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Decided by: President: Evelio Fernandez Arevalos;
First Vice-President: Paulo Sergio Pinheiro;
Second Vice-President: Florentin Melendez;
Commissioners: Freddy Gutierrez, Paolo Carozza, Victor Abramovich.
Dated: 21 October 2006
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Represented by: APPLICANTS: the Human Rights Office of the Archdiocese of Guatemala and the International Human Rights Law Group
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I. SUMMARY

1. On June 24, 1993, the Inter-American Commission on Human Rights received a petition presented by the Human Rights Office of the Archdiocese of Guatemala and by the International Human Rights Law Group (hereinafter “the petitioners”) alleging the responsibility of the State of Guatemala (hereinafter “the State,” “Guatemala”, or “the Guatemalan State”) for the violation, with prejudice to Tomás Lares Cipriano (hereinafter “the alleged victim”) of the rights provided for by Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 16 (freedom of association) and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter “the Commission” or the “American Convention”), in connection with the general obligation on the part of the State to respect and guarantee the aforementioned rights, established by Article 1(1) of the same instrument.

2. On February 27, 2002, during its 114th regular session and in its Report on Admissibility No. 13/02, the Commission found the case to be admissible regarding the alleged violations of Articles 4, 8, 16, 25 and 1(1) of the Convention, with the State of Guatemala allegedly responsible. The Commission found the alleged violations of Articles 5 and 7 of the Convention to be inadmissible.[FN1]

[FN1] IACHR, Report on Admissibility No. 13/02.

3. In this report the Commission concluded that the State of Guatemala, with prejudice to Mr. Tomás Lares Cipriano, violated Articles 4, 5, 8 and 25 in connection with Article 1(1) of the American Convention.

II. PROCESSING BEFORE THE COMMISSION

4. On February 27, 2002, the Commission approved the Report on Admissibility No. 13/02, regarding the alleged violations, by the State of Guatemala, of Articles 4, 8, 16, 25 and 1(1) of the Convention.

5. On March 14, 2002, the Commission transmitted the Report on Admissibility to the parties, offering its assistance for the purpose of reaching a friendly settlement, and requested their response to this offer within thirty days.

6. On May 9, 2002, the petitioners requested a thirty day extension of the deadline, in order to present their observations on the Report on Admissibility.

7. On July 8, 2002, the Commission informed the petitioners of the State of Guatemala's interest in initiating a dialogue towards reaching a friendly settlement, according to a communication from the State received on the same day.

8. On December 8, 2003, the Commission informed the State of Guatemala that, given the lack of response of the petitioners, it was granting the State two months to present additional observations on the Report on Admissibility 13/02.

9. On March 3, 2004, the State requested an extension to file its observations on the merits, which were presented in an April 16, 2004 communication. In this communication the State provides a summary of the judicial situation of the case and refers to the acknowledgement of institutional responsibility made by President Portillo on August 9, 2000. It further requests the IACHR to take note of the failure to act on the part of the petitioners during the merits stage, as well as of its intention to achieve a friendly settlement in this case.

III. POSITIONS OF THE PARTIES

A. The Petitioners

10. On February 19, 1993, according to the petitioners, three thousand members of the voluntary self-defense committees, belonging to several counties of the municipal seat of Joyabaj, Department of Quiché, including Mr. Tomás Lares Cipriano, resigned from the committees before several civil authorities.[FN2]

[FN2] Decree No. 19-86, in force since January 10, 1986, establishes, inter alia, "That Civil Defense Committees currently exist, voluntarily formed by Guatemalan citizens ... to provide for the defense of their communities, their families, and their property, from the effects of natural

accidents ... and armed conflicts, such as the new form of attack implemented by the subversive bands ...

That these civil organizations make a positive contribution towards achieving the levels of development, peace and tranquility enjoyed in the country at the present time ...

That it becomes necessary for the State to ensure the existence and operation of the aforementioned organizations of a civil nature, under the assistance of and coordination by the Ministry of National Defense, for which a legal regulation must be issued ...

Article 1. The existence of the Civil Defense Committees, as civil organizations and as a part of the Territorial Reserve Available for Mobilization established by law, is acknowledged. They shall, without detriment to their own organization, be assisted and coordinated by the Ministry of National Defense.

(...)

Article 4. The Ministry of National Defense ... may grant financial assistance to those members of the Civil Defense Committees who, in the course of their self-defense activities, receive injuries causing physical and/or psychological disabilities...”

11. On March 26 of that same year, Messrs. Tomás Lares Cipriano, Diego Lares, Marcos Ambrosio Sacarías, Manuel Ambrosio Sacarías and Domingo Gutiérrez arrived at the Human Rights Office of the Archdiocese of Guatemala to report threats made against them by members of the civil self-defense patrols of the Joyabaj municipality. These threats were a response to their resignation from the self-defense committees. On that occasion, Mr. Tomás Lares Cipriano and his companions asserted that they had also been threatened with serious consequences – according to the petitioners the equivalent of a death threat – should they not attend a demonstration of civil patrolmen organized for March 28, 1993; to that end a roster would be prepared with the names of those not participating, who in turn would be accused of being members of organizations connected with the Unidad Revolucionaria Nacional Guatemalteca [Guatemalan National Revolutionary Unity].

12. The seriousness of the report motivated the Human Rights Office of the Archdiocese of Guatemala to file a preventive habeas corpus petition before the Supreme Court, on behalf of Tomás Lares Cipriano and other persons who had resigned from the Patrulla de Autodefensa Civil [Civil Self-Defense Patrol] of Joyabaj.

13. On April 30, approximately at 11:30 a.m., according to a communication from the Comité de Unidad Campesina (CUC) [Committee for Peasant Unity], Tomás Lares Cipriano “was ambushed and cowardly murdered: he received 6 gunshot wounds (2 bullets in the left hand, 1 bullet in the chest, 1 bullet between the eyes, 1 bullet in the head); his right ear was severed and his head smashed, after which he was decapitated.”[FN3]

[FN3] Communication of May 4, 1993, in the file processed with the IACHR.

14. The CUC communication asserts that

the General Commander of the PACs (of Joyabaj), Leonel Nogales, has issued orders for the kidnapping of Mr. Tomás Lares Cipriano ... simultaneously, Messrs. Catarino Juárez and Santos Chich Us, first and second leaders of the Chorraxaj county PACs, made up lists of all the residents that are organized in cooperatives, religious activities and popular organizations ...

15. On May 19, 1993, at which time the murder of Tomás Lares Cipriano was public, [FN4] the Human Rights Office of the Archdiocese of Guatemala was notified of the decision by Judge Lic. [Licenciate] Roderico Haroldo López Robles of the Juzgado Segundo de Primera Instancia Penal del Quiché [Second Criminal Court of the First Instance of Quiché], regarding the petition for habeas corpus which the petitioners had filed. The decision denied the request, stating that “the alleged victims are not in the situation provided for by Article 82 of the National Constituent Assembly’s Decree 1-86 [and] that they could not be found.”

[FN4] The murder of Mr. Tom Lares Cipriano was published in several media, among them: Siglo Veintiuno, “Responsabilizan a PAC por asesinato” [PAC held responsible for murder], May 5, 1993 and La Hora, “CERJ denuncia asesinato de activista de derechos humanos” [CERJ reports murder of human rights activist], May 4, 1993.

16. In the additional information and in their observations on the reports presented by the State during the proceedings before the IACHR, the petitioners asserted that on May 20, 1993, Mr. Diego Lares Ambrosio had filed a complaint against Próspero Leonel Ogaldez García, Santos Chich Us, Catarino Juárez, Diego Granillo Juárez, Santos Tzi and Gaspar López Chiquiaja, whom he alleged were responsible for the murder of Mr. Tomás Lares Cipriano.

