged that the basis for the assumptions made in the plan lay in the experience which the police had acquired in carrying out evictions in other estates in similar circumstances. However, police forces cannot act on the basis of general information to establish a plan that requires the use of extreme force in an individual case. The study carried out by law enforcement officials of the need for and type of force that should be used must be closely linked to specific facts in order to respect the principles of proportionality and necessity in the present case.

63. The Commission once again wishes to point out that the record does not show that eviction by force was a legitimate law enforcement objective in this case. Consequently, a plan based on previous experiences of compulsory evictions would necessarily lead to a type and degree of force that was more extreme than necessary in this case, which concerned only the execution of arrest warrants.

64. The degree of force envisaged under the plan was excessive. The plan provided for the use of agents from various police units, including the Quick Reaction Squads and the Fifth Police Corps (anti-riot police). More than 200 police agents were assigned to the operation. The figure should be compared with the 111 arrest warrants that were required to be executed, bearing in mind that the record does not show that all of these 111 persons were actually on the estate. The police agents had to be transported in six buses and four trucks. The plan also provided for the use of a helicopter and a tractor. The police agents were required to carry with them long truncheons, teargas, pistols and guns. The Commission considers that this degree of force was disproportionate and unnecessary to achieve the objective of executing the pending arrest warrants.

65. The Commission concludes that the plan in no way provided adequate guarantees for the avoidance of excessive use of force. In a 16-page plan for an operation with heavy weapons, only a brief mention is made on page 14 of the need to limit the force to be applied. Instruction N° 11 provides that “the use of firearms is expressly prohibited, except in self-defense”. Although the plan recognizes that children could be present at the time of the raid, no protection is provided for them in the event that the use of force became necessary. The Commission considers that the type of force to be used, together with the failure to clearly indicate to the police units that they should limit the use of the force applied, made it inevitable that excessive force would be used.

66. The Government provided the Commission with a copy of the Montaña plan, which differs from the plan examined by the Commission. [FN38] This second version of the plan, which was sent to the Office of the Public Prosecutor by the National Police on January 5, 1995, does not use the same language of the plan examined by the Commission. For example, this version says “possible opposition figures” instead of “enemy forces” and does not include in this category trade union leaders and subversive groups. Nor does it mention an eviction and it places greater emphasis on control by the police officers of the use of weapons.

[FN38] See: Plan of Operations N° 121-94 “Montaña”, approved by the National Police and submitted to the Office of the Public Prosecutor on January 3, 1995.

67. However, the document that contains the original Montaña plan examined by the Commission, which is in the file, clearly indicates that this plan was indeed sent to the police units that participated in the raid and that these units received the plan before the operation took place. Consequently, the copy of the Montaña plan provided by the Government does not lead the Commission to conclude that the second and more acceptable version was distributed and implemented. On the contrary, the Commission must conclude that the agents of the Government recognized the compromising nature of the original plan and therefore provided a modified version of it for use in the criminal investigation of the case.

68. Based on these considerations, the Commission concludes that the Guatemalan police forces used excessive force on August 24, 1994 and therefore arbitrarily deprived Efraín Recinos Gómez, Basilio Guzmán Juárez and Diego Orozco of their lives, thereby violating Article 4(1) of the Convention. The Government agents responsible for the excessive use of force also violated Article 5(1), which protects the right to physical, mental and moral integrity for the group of occupants of the estate who were attacked and, in particular, for the 11 persons who were seriously injured.

b. Torture of Diego Orozco García

69. The information available to the Commission shows that Diego Orozco García received a bullet wound to the chest during the police raid on Finca “La Exacta” and that this wound was at least in part the cause of his death. [FN39] The record also shows, however, that Diego Orozco García was taken alive from the estate in one of the helicopters used in the police operation and that his body was found days later some 60 kilometers from the estate. [FN40] The forensic report that was prepared concluded that Mr. Orozco died from a bullet wound and severe bruises and lacerations on his face, chest and upper body. The report also indicated that the corpse showed signs of having been tied by the hands and chest and dragged over a rough surface. [FN41]

[FN39] See: Report of the Counsel for Human Rights of Guatemala, September 6, 1994, p. 4; original complaint of the petitioners, p.3.

[FN40] Ibid.

[FN41] See report of the Counsel for Human Rights of Guatemala, September 6, 1994, p. 5.

70. The Commission concludes that, in addition to being a victim of the excessive force used by the police units, Mr. Orozco was tortured before his death. The forensic report establishes that his hands and chest were tied. He must have undergone this treatment while still alive and suffering from the bullet wound to his chest. When he was taken from Finca “La Exacta”, Mr. Orozco already had a bullet wound and there would have been no reason to tie him after his death. The forensic report also establishes that Mr. Orozco suffered other violent treatment that caused bruises and lacerations. The Commission concludes that the acts committed against Mr. Orozco constituted torture, in direct violation of Article 5(2) of the Convention, which expressly prohibits the use of torture.

71. The torture to which Mr. Orozco was subjected also constitutes a violation of the Inter-American Convention to Prevent and Punish Torture (“Convention against Torture”), which was ratified by the Government of Guatemala on 29 January 1987. [FN42]

[FN42] Article 29 of the American Convention clearly provides that the norms laid down in other international acts also apply to States parties to the Convention. The purpose of the Convention against Torture is to serve as an auxiliary instrument to the American Convention within the inter-American system for the protection of human rights, extending the principles established in Article 5 of the American Convention. Article 8 of the Convention against Torture expressly provides that a case of torture may be submitted to an international forum when all domestic legal procedures have been exhausted. The Commission therefore considers that, pursuant to Article 49 of the American Convention, the Convention against Torture may apply directly through the mechanisms provided for in the American Convention.