17. The petitioners reported that the civil self-defense patrolmen had prevented the practicing of the autopsy and that consequently they had requested from the Juzgado Segundo de Primera Instancia del Quiché [Second Court of the First Instance of Quiché] the exhumation and autopsy of the body, procedures which were carried out on June 29, 1993. Regarding the reconstruction of the events, a procedure which was ordered but which did not take place, the petitioners asserted that the threat of an ambush by members of the self-defense patrols was the real reason why this procedure was not carried out: it was not for the reason given by the State, i.e., that of bad weather.[FN5]

[FN5] This was asserted by the petitioners in their communication to the IACHR of January 25, 1995.

18. The petitioners stated that on July 29, 1993, an arrest warrant was issued for the defendants, but that only Catarino Juárez and Gaspar López Chiquiaja were arrested and that Próspero Leonel Ogaldez García had appeared voluntarily before the Juzgado Segundo de Instrucción del Quiché [Second Magistrates’ Court of Quiché]. In their depositions the aforementioned individuals denied being members of the self-defense patrols, but the petitioners maintained that their membership was duly established in the proceedings, by both documentary

evidence and witness testimony and was public. The judicial authority considered only the depositions of the defendants and their witnesses, omitting other evidentiary items. As a result, the judge decided not to rescind the orders for the release without conditions and the release on his own recognizance, respectively, of the defendants Próspero Leonel Ogaldez García and Catarino Juárez. Regarding Gaspar López Chiquiaja, the petitioners stated that the judge had ordered his release despite contradictory testimony of different witnesses. According to the petitioners, the prosecution did not have the opportunity to properly question the witnesses for the defense and that there were additional procedural anomalies.[FN6]

[FN6] The petitioners emphasize the procedures requested to the judicial authority, inter alia, a line-up of the defendants so that they could be identified by the witnesses who gave their depositions in the proceedings; the release, by the Commander of Military Zone No. 20, with headquarters in Santa Cruz del Quiché, of the minutes of the events in which the Patrol Leaders of the Joyabaj Municipality took up their posts and the roster of civil patrolmen, as well as their depositions, and the additional depositions of the witnesses for the prosecution. According to the petitioners, all these procedures were denied by the court, except the deposition of the military Commander, who later refused to provide it.

19. With respect to the arrest warrant issued on July 29, 1993 against Santos Chich Us, Diego Granillo Juárez and Santos Tzi, the petitioners asserted that it was not carried out, notwithstanding that these persons remained in their communities. For the petitioners, this order was not executed was due to the fear on the part of the police of the threats made against them by members of Military Zone No. 20. According to the complainants, the Chief of Police of the Quiché had apparently stated that he would rather to go to jail for disobeying orders than be killed.

20. The petitioners also asserted that in January 1994 a new judge was appointed to the Juzgado Segundo de Primera Instancia del Quiché [Second Court of the First Instance of Quiché], his predecessor having been dismissed under charges of corruption. They also stated that the records of the court had been set on fire on January 19, and that the judge had reported that the fire could have been set by members of the patrols and that he himself was the target of their threats. The petitioners further stated that the Army of Guatemala and, especially, the Commander of Military Zone No. 20 of the Quiché, were abettors and accessories after the fact of the criminal actions occurred.

21. The petitioners stated that the State had not taken the necessary steps to fulfill the arrest warrants[FN7], which remained pending after more than six years against three of the principal defendants in connection with the death of Tomás Lares Cipriano, and that this failure represented an omission attributable to the State, which, in denying justice, incurred in international responsibility.

[FN7] These warrants, against Diego Granillo Juárez, Santos Tzit and Gaspar Chiquiaj, were issued by the Criminal Court of First Instance on July 30, 1993 and were re-issued on May 6, 1995.

22. Lastly, the petitioners contended that the State of Guatemala has not complied with its commitments to remedy the situation of the Quiché community, to which the alleged victim belonged: some of its inhabitants have been forced to give up their land to former PAC members, facing extreme hunger, disease and poverty.

B. The State

23. The State of Guatemala stated in its initial response that an investigation has been started as part of Proceedings No. 79-93 in the Juzgado Segundo de Primera Instancia Penal de Instrucción [Second Criminal Magistrates' Court of the First Instance] and that several procedures towards clarifying the facts were pending. It further informed the IACHR that the Ministry of National Defense and the Office of the Attorney General had been instructed to investigate the case and to move the proceedings forward.[FN8]

[FN8] Information received by IACHR on October 28, 1993.

24. The State later presented more detailed information and asserted that its preliminary investigation had established that Mr. Tomás Lares Cipriano had resigned from the Civil Self-Defense Patrols on March 26, 1993; that on the 28th of that month had taken part in an organized demonstration for their dissolution and that, as a result, he had received death threats from members of these organizations.[FN9]

[FN9] Information received by IACHR on February 17, 1994.

25. Regarding judicial proceedings, the State informed the IACHR that on May 1, 1993, the Justice of the Peace of the Municipality of Joyabaj had issued an order for committal proceedings and had requested the National Police to start the necessary enquiries. On May 3 of that same year the aforementioned judge disqualified himself from hearing the case arguing incompetence and referred the proceedings to the Juzgado Segundo de Primera Instancia Penal de Instrucción [Second Criminal Magistrates' Court of the First Instance]. On May 12, the Office of the Prosecutor joined the proceedings based on a complaint filed by the son of Mr. Tomás Lares Cipriano.

26. The State further informed the IACHR that on February 20, 1993, Mr. Domingo Lares Ambrosio, son of the victim, had filed a complaint against Santos Chich Us, Leonel Ogaldes and Catarino Juárez.[FN10] The judge then ordered committal proceedings, and the Office of the Prosecutor joined the proceedings after being notified of the complaint. Subsequently several

procedures were carried out[FN11], up to the moment of the prosecution's request for Leonel Ogaldez García, Santos Chich Us, Catarino Juárez, Diego Granillo Juárez, Santos Tzi and Gaspar López Chiquiaja to be remanded in custody. Catarino Juárez was arrested on August 3, and on that same day he rendered his deposition; two days later, on August 5, and after hearing the testimony of the witnesses for the defense, he was granted pre-trial release for lack of grounds for preventive detention. On August 9, Próspero Leonel Ogaldez García made a voluntary appearance for his deposition. After hearing the witnesses for the defense, the judge ordered his release without bail for lack of grounds for preventive detention. The Office of the Prosecutor appealed the orders for the release of the defendants. They were upheld however, by the Court of Appeals, but this Court also ordered Catarino Juárez not to leave the country.

[FN10] In the information provided by the petitioners it is stated that the afore-mentioned complaint were filed on May 23, 1993 and not on February 23 of that year.

[FN11] Inter alia, depositions and the prosecutor's request for an exhumation and autopsy, which was later carried out by the Department's Forensic Scientist, Ana Lissette García de Crocker.

27. The State also informed the IACHR that Gaspar López Chiquiaj was taken into custody on October 17, 1993 pursuant to a court order. On October 21, after hearing the depositions of the defendant and his witnesses, the judge ordered his pre-trial release. This decision was challenged by the Office of the Prosecutor on October 22 and the Court of Appeals overturned the order for pre-trial release, entailing the obligation of the judge of the case to remand the defendant in custody.