Article 2 of the Convention against Torture defines torture as follows:

..... any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose.

The treatment suffered by Diego Orozco at the hands of Government agents, as emerges from the type of bodily injuries described in the forensic report, is consistent with this definition of torture.

2. Right to freedom of association

72. The Commission proceeded to examine the claim that the Government agents who carried out the raid of August 24, 1994 also violated Article 16 of the Convention, which protects the right to freedom of association. Article 16(1) provides that “everyone has the right to associate freely for labor or other purposes”.

73. In February 1994, the workers on Finca “La Exacta” organized themselves into a union with the assistance of UNSITRAGUA. [FN43] On February 18, 1994 the workers on Finca “La Exacta” petitioned the labor courts of Guatemala to institute proceedings in connection with a labor dispute of an economic and social nature arising from a conflict with the owners of Finca “La Exacta”. [FN44] The filing included a set of petitions by the workers against the owners and administrators of the estate.

[FN43] See document submitted to the Deputy Labor Inspector, Ministry of Labor and Social Welfare, Coatepeque, Quetzaltenango, February 16, 1994.

[FN44] Document instituting proceedings in the economic and social labor dispute brought before the Second Labor and Social Welfare Court of First Instance of Coatepeque, Quetzaltenango, February 18, 1994.

74. In early March 1994, the owners and administrators of Finca “La Exacta” began to dismiss workers who had signed the petition to initiate the process related to the collective bargaining dispute. According to undisputed information submitted by the petitioners, during the first week of March, more than 60 workers were dismissed. [FN45] The workers immediately instituted proceedings for their reinstatement with the Second Labour Court. [FN46] The owners of the estate continued to refuse to reinstate the workers or to discuss their claims, and the courts also failed to take action. The workers subsequently occupied Finca “La Exacta” on July 17, 1994.

[FN45] See also report of the Counsel for Human Rights of Guatemala, September 6, 1994, p.1.

[FN46] See, for example, Claim for Reinstatement, March 3, 1994.

75. This background to the raid of August 24, 1994 and the way in which the raid was planned and executed show that the purpose was to suppress the labor movement and its activities on Finca “La Exacta”. As stated in the section above, the raid was executed using excessive force for the sole purpose of fulfilling the legitimate police obligation to execute warrants of arrest. Moreover, as already pointed out, the “organized peasant groups” and “union leaders” were identified as “enemy forces”. [FN47]

[FN47] See: Montaña Plan, p.1

76. The Commission also notes that the owners of the estate and the owners of other neighboring estates collaborated with the police in execution of the operation of August 24, 1994. The plan of operation provided for the “interested parties” to give logistical support to the operation, including air support, buses and trucks, as well as food for the participating police agents. [FN48] The testimony of the helicopter pilot Carlos Alberto Enríquez Santizo was that he transported in his helicopter Alvaro Blanco, one of the owners of the company and estate known

as La Exacta, during the raid. [FN49] According to uncontested information provided by the petitioners, private security agents attached to Finca “La Exacta” wore police uniforms and participated in the raid. The testimony of the National Police agent who prepared the plan of operation was that the owner of a neighboring estate provided another helicopter for use in the raid. [FN50]

[FN48] Ibid, p.7.

[FN49] See: Testimony of Carlos Alberto Enríquez Santizo to the Office of the Public Prosecutor in Coatepeque, Quetzaltenango, January 17, 1996, p.2.

[FN50] See: Statement of Francisco Filiberto Duarte Gómez to the Second Court of First Instance of Coatepeque, Quetzaltenango, October 11, 1995, p. 10.

77. On the day of the raid, the owners and administrators of Finca “La Exacta” had already shown an interest in suppressing the union activity and punishing participants. As mentioned before, in reaction to the formation and organization of a union movement on the estate and the presentation of a labor dispute petition, Finca “La Exacta” terminated the contracts. The owners and administrators, moreover, refused to agree to initiate the proceedings that govern labor disputes or to engage in any negotiations with the organized workers on the estate.

78. The desire of the estate owners to suppress the union movement was also evident from the evidence found after the raid of August 24, 1994. After the raid, angry workers from neighboring estates rushed to Finca “La Exacta” and disarmed and detained the private security agents working for Finca “La Exacta”. Hugo René Murga Izguirre, a retired army colonel who headed the private security team, was searched while under detention. According to uncontested information provided by the petitioners, a document was found on his person that contained the names of representatives of UNSITRAGUA, the union organization that had advised the workers on Finca “La Exacta”. The document contained the names of Luis Mérida and Guillermo Monzón and the license plate numbers of their cars. It may be assumed that the private security agent was in possession of this document because he had been asked to subdue the persons listed by violent means.

79. The Commission considers that the examination of the plan and of the police operation of August 24, 1994, together with the collaboration of the owners of the estate and other neighboring estate owners, show that the police units did not act with objectivity as law enforcement officials on August 24, 1994 but acted instead to achieve the objective of the estate owners, which was to take reprisals against the activity of the movement of rural workers that arose on Finca “La Exacta”, and to suppress it.

80. In coming together in a trade union to carry out union activities, the workers had embarked on an initiative protected by Article 16 of the Convention. The Government agents, who worked with the owners of the estate, punished with the severest sanction possible, the decision of the workers of Finca “La Exacta” to form a trade union organization, by killing three men, seriously wounding 11 others and endangering the lives and security of an entire group of

persons. The reprisals taken against the union activities and the suppression of the trade union movement constitute a violation of Article 16.