28. In another communication[FN12], in response to an observation made by the petitioners, corrected the date of Tomás Lares Cipriano's resignation from the Civil Self-Defense Patrols: Not February 26, but February 19, 1993. It also stated that the autopsy had been ordered by the Justice of the Peace, but that it had not been carried out because the assistant mayors of the county of Chorraxaj opposed it, and the children of the deceased, along with a multitude of 400 people armed with machetes, prevented the body from being taken to the morgue. [FN13] For this reason it was not until later that the body was exhumed and the autopsy practiced. Regarding the reconstruction of the events, the State asserted that it had not been carried out due to bad weather. [FN14]

[FN12] Presented to the Commission on August 22, 1994.

[FN13] Along with the information provided on July 14, 1995, the State reaffirmed its position regarding the reasons that prevented the practice of the autopsy on Tomás Lares Cipriano. These reasons, the State further expressed, can be found in the record of the proceedings.

[FN14] Along with the information provided on July 14, 1995, the State reaffirmed its position regarding the reasons that prevented the reconstruction of the facts surrounding Tomás Lares Cipriano's death.

29. With respect to the other defendants who were granted pre-trial release, the State asserted that those actions were legal and based on a reasonable appreciation of facts and evidence available to the judicial authorities. Likewise, the State contended, it was necessary for the complainants to provide evidence in the proceedings and that the aforementioned investigation was the means provided by the new Code of Criminal Procedure for the satisfaction of justice. The State also invoked Article 37 of the (former) IACHR Rules of Procedure, contending that the complainants should first exhaust the remedies provided for by due process in their domestic jurisdiction.

30. Regarding the warrants for the arrest of Santos Chich Us, Diego Granillo Juárez and Santos Tzi, the State informed the IACHR that it had requested the Ministry of the Interior and the Office of the Director General of the National Police to arrest the aforementioned persons and take them before the judge of the case.

31. With respect to the information provided by the petitioners regarding a fire affecting the records of court that was hearing the case, the State informed the IACHR that it had instituted Proceedings No. 127-94, within which the Office of the General Prosecutor ordered an enquiry and that the investigation was being carried out by the Office of the Director General of the National Police.

32. In subsequent communications to the IACHR, the Government stated that on May 10, 1995, the Juzgado Primero de Primera Instancia Penal [First Criminal Court of the First Instance] of Huehuetenango had issued a bill of indictment against Santos Chich Us under Case 758-93 for the murder of Tomás Lares Cipriano and that, after the relevant procedures were carried out, on November 5, 1996 the aforementioned person had been given a 28-year non-commutable prison sentence. The sentence became final after the Sala Novena de Apelaciones [Ninth Chamber of Appeals] denied, on December 4, 1996, a special appeal filed by the defense.

33. The State also informed the IACHR that the arrest warrants issued on July 30, 1993 and reissued on May 6, 1995 against another four persons charged with the death of Tomás Lares Cipriano were pending execution. On December 28, 1998, the State, acting through the Presidential Commission on Human Rights, reiterated to the Office of the Director General of the National Police the need to speed up their efforts to ensure compliance with the warrants for the arrest of Diego Granillo Juárez, Santos Tzit y Gaspar López Chiquiaj.

34. In its communication to the IACHR of August 24, 1999, the Guatemalan Government reaffirmed its contention that domestic remedies had not been exhausted. It requested that the Commission disregard the petitioners' claim that the delay in the effective execution of the arrest warrants against three of the defendants qualified as an exception to the requirement of exhaustion of domestic remedies, based on the premise that the domestic procedures evidenced a denial of justice. The State assured the IACHR that it was making its utmost effort to arrest the persons for whom the warrants had been issued.

Acknowledgement by the State of its responsibility

35. On August 9, 2000, in the city of Guatemala and in the presence of the President and Executive Secretary of the IACHR, the President of the Republic, Dr. Alfonso Portillo stated that his Administration:

[a]cknowledges the institutional responsibility of the State for noncompliance with the obligation, found in Article 1(1) of the American Convention, to respect and guarantee the rights contained by the Convention and Articles 1, 2 and 3 of the Constitution of Guatemala with respect to the following persons or cases:

3. Tomás Lares Cipriano (IACHR 11171)

....

The aforementioned acknowledgement is based on the omission on the part of the State regarding its obligation to guarantee all persons the enjoyment of and respect for their fundamental rights, in compliance with the Constitution of Guatemala, the American Convention on Human Rights and other international instruments signed and ratified by Guatemala ...

[t]he Guatemalan Government does not dispute the events that gave rise to the filing of the petitions before the Commission ... and pledges to begin negotiations regarding these cases.

36. In the last communication received by the Commission, the State reiterates the aforementioned acknowledgement of institutional responsibility for the violations of fundamental guarantees committed in the Tomás Lares Cipriano case, but makes no reference to any other events, or to the measures adopted to remedy the acknowledged noncompliance with its obligations.

IV. EXAMINATION OF THE MERITS

A. Preliminary considerations

1. Regarding the acknowledgement by the State of its institutional responsibility

37. The Commission notes that the acknowledgement by the State of its institutional responsibility for failure to comply with the obligations imposed by Article 1(1) of the Convention, with prejudice to Tomás Lares Cipriano, made by the President of the Republic of Guatemala on August 9, 2000 and reaffirmed by the State in its communication of April 15, 2004,[FN15] has full legal value according to principles of international law. [FN16] To be noted that in the aforementioned acknowledgement the State pledged to follow up and to promote the investigation of the facts.

[FN15] The Commission noted that after its statement of August 9, 2000, specifically in its communication of July 8, 2002, the State expressed that in the instant case the domestic judicial mechanisms worked and the fact that there still are persons whose arrest is pending does not imply a lack of compliance with its obligations. The Commission further understood that this

partial change in the State's posture was corrected with the reaffirmation of its acknowledgement of responsibility in its latest communication.

[FN16] See, inter alia, Permanent Court of International Justice, 1933, P.C.I.J., Ser A/B No. 53, 71 (Norway v. Denmark).

38. In addition, the Commission notes that the declaration acknowledging institutional responsibility, also contains the State's acknowledgement of the facts reported by the petitioners, events which, in any case, have been properly established by different evidentiary items collected during the processing of the instant case before the Commission.

39. Notwithstanding the above, the Commission notes that, from said date onward, the State failed to adopt measures to comply with the obligation undertaken to prosecute and punish all those responsible; and that the family members of the victim have not received any compensation.

2. Regarding the State's intention of reaching a friendly settlement

40. During the processing of the case before the Commission, the State asserted its wish to begin a procedure for friendly settlement. This it did in its declaration of August 9, 2000, in its communication of July 8, 2002 and in its observations on the merits. For its part, in its communications notifying the Report on Admissibility No. 13/02, the Commission offered its assistance to the parties for the purpose of reaching a friendly settlement of the matter, pursuant to Article 48(1)(f) of the American Convention. The petitioners, for their part, did not respond to the State's expressions of its wish for a settlement. Consequently, notwithstanding the State's conveyed wishes, in this case a friendly settlement procedure could not take place.

41. In light of the foregoing considerations, the Commission now proceeds to examine and decide on the merits of the instant case.

B. Facts

42. In accordance with the acknowledgement of responsibility by the State and the evidence collected in the instant case, the Commission finds that the facts enumerated below (following a description of their context), are fully established

A. Context

43. Between the years of 1962 and 1996 there was an armed conflict in Guatemala, at great human, material, institutional and moral cost. The victims of arbitrary executions and forced disappearances resulting from the political violence during this period have been estimated at over two hundred thousand.[FN17]

[FN17] During its documentation efforts, the CEH recorded 42.275 victims of arbitrary executions and forced disappearances. 23.671 were arbitrarily executed and 6.159 were victims

of forced disappearance. CEH, Memory of Silence, Volume V, Conclusions and Recommendations, p. 21. The IACHR provided information regarding human rights violations during the armed conflict in an extensive series of reports both on the general situation and on specific cases.

44. The armed conflict had multiple causes. The CEH found that:

... other parallel phenomena, such as structural injustice, the closing of political spaces, racism, the increasing exclusionary and anti-democratic nature of institutions, as well as the reluctance to promote substantive reforms that could have reduced structural conflicts, are the underlying factors which determined the origin and subsequent outbreak of the armed confrontation. [FN18]

[FN18] CEH, Memory of Silence, Volume V, Conclusions and Recommendations, p. 24.

45. The CEH concluded that the State forces and related paramilitary groups, specifically the PACs, were responsible for 93% of the violations documented by its investigation, including 92% of the arbitrary executions and 91% of the forced disappearances. The CEH also attributed to the armed insurgent groups[FN19] 3% of the recorded violations. It was not possible to obtain information establishing responsibilities for the remaining 4% of the violations.

[FN19] The CEH applied the principles shared by International Human Rights Law and International Humanitarian Law to the acts of violence committed by the guerrillas, in order to give equal treatment to the parties. CEH, Volume I, p. 47.

46. Peace negotiations were initiated in 1990 and were completed in 1996. This process was intended to overcome the armed conflict, which had lasted more than 34 years. The parties, the Government of the Republic of Guatemala and the URNG, with the participation of a wide-ranging Asamblea de la Sociedad Civil [Civil Society Assembly], signed twelve agreements during this period.[FN20]

[FN20] Framework Agreement for the Resumption of the Negotiating Process between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca [Guatemalan National Revolutionary Unity] (January 1994); Comprehensive Agreement on Human Rights (March 1994); Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict (June 1994); Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence that Have Caused the Guatemalan Population to Suffer (June 1994); Agreement on Identity and Rights of Indigenous Peoples (March 1995); Agreement on Social and Economic Aspects and Agrarian Situation (May1996); Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society (September 1996); Agreement on the Definitive Ceasefire (December 1996); Agreement on

Constitutional Reforms and the Electoral Regime (December 1996); Agreement on the Basis for the Legal Integration of the Unidad Revolucionaria Nacional Guatemalteca (December 1996); Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements (December 1996) Agreement on a Firm and Lasting Peace (December 1996).

47. It is appropriate to emphasize in particular that in 1993, year in which the events of this case took place, the peace negotiations had been set back and were stagnated. Because of this, the violence produced by the armed conflict, still the object of negotiations within the peace process, continued in Guatemalan national life through the actions of the counterinsurgency structures created, such as the Civil Self-Defense Patrols, or the Voluntary Defense Committees, which attacked the civil population,[FN21] including members of their own ranks, as a mechanism to punish desertion or refusal to join them.

[FN21] See Human Rights Office of the Archdiocese of Guatemala, Annual Report, 1993, pp. 1-8.

B. Established facts

1. The death of Tomás Lares Cipriano

48. Tomás Lares Cipriano, a 55 year-old farmer, was a member of the Consejo de Comunidades Etnicas "Runujel Junam" (CERJ) [Council of Ethnic Communities "Runujel Junam"] and of the Comité de Unidad Campesina (CUC) [Committee for Peasant Unity]. As an active community leader of his town, Chorraxá Joyabaj, El Quiché, he had organized numerous demonstrations against the presence of the army in his zone and against the apparently voluntary, but in fact compulsory, service of the peasants in the so-called Civil Self-Defense Patrols (PACs). In addition, he also filed numerous complaints regarding threats made against the local population by Military Commissioners, acting as civil agents of the army, patrol leaders and, occasionally, as soldiers.

49. On February 19, 1993, three thousand members tendered their public resignation from the Voluntary Self-defense Committees before civil authorities[FN22]; among them was Tomás Lares Cipriano. [FN23] In the document of resignation, the resigning members stated:

1. That since the 1980s we have been serving without pay in the Civil Patrol, today called "Voluntary Civil Defense Committee," which in practice is completely compulsory in our communities: the Patrol Leaders, military commissioners in our communities, who follow the orders of the military detachment in our municipality tell us that if we don't become members of the Civil Patrols, that is because we are guerrillas and that we should leave our homes and take our children into the jungle; otherwise one day we will be murdered.

2. In addition, we are forced by the leaders of the Civil Patrols to bring firewood to the military detachment ... because of the threats and intimidations, i.e., to save our lives, it is that we have been participating with the Civil Patrols ...

(...)

4. This very difficult situation has tired us so much that we have decided to resign from the Civil Patrols, under the protection of Article 34 of the Constitution which literally provides in its second paragraph NOBODY IS UNDER THE OBLIGATION TO ASSOCIATE WITH OR TO FORM PART OF GROUPS OR ASSOCIATIONS OF SELF-DEFENSE OR ANY OTHER SIMILAR ORGANIZATION ...[FN24]

[FN22] For the instant case, the public statements made by the then Minister of Defense, General García Samayoa, are especially significant. He referred to the massive resignations of patrolmen as a manipulative maneuver on the part of the guerrillas, and questioned whether the demonstrators belonged to the patrols, asserting that “the number of alleged patrolmen is absurd, because the army has no way of providing weapons to so many people; if they are truly patrolmen, one of the clearest ways of proving it will be that they turn in their weapons.”

[FN23] The record contains a number of press Articles reporting the resignation of more than 3000 members of the Voluntary Self-defense Committees.

[FN24] This communication was addressed, inter alia, to the President of the Republic, the Defense Minister, the Attorney General of the Nation, the Ombudsman for Human Rights, and the President of the Supreme Court.

50. The resignation was published in different media, inter alia, El Gráfico on February 24, 1993; Prensa Libre, on February 25, 1993, Siglo Veintiuno, on February 25 and 26, 1993.[FN25]

[FN25] Copies of these newspaper items can be found in the IACHR proceedings of this case.

51. The February 25, 1993 edition of the newspaper Siglo Veintiuno, contains statements made by the Minister of Defense, José Domingo Samayoa, in which he claims that the alleged resignation of the patrolmen is something very carefully set up, just a hoax, an act of manipulation by the insurgency that takes place year after year en the Quiché region.[FN26]

[FN26] CUC: tres mil patrulleros renunciarán hoy en Joyobaj, [CUC: Three thousand patrolmen will resign today in Joyobaj],” Siglo Veintiuno, February 25, 1993.

52. On March 16, 1993, Tomás Lares Cipriano lodged a complaint against the Leader of the Civil Self-defense Patrols of his county, Catarino Juárez, with the Office of the Ombudsman for Human Rights (PDH) in the city of Santa Cruz del Quiché. Mr. Lares asserted that he feared for his life and requested the aid of the PDH, because the patrol leader was accusing him of organizing guerrilla meetings, under the pretext of community work. [FN27]

[FN27] The proceedings of this case contain a copy of the report made by Tomás Lares Cipriano to the PDH on March 16, 2003.

53. On March 19, 1993, the Committee for Peasant Unity (CUC) reported in a press release that “the security of [their] brethren, who voluntarily abandoned the civil defense patrols is currently threatened by the announcements made by the commanders and the patrol leaders in the last few days, to the point of asserting that they are going to kidnap the community leaders.” In particular, it also reported that the general commander of the Civil Self-defense Patrols, Leonel Nogales, had issued orders for the kidnapping of Mr. Tomás Lares Cipriano, who made several statements to the press regarding the massive resignation from the PACs. [FN28]

[FN28] Communiqué of the Comité de Unidad Campesina, CUC [Peasant Unity Committee], Nuevo atentado con la sociedad civil [New Assault Against Civil Society], May 4, 1993.