3. Rights of the child

81. Article 19 of the Convention provides that “every minor child has the right to the measures of protection required by his condition as a minor”. In the raid of August 24, 1994 the Guatemalan police agents used excessive force against a group of persons that included minors. As noted above, the Guatemalan security forces recognized in the plan prepared before August 24, 1994 that minors would be present during the raid on the estate. Since minors are particularly vulnerable, the international norms and Article 19 of the Convention require that special measures be taken to prevent them from being victims of violence. [FN51] Despite this, in this case, the plan of the security forces for the raid did not provide for any protective measure whatsoever to be taken for the children who would be present. The Government therefore violated Article 19 of the Convention.

[FN51] See: Code of Conduct, Article 3, Commentary (c).

4. Right to due process and to judicial protection

82. The Commission will now examine the question of whether the Government of Guatemala violated in this case Articles 8 and 25 of the Convention. Articles 8 and 25 of the Convention recognize the right of everyone to recourse, the right to institute judicial proceedings and to be heard in them, and the right to a ruling by the competent judicial authority. Article 25(1) of the Convention provides that:

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention ...

Article 8(1) of the Convention provides that every person has the right to a hearing, with due guarantees” and within a reasonable time, by a competent, independent and impartial tribunal, for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature. Article 25(2) provides that Governments should ensure that any person claiming a remedy shall have his rights determined by the competent authority.

83. In the present case, the Commission must deal with the question of the application of Articles 8 and 25 in two aspects. The Commission considers the application of both Articles with respect to the labor demands made by the workers of Finca “La Exacta” and with respect to the claim before the court of law arising from the acts of violence committed on August 24, 1994.

a. Denial of justice with respect to the labor claims of the workers on Finca “La Exacta”

84. The Commission concludes that the Government of Guatemala violated Articles 8 and 25 of the Convention with respect to the labor claims brought by the workers on Finca “La Exacta” before the Guatemalan courts. These violations are in respect both of the claims made in the initial petition of the workers to the Guatemalan courts, which initiates a proceeding arising from the worker dispute, and of the claims arising from the dismissal of workers following the submission of the petition arising from the worker dispute.

85. As mentioned before, the organized workers on Finca “La Exacta” filed a petition to institute a proceeding in connection with the worker dispute on February 18, 1994, to present their claims related to their working conditions to the Guatemalan courts. [FN52] In accordance with the Labor Code of Guatemala, this petition may be submitted when a dispute that may lead to a strike arises at a workplace. [FN53] According to the Labor Code of Guatemala, once a petition of this type is submitted, the competent judge for the case is required to convene a conciliation tribunal within 12 hours. [FN54] The resulting conciliation procedure may not last more than 15 days. [FN55] If no agreement is reached, the workers may request the court’s permission to begin a strike.

[FN52] The following were the principal claims of the workers, in relation to violations of the law:

1. Most workers were paid 6 quetzales per day, instead of the minimum wage of 10 quetzales provided for by law.
2. The year-end bonus provided for by law was not paid.
3. The “bono catorce” that should be paid in July in accordance with the law was not paid.
4. Year-end vacations were not paid.
5. Workers were neither granted nor paid for public holidays.
6. Workers had no access to the benefits and allowances provided by the Guatemalan Social Security Institute.

Nevertheless, in the set of petitions submitted together with the petition to institute a labor dispute proceeding, the workers also made additional claims. The Commission notes that the Ministry of Labor recognized, after the incidents of August 24, 1994 that the workers were not being paid the minimum wage. See: “Minister Morfín: Minimum wage not being paid in Hacienda San Juan el Horizonte”, August 30, 1994, La Hora.

[FN53] See: Labor Code of Guatemala, Article 377.

[FN54] Idem, Article 382.

[FN55] Idem, Article 393.

86. In the present case, the courts never ruled on the petition presented by the organized workers of Finca “La Exacta”. After initially admitting the case to begin the proceeding, the Second Labor Court took no measures whatsoever to move it forward until several months later. On May 12, 1994 the Second Labor Court notified the workers that the case had been transferred to the Sixth Labor and Social Welfare Court of Guatemala City. [FN56] Although when the workers occupied Finca “La Exacta”, several months had already passed since the filing of the petition, no additional measures had been taken in the case. Today, more than two years later, the Guatemalan labor courts have still not processed the claims brought by the workers in their filing

of February 18, 1994, since the proceeding provided for by law for a collective labor dispute has not been completed.

[FN56] See: Second Labor and Social Welfare Court of First Instance of Coatepeque, May 12, 1994.

87. Consequently, the organized workers who sought to obtain access to the courts for the determination of their rights and obligations as workers vis-à-vis the owners and administrators of Finca “La Exacta” were denied the possibility of a hearing within a reasonable time period, in violation of Article 8 of the Convention. The Guatemalan labor courts did not provide a forum in which the workers’ claims could be heard, with a view to a settlement, through mutual collaboration with the owners and administrators of the estate or through a legal strike. The opportunity to be heard was not given to the workers within the time limits provided for in Guatemalan law or within any other reasonable time period.

88. Nor did the courts grant a hearing or resolve the case arising from the dismissal, in early March 1994, of the workers who had formed a labor association on Finca “La Exacta” and who had joined in submitting the petition to institute proceedings in connection with the collective labor dispute. The actions of the owners of Finca “La Exacta” violated the ruling of the Second Labor Court when it officially allowed the petition to stand. [FN57] In that ruling, and in accordance with Guatemalan law, the Court prohibited both parties from taking reprisals against each other. The ruling specifically provided that any termination of contract must be authorized by the court. As indicated above, the dismissed workers immediately instituted proceedings for their reinstatement before the Second Labor Court. [FN58]

[FN57] See: Decision of the Second Labor and Social Welfare Court of First Instance of Coatepeque, Quetzaltenango, February 18, 1994.