54. On March 26 of that same year, some of the persons who had resigned from the Voluntary Self-defense Committees on February 19, including Mr. Tomás Lares Cipriano, appeared before the Human Rights Office of the Archdiocese of Guatemala, to report different threats made against them by some of the civil self-defense patrols in the Municipality of Joyabaj, Department of Quiché, for having resigned from those committees. [FN29] They also reported that on March 28 there would be a demonstration of civil patrolmen and that they had received threats from the patrols, in an attempt to force them to attend. Should they not participate, they would be opening themselves to being accused of belonging to the Unidad Revolucionaria Nacional Guatemalteca.

[FN29] The report, provided by the petitioners, in which the Human Rights Office of the Archdiocese of Guatemala attests to having received the complaint, is filed with the proceedings.

55. On the same March 26th, the Human Rights Office of the Archdiocese of Guatemala filed a habeas corpus petition on behalf of, inter alia, Tomás Lares Cipriano, Diego Lares, and Marcos Ambrosio Sacarías, in order to protect their lives and physical integrity. [FN30] In said petition, they requested the court:

to guarantee the physical integrity of the members who resigned from the self-defense patrols, in view of the threats which have been made against them...

to immediately adopt the necessary measures to protect the life, integrity and freedom of the aforementioned persons.

to order the competent judge to travel to the Municipality of Joyabaj ... on Sunday, March 28 ... and ensure that no illegal arrests be carried out or threats made against those persons who refuse to serve in the Civil Self-defense Patrols...

[FN30] The proceedings contain a copy of the petition of Habeas Corpus filed by the petitioners on behalf, inter alia, of Tomás Lares Cipriano.

56. On April 30 of that same year, Tomás Lares Cipriano was ambushed and murdered by Santos Chich Us, Leonel Olgadez, Catarino Juárez, Diego Granillo Juárez, Santos Tzit and Gaspar López Chiquiaj, [FN31] all members of the PACs. The body had two gunshot wounds in the left hand, one between the eyes and another in the head, a mutilated right ear, a fractured skull, and a severance of the head. [FN32]

[FN31] This was asserted by the petitioners and the victim's family members, by a press release made by the CUC (Comité de Unidad Campesina) [Peasant Unity Committee] as well as by the State of Guatemala in its March 26, 1999 communication.

[FN32] Communiqué of the Comité de Unidad Campesina, CUC [Peasant Unity Committee], "Nuevo atentado con la sociedad civil" [New Assault Against Civil Society], May 4, 1993.

57. On May 1, 1993, Domingo Lares Ambrosio, son of the victim, reported the murder to the National Police and informed them where the body could be found. The police authorities notified the judge on duty of the municipality of Joyabaj, Department of El Quiché, who in the company of the complainant traveled to the Cruzchich village in his jurisdiction, where the body of the victim was indeed found and identified. [FN33]

[FN33] This information was provided by the State of Guatemala in its communication of March 26, 1999.

58. On May 11, 1993, the Supreme Court of Justice denied the petition of habeas corpus, which had been filed previously by the petitioners, on the grounds that the persons on whose behalf it had been filed could not be found, but without mentioning the murder of Tomás Lares Cipriano, which by that time was public.[FN34]

[FN34] A copy of the Guatemalan Supreme Court's decision is filed in the proceedings.

2. The domestic judicial investigation

59. According to the information provided by the State, on May 3, 1993, the Juzgado Segundo de Primera Instancia Penal de El Quiché [Second Criminal Court of the First Instance of El Quiché] instituted proceedings related to the murder of Tomás Lares Cipriano, under Case No. 758-93.

60. On June 29, 1993, the body was exhumed and the autopsy was practiced in the cemetery of the Chorroxaj hamlet, in the Municipality of Joyabaj. According to a July 1 communication signed by Dr. Lissette García de Crocker, the physician who carried out the autopsy, the causes of the death of Tomás Lares Cipriano were severe damage to the brain, multiple skull fractures, gunshot wounds and knife injuries to the neck.[FN35]

[FN35] The proceedings contain a copy of the July 1, 1993 communication addressed to the Human Rights Office of the Archdiocese by the aforementioned forensic scientist.

61. On July 30, 1993, the Juzgado Segundo de Primera Instancia Penal de El Quiché [Second Criminal Court of the First Instance of El Quiché] issued an arrest warrant against Santos Chich Us, Leonel Ogaldez, Catarino Juárez, Diego Granadillo Juárez, Santos Tzit and Gaspar López Chiquiaj, all charged with the murder of Tomás Lares Cipriano.[FN36]

[FN36] Information provided by the State of Guatemala in its communication of March 26, 1999.

62. On August 3, 1993, the National Police arrested Catarino Juárez, who was questioned that same day in the Second Criminal Court of the First Instance.[FN37] On August 5, 1993 depositions were taken from Messrs. Roberto Juárez Morante, Julio Terano Villatoro and from Rosa Ramos Sánchez, witnesses for the defense proposed by Catarino Juárez. On that day the Judge also ordered the release of defendant Juárez because in his judgment there were insufficient grounds to order preventive detention.[FN38]

[FN37] Idem.
[FN38] Ibid.

63. On August 9, 1993 Mr. Leonel Ogaldez voluntarily appeared before the Second Criminal Court of the First Instance, asserted in his deposition that he had not taken part in the crime he was charged with and, according to the State, “based on the evidence [the judge] decided to rescind the arrest warrant against [him].”[FN39]

[FN39] Ibid.

64. On October 17, 1993, the National Police arrested Mr. Gaspar López Chiquiaj. On October 21, 1993, the Second Judge of the First Instance heard the depositions of the witnesses for the defense Domingo Ramírez Hernández, Gaspar Quixa de la Cruz, José Hernández and

Alejandro López Chiquiaj. On that same day the Judge of the First Instance ordered the pre-trial release of defendant López Chiquiaj, and ordered him not to leave the country. On October 22 of the same year, the Office of the Public Prosecutor appealed this decision. On April 14, 1994, the Sala Novena de la Corte de Apelaciones de Antigua Guatemala [Ninth Chamber of the Court of Appeals of Antigua Guatemala] ruled to overturn the appealed order.[FN40]

[FN40] Ibid.

65. On December 12, 1994, the Office of the Public Prosecutor requested the Second Criminal Court of the First Instance to issue a warrant for the arrest of Alejandro López Chiquiaj, as allegedly responsible for the death of Tomás Lares Cipriano. The warrant was issued on December 22, 1994.[FN41]

[FN41] Ibid.

66. On May 6, 1995, the warrants for the arrest of Messrs. Diego Granadillo Juárez, Santos Tzit and Gaspar López were re-issued.

67. On May 10, 1995, the Juzgado Primero de Primera Instancia Penal de Huehuetenango [First Criminal Court of the First Instance of Huehuetenango] issued a bill of indictment against the defendant Santos Chich Us for the murder of Mr. Tomás Lares Cipriano.

68. On November 5, 1996, the Tribunal de Sentencia de El Quiché [Trial Court of El Quiché] gave Mr. Santos Chich Us a 28-year non-commutable prison sentence.

69. On December 4, 1996 the Ninth Chamber of Appeals denied a special appeal filed by the defense of Santos Chich Us and consequently the defendant's sentence became final. The convict was transferred to the jurisdiction of the Juzgado Primero de Ejecución Penal [First Court for the Execution of Sentences] of the City of Guatemala, on January 6, 1997.[FN42]

[FN42] Ibid.

70. According to the information provided by the State on April 16, 2004, the warrants for the arrest of Diego Granadillo Juárez, Santos Tzit and Gaspar López have yet to be carried out, as they are, according to the State, fugitives from justice.

C. Considerations of law

1. The right to life

71. Article 4(1) American Convention provides that:

[e]very person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

72. The right to life constitutes the essential basis for the exercise of all other rights. Compliance with Article 4, in connection with Article 1(1) of the American Convention, not only assumes that no person shall be deprived of his life arbitrarily (negative obligation), but also requires that the States adopt all the proper measures to protect and preserve the right to life (positive obligation). In this regard, the Inter-American Court has stated the following:

The right to life is a fundamental human right, and the exercise of this right is essential for the exercise of all other human rights. If it is not respected, all rights lack meaning. Owing to the fundamental nature of the right to life, restrictive approaches to it are inadmissible. In essence, the fundamental right to life includes, not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence. States have the obligation to guarantee the creation of the conditions required in order that violations of this basic right do not occur and, in particular, the duty to prevent its agents from violating it.[FN43]

[FN43] I/A Court H.R., Case of the “Street Children,” Judgment (Merits) of November 19, 1999, paragraph 144.

73. The Human Rights Committee, created by the International Covenant on Civil and Political Rights, established that [t]he protection against arbitrary deprivation of life, which is explicitly required by the third paragraph of Article 6.1 [of the International Covenant on Civil and Political Rights] is of paramount importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of utmost gravity. Therefore, [the State] must strictly control and limit the circumstances in which [a person] may be deprived of his life by such authorities. [FN44]

[FN44]. I/A Court H.R., Case of the “Street Children”. Judgment (Merits) of November 19, 1999, paragraph 145.

74. According to the established facts, accepted by the State in the instant case, Tomás Lares Cipriano was murdered by members of the Civil Defense Patrols of Joyabaj. The PACs appeared at the beginning of the 1980s as groups of civilians forcibly organized by the armed forces, which intended to isolate the guerrilla movement and control the communities. In April 1983 they were legally recognized by Government Decision 222-83 which created the Jefatura Nacional de Coordinación y Control de la Autodefensa Civil [National Headquarters for the Coordination and Control of Civil Self-defense], hierarchically subordinated to the military authorities. The central objectives of the PACs were to organize the civil population against the

guerrilla movements and to achieve physical and psychological control over the population; they had considerable impact on the Guatemalan social structures, especially in the predominantly indigenous rural areas.[FN45]

[FN45] IACHR, Report No. 59/01, Case 10.626 ET AL., Guatemala, April 7, 2001, paragraphs 81-94.

75. In 1986 the PACs were renamed Comités Voluntarios de Defensa Civil (CVDC) [Voluntary Civil Defense Committees]; this change, however, was purely nominal and they continued to be called PACs and to be part of the Army's counterinsurgency strategy. [FN46] Its members continued to be subordinated to the armed forces.

[FN46] By government decision 434/95, the institution of military commissioners was eliminated on September 11, 1995. The PACs were formally dissolved in 1996, by decree 143-96, in fulfillment of the Peace Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society.

76. Regarding the people's membership with the PACs, notwithstanding that it was theoretically voluntary, but in practice, on many occasions, it was achieved forcibly, and on many others it became a survival mechanism for the civil population.[FN47]

[FN47] There are no official data regarding the number of men in the PACs. However, around 1982-1983 they reached approximately 900,000 peasants between 15 and 60 years of age, close to 80% of the male population in the rural indigenous areas. During the administration of Vinicio Cerezo (1986-1990), PAC membership fell to 500,000, and at the time they were dissolved they numbered about 375,000. Human Rights Office, Archdiocese of Guatemala, Informe Proyecto Interdiocesano de Recuperación de la Memoria Histórica, Guatemala Nunca Más [Report on the Inter-diocesan Recovery of the Historical Memory Project, Guatemala: Never Again!], Volume II, p. 119.

77. The forced involvement of the civil population in the domestic armed conflict through the PACs was greater by far in those departments with a larger Maya population.[FN48]

[FN48] See Commission for Historical Clarification (CEH), Guatemala: Memory of Silence, 1999, Volume II, paragraph 1289.

78. The Commission concludes that the murder of Tomás Lares Cipriano by the PACs had a double connotation: on the one hand, as a direct retaliation for his community activities;

particularly for having led the movement for the massive resignation of patrolmen that took place on February 25, 1993 in Joyabaj. These resignations were said by the Minister of Defense to be the result of a manipulation on the part of the guerrilla. On the other hand, the murder was a message of terror sent both to the other leaders of the movement and to the patrolmen who were considering the possibility of resigning from the PACs.

Responsibility of the Guatemalan State for violations committed by the Civil Self-Defense Patrols

79. The Commission for Historical Clarification (hereinafter the "CEH"[FN49] concluded in its report that "[t]he State is responsible for the violations committed by the PACs to the degree that they acted organized by it, in compliance with its orders, or because of the power delegated to them by the State, or with its acquiescence, knowledge or tolerance, and were under hierarchical control and supervision. The State is also responsible for the failure to investigate, prosecute or punish the individuals responsible in each case." [FN50]

[FN49] According to its mandate, Commission for Historical Clarification's research, spanned the period from the beginning of the armed conflict to the signing of the Agreement on a Firm and Lasting Peace, *id est.*, from 1962 to December 1996.

[FN50] See IACHR, Report No. 39/00, Case 10.586 ET AL., *Extrajudicial Executions, Guatemala*, April 13, 2000, paragraphs 81 to 94.

80. In the Blake Case, the Court found that the the State of Guatemala's support for or acquiescence to the actions of control and repression carried out by the civil patrols allows the conclusion that these patrols should be considered as agents of the State and, consequently, their actions are attributable to the latter. [FN51] In this respect, the Court stated:

This institutional relationship was visible in the very decree creating these Civil Defense Committees (CDC), and in the 1996 Guatemala Peace Agreements, which established that the CDCs, "including those previously demobilized, would cease all institutional relations with the Guatemalan Army and would not be reassembled in a way that would restore that relationship" (not underlined in the original) (Agreement on the Strengthening of the Civil Authority and Function of the Army in a Democratic Society, para. 61). More particularly, Decree 143-96 of the Congress of the Republic of Guatemala of November 28, 1996, which rescinded Decree-Law 19-86, which had legally established the Civil Defense Committees, stated in one of its "Considering" that: the function of some civil self-defense patrols, now known as Voluntary Civil Defense Committees, had been perverted over the years... and that they had fulfilled missions belonging to the regular State organs, provoking repeated human rights violations by members of those committees (no underlining in the original).[FN52]

[FN51] I/A Court H.R., Blake Case. Judgment of January 24, 1998. Series C., No. 36, paragraph 78.

[FN52] I/A Court H.R., Blake Case. Judgment of January 24, 1998. Series C., No. 36, paragraph 77.

81. At the time of the extrajudicial execution of Tomás Lares Cipriano, the civil patrols were acting as agents of the State. In fact, as of the 30 of 1993 both the military commissioners and the civil self defense patrols were in operation and were hierarchically subordinated to the Army, not only by statute but de facto. In the Blake Case, the Court concluded that:

the civil patrols enjoyed an institutional relationship with the Army, performed activities in support of the armed forces' functions, and, moreover, received resources, weapons, training and direct orders from the Guatemalan Army and operated under its supervision. A number of human rights violations, including summary and extrajudicial executions and forced disappearances of persons, have been attributed to those patrols. [FN53]

[FN53] I/A Court H.R., Blake Case. Judgment of January 24, 1998. Series C., No. 36, paragraph 76.