[FN58] See: Request for reinstatement, March 3, 1994.

89. Despite the fact that the owners of Finca “La Exacta” had not complied with the orders of the Court itself, the Second Labor Court did not take appropriate measures with respect to the workers’ claims. More than two years after the filing of the applications for reinstatement, the Guatemalan Labor Courts have not succeeded in reinstating the workers. According to Guatemalan law and pursuant to the orders of the Second Court, the owners of Finca “La Exacta” were obliged to immediately repair any damage that they might have caused as a result of the reprisals taken against those who participated in the labor dispute. [FN59]

[FN59] See: Decision of the Second Labor and Welfare Court of First Instance of Coatepeque, Quetzaltenango, February 18, 1994; Labor Code of Guatemala, Article 379.

90. The Commission therefore concludes that the dismissed workers were not given an opportunity to be heard nor were they given access to a prompt and effective remedy against the violations of the law that adversely affected their right to work and their right to freedom of association, rights recognized both in the Guatemalan Constitution and in the American Convention. [FN60] This denial of access to justice constitutes a violation of Articles 8 and 25(1) of the Convention.

[FN60] See: Political Constitution of the Republic of Guatemala, Articles 34,101.

91. The Commission's conclusion with regard to the lack of judicial protection for the labor claims of the workers of Finca "La Exacta" is supported by the fact that the norm in Guatemala is for labor courts to be remiss in the fulfillment of their obligations. [FN61] According to information transmitted to the Commission in an amicus curiae document, the Sixth Labor Court to which competence was transferred in the matter of the procedure arising from the labor dispute in this case settled only one case between March 1994 and March 1995, which is the most relevant period for this case. [FN62] The Commission has indicated above that the labor courts of Guatemala are not in a position to provide judicial protection in labor matters. [FN63] MINUGUA has also confirmed that the Guatemalan courts do not attend in a timely or effective manner to labor issues and issues of freedom of association. [FN64]

[FN61] See: case of Velásquez Rodríguez, Judgment of July 29, 1988, paragraph 126 (a pattern of proven violations supports the conclusion that a violation has taken place in a specific case).

[FN62] See: Statement amicus curiae of the International Labor Rights Fund, project between the United States and Guatemala in labor education, submitted to the Commission on September 25, 1995.

[FN63] See: Fourth report, p. 91.

[FN64] See: Fifth report of the Director of MINUGUA, paragraph 179.

92. The Guatemalan authorities have also admitted that this case is part of a general tendency for the Guatemalan courts to fail to provide protection in labor-related matters. The Attorney General of Guatemala, Acisclo Valladares Molina, declared, shortly after the incident of August 24, 1994 that the case was part of a series of cases that "should be resolved judicially within a short period, [but that] they were dragging on indefinitely in the labor courts". [FN65]

[FN65] "Acisclo : Labor Court has responsibility in eviction", La República, August 29, 1994.

b. Denial of justice with respect to the violations committed on August 24, 1994

93. The Commission also concludes that the provisions of Articles 8 and 25 of the Convention were violated with respect to the attempts to secure justice for the violations of rights

committed on August 24, 1994. As was stated in the Commission's examination of the admissibility of the case, international observers have indicated that the processing of the case has been unjustifiably slow and inadequate. More than two years after the events of August 24, 1994 no charges have been brought against any suspect and the case is still in the preliminary stage. The Commission's conclusion that the petitioners are excused from the requirement for the exhaustion of domestic remedies, based on these and other factors, also points to the conclusion that Articles 8 and 25 have been violated. [FN66]

[FN66] See: case of Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987, paragraph 91.

94. The Commission also notes that the investigation carried out in this case has been inadequate, which clearly shows the lack of access to an effective legal remedy. Moreover, as was also indicated in the section on admissibility, various authorities of the Guatemalan Government have stated that they were not prepared to fully investigate the incident and to prosecute those responsible.

95. The competent court in the case, the Second Court of First Instance of Coatepeque, and the Public Prosecutor's Office have been guilty of unwarranted delay in questioning key witnesses and have failed to fully and effectively interview the witnesses. The police officers called as witnesses have not always appeared when summoned to collaborate in the investigation.

96. The Montaña Plan lists the names of certain police officers responsible for the operation of August 24, 1994. Nevertheless, now more than a year after the incident, the courts and the Public Prosecutor's Office have received the statement of the first of these officers.

97. On October 11, 1995 14 months after the police raid on Finca "La Exacta", the Second Court of First Instance of Coatepeque took a statement from the first police officer. Francisco Filiberto Duarte Gómez, the agent responsible for preparing the plan of operations, testified before the court on that day. [FN67] The court originally found sufficient grounds to detain Mr. Duarte based on his statement, but released him in December 1995.

[FN67] See: statement of Francisco Filiberto Duarte Gómez to the Second Court of First Instance of Coatepeque, Quetzaltenango, October 11, 1995.

98. According to uncontested information provided by the petitioners, the police officer mentioned in the Montaña Plan as the one responsible for the operation of August 24, 1994 was recently summoned to testify on November 11, 1995. This officer, Reyes Gumercindo López Martínez, refused to appear when first summoned. He recently testified in January 1996.

99. In its report of January 23, 1996 the Government informed the Commission that on November 11, 1995 the Second Court of First Instance of Coatepeque had ordered that a statement be taken from Basilio Hernández Guzmán. Mr. Hernández is a police commissioner who was named as a suspect in the case. However, he recently gave a statement in December 1995. [FN68] When his testimony was finally taken, the witness offered an alibi indicating that he had not been present during the violent incidents of August 24, 1994. The judge who heard the testimony did not ask the witness any questions about his alibi or about any other matter.