82. Regarding the international responsibility of States for acts committed by its agents, the Inter-American Court established in 1988 the following:

Thus, in principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State. However, this does not define all the circumstances in which a State is obligated to prevent, investigate and punish human rights violations, nor all the cases in which the State might be found responsible for an infringement of those rights. An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention. [FN54]

[FN54] I/A Court H.R., Velásquez-Rodríguez Case. Judgment of July 29, 1988. Series C, No. 4, paragraph 172.

83. The execution of Mr. Tomás Lares Cipriano was not an isolated event within the Guatemalan domestic armed conflict; it belonged to a pattern of extrajudicial executions committed by military commissioners and members of the civil self-defense patrols on the orders of the Army or with its acquiescence. In this connection, it has been established that the members of the Consejo de Comunidades Étnicas Runujel Junam (CERJ) [Council of Ethnic Communities Runujel Junam] were victims of extrajudicial executions and other grave human rights violations in response to their open and public opposition to forcible recruitment of members of the Mayan people for the civil self-defense patrols.

84. In 1990, the Commission received complaints regarding 7 members of the CERJ who were murdered between March and October 1990 by members of the Civil Patrols or groups of persons dressed as civilians acting with the complicity of government authorities.[FN55]

[FN55] IACHR, Annual Report 1990-1991. Also see the 1991 Annual Report, which notes that there were extraordinarily alarmed reports on the campaign of persecution and intimidation of activist members of the Consejo de Comunidades Étnicas Runujel Junam (CERJ) [Council of Ethnic Communities Runujel Junam].

85. In its Report on Merits No. 39/00 the Commission stated:

Many of the selective extrajudicial executions during 1990-91 were carried out against victims who were targeted for their involvement in social and political organizations. The Commission and other sources reported during this period on the persistence of campaigns of violence and intimidation against: human rights defenders, particularly members of the CERJ [.] [FN56]

[FN56] See IACHR, Report N° 39/00, Case 10.586 ET AL, Extrajudicial Executions, Guatemala, April 13, 2000.

86. In the same report on merits the Commission established that the extrajudicial executions alleged in all the cases examined were perpetrated in rural areas where the civil self-defense patrols were a strong presence and had considerable power. In addition, in all cases the victims, before their death, had been threatened by members of the PACs either because they refused to join or had resigned from them. Of the fifteen victims of extrajudicial execution, at least nine were indigenous, and at least seven were members of the CERJ, facts that are consistent with the practice, during that period, of persecution and intimidation against members of human rights organizations and especially against members of the CERJ. Likewise, eight of the extrajudicial executions occurred in San Pedro de Jocopilas.[FN57]

[FN57] IACHR, Report No. 39/00, Case 10.586 ET AL., Extrajudicial Executions, Guatemala, April 13, 2000, paragraph 113.

87. The response to the action of the CERJ consisted of threats, intimidation, murders and forced disappearances carried out by members of the armed forces, military commissioners and members of the PACs. The Commission established that the crimes against the members of the CERJ were not followed by the contingency or enquiry measures which were a State obligation. [FN58]

[FN58] See IACHR, Report No. 11/98, Case 10.606, Samuel de la Cruz Gómez, Guatemala, April 7, 1998, paragraph 41.

88. The Inter-American Court has established that the existence of a pattern of extrajudicial executions generates an atmosphere which is incompatible with the effective protection of the right to life.

[S]ince there was a pattern of extra-legal executions tolerated and promoted by the State, this generated a climate that was incompatible with effective protection of the right to life. As the Court has stated, the right to life plays a key role in the American Convention as it is the essential corollary for realization of the other rights. When the right to life is not respected, all other rights lack meaning.

89. Regarding cases of human rights violations that are part of a state practice, or that constitute a practice tolerated by the State, the Inter-American Court has determined that:

if it is proven for the specific case that it fits within the pattern of extra-legal executions, it is reasonable to assume and conclude that there is an international responsibility of the State.
[FN59]

[FN59] I/A Court H. R., Juan Sánchez Case. Judgment of June 7, 2003, paragraph 108.

90. The death of Mr. Tomás Lares Cipriano, perpetrated by State agents, belongs to a pattern of serious human rights violations that existed at the time of the events. The existence of this pattern of extrajudicial executions, tolerated and even encouraged by the State, generated an atmosphere incompatible with an effective protection of the right to life.

The States have the obligation to ensure creation of the conditions required to avoid violations of this inalienable right and, specifically, the duty of avoiding violations of this right by its agents. Compliance with Article 4, in combination with Article 1(1) of the American Convention, not only requires that no person be deprived of his life arbitrarily (negative obligation), but also that the States take all appropriate measures to protect and preserve the right to life (positive obligation), as part of their duty to ensure full and free exercise of the rights by all persons under their jurisdiction. This active protection of the right to life by the State does not only involve legislators, but all State institutions and those who must protect security, both its police forces and its armed forces. Due to the above, the States must take all necessary measures not only to prevent and punish deprivation of life as a consequence of criminal acts, but also to prevent arbitrary executions by its own security forces. [FN60]

[FN60] I/A Court H. R., Juan Sánchez Case. Judgment of June 7, 2003, paragraph 109.

91. Article 4 of the American Convention, in connection with Article 1(1) establishes the positive obligation for the States to adopt all appropriate measures to protect, preserve, investigate and punish the violations to the right to life. In this case, however, the State did not comply with its obligation to undertake a serious and impartial investigation, because indispensable preliminary procedures were not carried out, evidence was omitted, all the witness testimony that would have been essential in the investigation was not heard, and the proceedings against several defendants were in fact suspended from the moment proceedings were instituted, i.e., from 1993 to the present day.

92. The European Court of Human Rights has stated that safeguarding the right to life implicitly requires the existence of an effective form of official investigation when people die as the result of use of force by agents of the State. [FN61]

[FN61] I/A Court H. R., Juan Sánchez Case. Judgment of June 7, 2003, paragraph 111.

93. In the instant case the State has violated both the negative obligation implied by the fundamental human right to life and the positive obligation. Indeed, at the time the facts occurred, members of the CERJ were the target of different forms of persecution, including threats, intimidation, torture and extrajudicial execution. As a consequence there were a substantial number of complaints to which the State should have responded with an effective investigation, prosecution and punishment. However, State agents responsible for these acts were rarely investigated or found guilty, giving rise to a de facto impunity that allowed, and even encouraged, the continuance of these violations with prejudice to the members of the CERJ.

94. In this connection, in the Report 59/01 on 15 extrajudicial executions carried out by the PACs, the Commission concluded that the practice was encouraged by the prevailing atmosphere of impunity of the times, during which the Judiciary had no intention of seriously and effectively investigating the human rights violations that were reported to it.[FN62]

[FN62] IACHR, Report No. 59/01, Case 10.626 ET AL., Guatemala, April 7, 2001, paragraph 120.

95. Based on the foregoing, the Commission concludes that in the extrajudicial execution of Tomás Lares Cipriano the State of Guatemala violated the right to life contained in Article 4 of the American Convention.

2. Right to a fair trial, judicial protection, and the duty to investigate, prosecute and punish

96. According to the American Convention, every person affected by a human rights violation has the right to obtain from the competent State organs the clarification of the events that violated human rights and the determination of the corresponding responsibilities, through the investigation and prosecution provided for by Articles 8 and 25 of the Convention.[FN63]

[FN63] I/A Court H. R., Barrios Altos Case. Judgment of March 14, 2001, paragraph 48.