[FN68] See: statement of Basilio Hernández Guzmán to the Fifth Criminal Court of First Instance, December 10, 1995.

100. In its report of January 23, 1996 the Government also notes that the Office of the Public Prosecutor heard testimony from various other important witnesses in November and December 1995 more than two years after the events that are the object of this petition. The Government provided the testimony of each of the witnesses mentioned in its report. All of these witnesses declared that they had not been present in the place where the acts took place, either because they had already left the area of Finca “La Exacta” altogether or because they provided only support service and therefore were not close to the area where the clashes took place. The Public Prosecutor’s Office did not question any of these witnesses after their testimony and therefore did not obtain from the witnesses any reply to crucial questions concerning the alibi of each of the witnesses and any information which they might have about the identity of other persons who participated in the violent acts that took place on August 24, 1994. [FN69]

[FN69] See: statements of Guillermo Enrique Betancourt Ruiz and Oscar Hugo Leonel López to the Office of the Public Prosecutor, November 9, 1995; statement of Darwin de León Palencia to the Office of the Public Prosecutor, November 14, 1995; statements of Rolando Ordóñez Corado, Hugo Leonel Gómez Díaz and Dimas Antonio Hernández Gómez to the Office of the Public Prosecutor, December 6, 1995.

101. The helicopter pilot who was hired by the owners of Finca “La Exacta” to participate in the events of August 24, 1994 was recently questioned in January 1996. [FN70] Particular importance should have been attached to this interview, not only because the helicopter had participated in the raid but also because Diego Orozco was taken in one of the helicopters present on August 24, 1994 and was alleged to have been thrown out of the helicopter.

[FN70] See: statement by Carlos Alberto Enríquez Santizo to the Office of the Public Prosecutor of Coatepeque, January 17, 1996.

102. The unwarranted delay in gathering evidence and taking the statements of these important witnesses evidently impeded the process of ascertaining the truth and ensuring that justice was

done in the internal investigation of the events of August 24, 1994. As time passes, the evidence of witnesses becomes less reliable and it becomes more difficult to find new evidence. The fact that meaningful interviews were not conducted with the witnesses even at this late stage has exacerbated the problem.

103. The court and the Public Prosecutor's Office have failed completely to fulfill their obligation to take the statements of other key witnesses and to follow up the information obtained from the witnesses that gave statements. For example, the record does not show that statements were taken from the three police officers named as assistants to Reyes Gumerindo López Martínez in the operation of August 24, 1994.

104. The pilot whose statement was taken in January 1996 said that one of the owners of Finca "La Exacta", Alvaro Blanco, traveled in the helicopter on the day of the incident. [FN71] Mr. Blanco, however, never gave a statement, even though he should have important information on key aspects of the operation, such as the sequence of the events that occurred on August 24, 1994, responsibility for the acts and the aims and intentions of the police units on the day in question. He should also be questioned about the fate of Diego Orozco, since he was present in one of the helicopters that were on the scene of the events.

[FN71] Ibid, p.2

105. The police officer who prepared the plan of operations, Francisco Filiberto Duarte Gómez, provided the name of the owner of a neighboring estate to Finca "La Exacta", who supplied another helicopter for use on August 24, 1994. There is no evidence that this person has made a statement, despite the importance of the information that he might have about the responsibility for the raid and possibly about the fate that befell Diego Orozco.

106. Finally, the Commission concludes that Government officials and/or entities clearly sought to obstruct the investigation of the events of August 24, 1994. As already noted, the preparation of a modified version of the Montaña Plan to submit to the Office of the Public Prosecutor can be interpreted only as an attempt to conceal prejudicial evidence and, therefore, to impede the effective investigation of the case.

107. The Government participants tasked with the criminal investigations and necessary judicial proceedings to ascertain the truth and punish those responsible in this case failed to discharge their obligations in a timely manner, which prevented justice from being done. Other Government participants, the police units and individual police officers who participated in the events of August 24, 1994 impeded the investigation or collaborated at a late stage. In this case, therefore, access to justice for the victims of the incidents of August 24, 1994 and their families was delayed and blocked.

5. Article 1(1) Obligation to respect rights

108. The violation of rights with respect to the court orders proves that the State of Guatemala has failed to discharge the obligation provided for in Article 1(1) of the American Convention to “respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms”.

109. The first obligation of any State party to the American Convention is to respect the rights and freedoms contained therein.

Whenever a State organ, official or public entity violates one of those rights, this constitutes a failure of the duty to respect the rights and freedoms set forth in the Convention..... A State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law. [FN72]

[FN72] Case of Velásquez Rodríguez, Judgment of July 29, 1988, paragraphs 169, 170.

110. As already indicated, in this case the Guatemalan police forces, acting in their official capacity, took part in the acts committed on August 24, 1994 which violated the right to life, the right to humane treatment and the right to freedom of association, protected by Articles 4, 5, 16 and 19 of the Convention. The Guatemalan agents also prevented the application of justice, in violation of Articles 8 and 25 of the Convention. The State of Guatemala has therefore violated Article 1(1) of the Convention as a result of the violations of the Convention committed by its agents, and bears responsibility for those violations.

111. The second obligation of the State is to “guarantee” the free and full exercise of the rights recognized by the Convention. The Commission wishes to reiterate that this obligation:

Implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation. [FN73]

[FN73] Case of Velásquez Rodríguez, Judgment of July 29, 1988, paragraph 166.

112. Articles 1 and 6 of the Convention against Torture also provide that States parties shall prevent and punish torture. The State of Guatemala has not fulfilled its obligation to prevent, investigate and punish the violations of the rights of the workers of Finca “La Exacta” and to pay compensation for these violations.

113. In the first place, the Government did not prevent the acts of violence that took place on August 24, 1994. The fact that the labor courts of Guatemala did not rule on the claims of the

workers of Finca “La Exacta” created a situation in which the workers could not obtain legal protection for their rights. As a result of the frustration of the workers faced with this lack of protection, a tense situation developed between the workers and the owners and administrators of Finca “La Exacta”.

114. The Government did not take adequate steps to ensure that the tense situation did not lead to acts of violence and to the violation of human rights. On the contrary, it elaborated a police plan that clearly provided for the use of force to settle the occupation of Finca “La Exacta”. No court of justice or other entity intervened to ensure that the plan did not lead to the use of excessive force, in violation of the rights of the workers occupying the estate.

115. The State also failed to fulfill its obligation to investigate and punish violations of the rights recognized by the Convention when the events took place. Nor did it pay any compensation to the victims of the violations in the case. The Government failed to carry forward the judicial proceedings arising from the incidents of August 24, 1994 with a view to bringing to justice those who carried out the attack against the workers of Finca “La Exacta”. In accordance with the Commission’s conclusion stated above, the procedures and investigations carried out have been inadequate and ineffective.

116. No one has been formally accused much less punished. It cannot be denied that the police force of Guatemala was responsible for the use of excessive force in this case, even though certain doubts remain as to the identity of the individual police officers responsible for preparing the attack and of the agents who actually fired their weapons. But no police officer has been punished by the Government. Nor has the Commission received information that any police officer has been dismissed.

117. The Government has also failed in its obligation to guarantee rights with respect to the acts committed by private individuals in violation of the rights, enshrined in the Convention, of the workers organized on Finca “La Exacta”. The owners and administrators of Finca “La Exacta” dismissed a large number of workers on the estate in reprisal for the decision of these workers to organize a union and to file a labor claim in the courts. Persons associated with the owners and administrators of Finca “La Exacta”, together with other private persons, also collaborated with the police force in preparing and executing the raid of August 24, 1994. These actions of private individuals resulted in violations of the right to freedom of association, the right to life and to humane treatment and the right of children.

118. The Guatemalan courts never revoked the firings of the workers nor has the Government investigated or punished the private individuals who participated in the planning and execution of the attack of August 24, 1994. The private individuals whose names appear in the judicial proceedings as participants in the violations of rights that took place on August 24, 1994 have not even been called upon to declare as witnesses. The State is therefore responsible for the acts of these private individuals that violate the rights protected by the Convention, “because of the lack of due diligence to prevent the violation or to respond to as required by the Convention. [FN74]

[FN74] Case of Velásquez Rodríguez, Judgment of July 29, 1998, paragraph 172.

119. The State of Guatemala is responsible for the violation of Article 1(1) inasmuch as it has not guaranteed the free and full exercise of the rights guaranteed in the Convention. Consequently, the violations of the Convention that took place are attributable to the State both for this reason and as a result of the State's failure to fulfill its responsibility to respect the rights recognized in the Convention.

III. DEVELOPMENTS SUBSEQUENT TO THE ISSUANCE OF REPORT 41/96, PURSUANT TO ARTICLE 50 OF THE AMERICAN CONVENTION

120. On October 16, 1996, at its 93rd period of sessions, the Commission adopted report 41/96, in accordance with Article 50 of the American Convention. In that report, the Commission concluded that the State of Guatemala was responsible for the violation of the right to life, recognized in Article 4 of the Convention, with respect to Efraín Recinos Gómez, Basilio Guzmán Juárez and Diego Orozco; the right to humane treatment, recognized in Article 5 of the Convention, with respect to Diego Orozco, the entire group of workers occupying the estate and their families, who suffered the attack of August 24, 1994 and especially the 11 persons who suffered serious injuries: Pedro Carreto Loayes, Efraín Guzmán Lucero, Ignacio Carreto Loayes, Daniel Pérez Guzmán, Marcelino López, José Juárez Quinil, Hugo René Jiménez López, Luciano Lorenzo Pérez, Felix Orozco Huinil, Pedro García Guzmán and Genaro López Rodas; the right to freedom of association, recognized in Article 16 of the Convention, with respect to the workers of Finca "La Exacta" who organized a labor association to express their labor demands to the owners and administrators of Finca "La Exacta" and to the Guatemalan courts and who suffered reprisals for this reason; the right of children to special protection, provided for in Article 19 of the Convention, with respect to the minors who were present during the raid of 24 August 1994; the right to a fair trial and to judicial protection, provided for in Articles 8 and 25 of the Convention, with respect to the organized workers who sought access to judicial remedies in connection with their labor demands, and with respect to the victims of events of August 24, 1994 and their relatives who sought justice in connection with these events, all of the above in conjunction with Article 1(1) of the Convention, for having failed to fulfill its obligations under the abovementioned Article. The Commission concluded also that the State of Guatemala was responsible for the violation of Articles 1, 2 and 6 of the Convention against Torture, with respect to the torture suffered by Diego Orozco.

121. The Commission also recommended that the State of Guatemala: 1) begin a prompt, impartial and effective investigation of the events of August 24, 1994 on the basis of which it could prepare an official report detailing the circumstances of and responsibility for the use of excessive force on that date; 2) take the necessary steps to subject the persons responsible for the acts of August 24, 1994 to the appropriate judicial processes, which should be based on a full and effective investigation of the case; 3) make reparations for the consequences of the violations of the rights identified, including the payment of fair compensation to the victims or their families; and 4) take the necessary steps to guarantee that violations of the type that took place in this case do not recur in future. The Commission also decided to transmit the report to the State and to grant it a period of two months to implement the recommendations contained therein. The

Commission transmitted the report to the State of Guatemala on October 30, 1996 the date on which the time limit of two months began to run.

122. On June 6, 1997 in a communication dated December 30, 1996, the State of Guatemala requested the IACHR to grant an extension for reporting on the action it had taken to implement the recommendations contained in report 41/96. On January 9, 1997 the Commission received the reply of the State in which it stated:

[With respect to the first recommendation, that] the Government of Guatemala has previously reported to the illustrious Commission on the investigation conducted by the Office of the Public Prosecutor in this case, which marked the start of the action taken to clarify the circumstances that led to the events...

[With respect to the second recommendation, that] independently of the proceeding followed in the inter-American system for the protection of human rights, the domestic legal order provides for certain procedures to be followed when a situation recognized and characterized as a crime has taken place. In this regard, the Office of the Public Prosecutor conducted the appropriate investigation and requested legal extensions from the court to gather more rational and substantial elements of proof to determine responsibility, culpability and the direct participation of those who appear to be involved in the acts that took place on August 24, 1994...

[With respect to the third recommendation, that] it was now not possible] to pronounce on the matter, since there is a criminal proceeding which, while [it was] provisionally closed, was nevertheless likely to be reactivated at any time, depending on whether other elements of proof and procedural information emerged that might add new elements to the process.

[With respect to the fourth recommendation, that] the police operation to execute the legal eviction orders had been carried out with sufficient guarantees for those persons who for various reasons had taken their position. Such operations provide for negotiation, dissuasion and persuasion of the occupiers and for the participation and accompaniment of human rights organizations as guarantors of the actions of the security forces.

123. The State undertook to add to the information provided to the Commission, and, to this end, in a communication transmitted to the IACHR on January 10, 1997 requested an extension of 30 days. On January 17, the State requested a further extension of 60 days. The Commission granted an extension of up to 6 March 1997.

124. On March 5, 1997 at its 95th period of sessions, the Commission held a hearing on the case, at which representatives of the State and petitioners participated. The former stated that the provisional closure of the proceeding should not be interpreted as a dismissal of the case since, despite that, the Office of the Public Prosecutor had continued to receive statements from police officers. They stated further that the case was very complex because of the participation of a large number of police officers in the execution of the operation, and that more time and evidence were therefore needed. On that same occasion, the State indicated that, for the time being, it could not reply to the question of whether or not it accepted the proposal for a friendly settlement but that it would do so within the next 45 days. [FN75] Based on this reply, and after

hearing the petitioners, the Commission decided to await the position of the State for the agreed time period.

[FN75] The Statement of the State appears in the minutes of hearing N° 34, 93th session of the Commission.

125. On April 21, 1997 the Government of Guatemala informed the Commission that it agreed to initiate a proceeding for a friendly settlement based on respect for the human rights provided for in the American Convention. On August 15 of the same year, the IACHR received a new communication from the State in which it reported on the proceeding agreed upon to implement the friendly settlement procedure. On January 12, 1998 the IACHR received another communication from the State informing it that one of the difficulties in the way of the friendly settlement procedure lay in the petitioners' claims, which exceeded reasonable limits but that, nevertheless, the Government had the highest interest in going forward with the proceeding proposed by the IACHR.

126. On February 24, 1998 representatives of the State held a meeting with Claudio Grossman, a member of the Commission, in which it was agreed that, prior to a Government proposal for a settlement, the petitioners should accredit the representatives of the victims. On June 24, 1998, the petitioners transmitted to the IACHR the requested accreditation.

127. On February 23, 1999 the petitioners contacted the IACHR and observed that the friendly settlement proceeding was not yielding results and that they continued to await a counter offer from the State. At the same time, they suggested another approach in the negotiations. On February 25, 1999 the Commission communicated to the State the suggestions of the petitioners.

128. On February 18, 2000 the petitioners submitted to the IACHR a list of the affected persons who indicated their wish for CALDH to conduct the negotiation aimed at reaching a friendly settlement of the matter. On April 12 of the same year, the petitioners communicated to the IACHR that a new meeting had been held with the Government of Guatemala but that no agreement had been reached.

129. On August 9, 2000 the Government of Guatemala, represented by the President of the Republic, Dr. Alfonso Portillo, recognized:

The institutional responsibility of the State arising from its failure to fulfill the obligation imposed by Article 1 (1) of the American Convention to respect and guarantee the rights enshrined in the Convention...with respect to the following persons or cases:

(...)

4. FINCA "LA EXACTA" (IACHR 11.382)

(...)

[the] Guatemalan Government accepted that the events that gave rise to the filing of the claims to the Commission did indeed take place ...undertook to begin negotiations on those cases and pledged to initiate a process of friendly settlement that would provide compensation and/or assistance to the families of the victims identified or, where possible, to the victims directly. The amount of the compensation which the Government of Guatemala undertook to pay to the persons concerned would be determined at a later date in a manner to be agreed upon with the victims or their family members or, failing that, on the basis of the principles and criteria established in the inter-American system for the protection of human rights. It [also] undertook to follow up and promote the investigation of the acts...to institute civil, criminal and administrative proceedings against those persons who, in fulfillment of State functions or acting with the authority of the Government, are presumed to have participated in the alleged violation...[Lastly], the State of Guatemala, through COPREDEH, undertook to report every six months to the Inter-American Commission on Human Rights on the fulfillment of the obligations assumed by the State pursuant to this declaration. [FN76]

[FN76] The document in which the Guatemalan State acknowledges the facts and its institutional responsibility was also signed by the then President and Executive Secretary of IACHR, Dean Claudio Grossman and Ambassador Jorge Taiana, respectively.

130. The Commission takes note of the fact that, following the issuance of report 41/96 on October 16, 1996 in accordance with Article 50 of the Convention, the State, on April 21, 1997 declared its willingness to reach a friendly settlement with the petitioners under the auspices of the IACHR, although it also observes that this process was delayed for more than five years, mainly, though not exclusively, for reasons attributable to the State.

131. On the other hand, the IACHR recognizes and highly appreciates the considerable progress made by the State of Guatemala in assuming institutional responsibility for violations of human rights in this case. However, the Commission notes that, from the initial response to report 41/96 up to recognition of institutional responsibility, the State has taken no specific and effective measures to implement the recommendations made by the Commission. The IACHR has further noted that the State is not effectively honoring the commitment that it gave in this case in the declaration of August 9, 2000. The IACHR must therefore continue with the proceeding, in accordance with Article 51 of the Convention.

IV. CONCLUSIONS

132. In view of the factual and legal considerations examined above, the Commission wishes to reiterate its conclusions that the Guatemalan State, in light of the information and observations contained above, has failed to fulfill the obligations which it has under Article 1(1) of the Convention and has violated, in conjunction with Article 1(1) of the Convention:

a. The right to life, recognized in Article 4 of the Convention, with respect to Efraín Recinos Gómez, Basilio Guzmán Juárez and Diego Orozco;

b. The right to humane treatment, recognized in Article 5 of the Convention, with respect to Diego Orozco, the entire group of workers who occupied the estate and their families, who suffered the attack of August 24, 1994, and, in particular, the 11 persons who suffered serious injuries: Pedro Carreto Loayes, Efraín Guzmán Lucero, Ignacio Carreto Loayes, Daniel Pérez Guzmán, Marcelino López, José Juárez Quinil, Hugo René Jiménez López, Luciano Lorenzo Pérez, Felix Orozco Huinil, Pedro García Guzmán, and Genaro López Rodas;

c. The right to freedom of association, recognized in Article 16 of the Convention, with respect to the workers on Finca “La Exacta” who organized themselves into a labor union to convey their labor demands to the owners and administrators of Finca “La Exacta” and to the Guatemalan courts and who suffered reprisals for this reason;

d. The right of children to special protection, recognized in Article 19 of the Convention, with respect to the minors who were present during the raid of August 24, 1994;

e. The right to a fair trial and to judicial protection recognized in Articles 8 and 25 of the Convention, with respect to the organized workers who sought access to legal remedies in connection with their labor demands and with respect to the victims of the events of August 24, 1994 and their relatives who sought justice in connection with these events.

133. The State of Guatemala has also violated Articles 1, 2 and 6 of the Convention against Torture in connection with the torture suffered by Diego Orozco.

V. RECOMMENDATIONS

134. Based on the analysis and conclusions of this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES THE FOLLOWING RECOMMENDATIONS TO THE STATE OF GUATEMALA:

1. That it begin a prompt, impartial and effective investigation of the events that took place on August 24, 1994 to be able to detail, in an official report, the circumstances of and responsibility for the use of excessive force on that date.

2. That it take the necessary steps to subject the persons responsible for the acts of August 24, 1994 to the appropriate judicial proceedings, which should be based on a full and effective investigation of the case.

3. That it make reparations for the consequences of the violations of the rights listed, including the payment of fair compensation to the victims or their families.

4. That it take the necessary measures to ensure that violations of the type that took place in this case do not recur in future.

VI. PUBLICATION

135. On March 14, 2002, the Commission transmitted Report No. 30/02 – the text of which appears above – to the Guatemalan State and the petitioners, in compliance with the provisions of Article 51.2 of the American Convention, and it granted the State a period of 30 days in which to submit information on its compliance therewith. On April 16, 2002, the Guatemalan State sent a note reporting that the Public Prosecution Service had requested that the investigation be reopened, and that this request had been granted by the investigation’s controlling judge on

November 2, 2001; that the same judge had summoned Messrs. Pedro Castro Acabal and Luis Fernando Tobar Mejía, together with other police officers involved in the operation at the La Exacta estate, but that the court has not yet served the summonses or heard from the defendants; that on November 27, 2001, the Public Prosecution Service requested the arrest of Harry Omar Hernández, who had been accused of having fired the shots that hit Diego Orozco, and that this arrest was ordered by the judge on November 29, 2001, and is still pending execution. With respect to reparations, the State reports that “it is about to hold talks with the petitioners in order to agree on how reparations should be made to the victims in the case at hand.”

136. The Inter-American Commission appreciates the information furnished by the Guatemalan State; however, it notes that the information on the status of the judicial investigations describes matters prior to the issuing of Report 30/02. The Commission also notes that the State has not complied with the other terms of the recommendations set forth in that report, as it should have done at this stage in the proceedings. Consequently, in the IACHR’s opinion, it would not be appropriate to offer additional comments further to those given in the preceding paragraphs of this report.

137. In light of the above comments, and pursuant to the terms of Article 51.3 of the American Convention and Article 48 of its Rules of Procedure, the Commission decides to reiterate the conclusions and recommendations set forth above in Chapters VI and VII, respectively; to publish this report; and to include it in its Annual Report to the General Assembly of the OAS. In accordance with the terms of Article 46 of its Rules of Procedure, the Commission will continue to assess the measures adopted by the Guatemalan State in connection with the above recommendations until such time as it has complied with them in full.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 21st day of October 2002. (Signed): Juan Méndez, President; José Zalaquett, Second Vice-President; Commissioners Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts, and Susana Villarán.