97. Article 25 of the Convention provides that:

1. 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, even though such violation may have been committed by persons acting in the course of their official duties.
2. The States Parties undertake:
 - a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
 - b. to develop the possibilities of judicial remedy; and
 - c. to ensure that the competent authorities shall enforce such remedies when granted.

98. Article 8(1) of the Convention, in connection with the above, provides that:

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

99. The protection offered by the norms cited is reinforced by the general obligation to respect human rights, provided for by Article 1(1) of the Convention. In this regard, the Court has expressly established that:

Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, inter alia, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered...Article 25 “is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society...” That Article is closely linked to Article 8(1), which provides that every person has the right to a hearing, with due guarantees ... for the determination of his rights, whatever their nature. [FN64]

[FN64] I/A Court H.R., Loayza-Tamayo Case, Reparations, Judgment of November 27, 1998, paragraph 169; Velásquez Rodríguez, Fairén Garbi and Solís Corrales, and Godínez Cruz cases, Preliminary Objections, paragraphs 91, 90 and 93, respectively.

100. Therefore, the States parties have the obligation of taking all necessary measures to prevent any person from being deprived of judicial protection and the exercise of his right to simple and effective recourse.[FN65] Within this framework, the State has the obligation of

investigating human rights violations, prosecuting those responsible, compensating the victims and avoiding impunity.

[FN65] I/A Court H. R., Barrios Altos Case. Judgment of March 14, 2001, paragraph 43.

101. It is the Inter-American Court's interpretation that, in accordance with the aforementioned provision, the States parties to the American Convention are duty-bound to furnish effective judicial recourse to the victims of human rights violations. [FN66] Recourse for remedies should follow the norms of due process (Article 8[1]), as part of the general obligation of the States to ensure the full and free exercise of recognized rights for the persons subject to the jurisdiction of said States (Article 1[1]). Moreover, Article 25(1) of the American Convention includes the principle of effectiveness of the procedural means to ensure the rights therein protected. Consequently, the lack of effective domestic remedies leaves the victim of a human rights violation in a state of defenselessness, justifying international protection.

[FN66] I/A Court H. R., Velásquez Rodríguez Case, Preliminary Objections, paragraph 91; Advisory Opinion OC-9/97 of October 6, 1987, Judicial Guarantees in States of Emergency, paragraph 24; Fairén Garbi and Solís Corrales Case, Preliminary Objections, Judgment of June 26, 1987, Series C., No. 2 (1987), paragraph 92.

102. In the instant case, the Commission must make a decision both on the remedies pursued by the petitioners to protect the life and personal integrity of Tomás Lares Cipriano and on the obligation of the State to investigate, prosecute, and punish the perpetrators of his murder.

103. With respect to the first issue, it is noteworthy that the Court has stated that the petition for habeas corpus fulfills an essential purpose as a means to ensure the respect for the life and integrity of all persons, to prevent their disappearance or the lack of knowledge regarding their place of detention.[FN67]

[FN67] Ibid.

104. In Guatemala the petitions for amparo [protection of fundamental rights] and habeas corpus, provided for in Article 82 of the Ley de Amparo, Exhibición Personal y de Constitucionalidad [Fundamental Protection, Habeas Corpus and Constitutionality Act] protect, inter alia, those persons who are threatened with losing their freedom or who suffer mistreatment. Their purpose is to ensure that judicial authorities order the cessation of the threats or mistreatment or of the coercion to which any person finds himself subjected to. [FN68] Their processing should be immediate to ensure speed and hence their effectiveness. [FN69] In the instant case, the habeas corpus petition filed by the Human Rights office of the Archdiocese on March 26, 1993, to protect the life and physical integrity of Tomás Lares Cipriano, among other

social leaders, was completely ineffective. It is fully proven that Tomás Lares Cipriano was murdered by members of the PACs on April 30, 2003, i.e., eleven days before the Supreme Court denied the petition on the grounds that the persons on whose behalf it was filed could not be found. The Court has previously established that the ineffectiveness of a petition for habeas corpus constitutes a violation of Article 25(1) of the American Convention.[FN70]

[FN68] Article 82 of the Ley de Amparo [Law for the Protection of Fundamental Rights] provides that:

Whoever is illegally imprisoned, arrested or is in any other way restrained in the enjoyment of his individual freedom, threatened with its loss, or humiliated, even if his imprisonment or arrest should be grounded in the law, has the right to request to immediately appear before a court of justice, for the purpose of the restitution or guarantee of his liberty, or for the cessation of humiliation, or to bring to an end any coercion to which he may be subjected.

[FN69] See Article 88 of the Ley de Amparo [Law for the Protection of Fundamental Rights]

[FN70] I/A Court H.R., Cantoral-Benavides Case. Judgment of August 18, 2000, paragraph 170.

105. With respect to the second issue, the Inter-American Court has determined that the duty to investigate and punish any violation of the rights recognized by the Convention follows from Article 1(1) of the Convention, and is a means to ensure said rights.[FN71] Jurisprudence of the Inter-American System has consistently held that the failure to comply with the duty to investigate is not only evidenced by the lack of a defendant found guilty in a court of law or because, despite efforts made, the facts of a case cannot be established. Nevertheless, the State, to establish credibly and convincingly that this outcome has not been the result of a mere formality, must effectively seek the truth, and must prove that it has made an immediate, exhaustive, serious and impartial investigation.[FN72]

[FN71] I/A Court H.R., “Street Children” Case. Judgment of November 19, 1999, paragraph 225.

[FN72] IACHR, Report No. 55/97, Case 11.137, Juan Carlos Abella, Argentina, IACHR Annual Report, 1997, OEA/Ser.L/V/II.98 doc. 6 rev., April 13, 1998, paragraph 412.

106. In the case of the murder of Tomás Lares Cipriano, the State has not complied with this obligation in view of the fact that it has allowed only one defendant, out of six who have been clearly identified, to be prosecuted, found guilty and sentenced. Indeed, as it has been proven, only one of the perpetrators of the extrajudicial execution, Santos Chich Us, has been given a prison sentence, whereas the remaining defendants, despite having been clearly identified and having arrest warrants pending against them, warrants which were re-issued in 1996, have not yet been prosecuted nor punished. Moreover, intellectual authors of the crime have not been investigated, tried and punished either.

107. The Commission concludes that in the instant case the majority of those responsible have gone unpunished and that the modus operandi has not been clarified. Impunity is the result of the

“failure to investigate, prosecute, take into custody, try and convict those responsible.”[FN73] The guarantees provided for in Articles 25, 8 and 1(1) of the American Convention, viewed in their logical connection, establish the State obligation to combat impunity with “all the legal means at its disposal ... since impunity fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives.” [FN74] As the Special United Nations Rapporteur on extrajudicial executions has emphasized, impunity continues to be “the principal cause of the perpetuation and encouragement of human rights violations, including extrajudicial, summary or arbitrary executions.”[FN75]

[FN73] I/A Court H.R., Loayza Case, Reparations, *supra*, paragraph 170

[FN74] *Ibid.* citing the Paniagua Morales ET AL. Case, Merits, *supra*, paragraph 173.

[FN75] Report of the Special Rapporteur, Mr. Bacre Waly Ndiaye, *supra*, paragraphs 46 and 94.

108. The Commission considers that the impunity established in this case is a demonstration of how far the Guatemalan State is willing to go in its efforts to end current general impunity. These limits are exemplified, in this particular case, first, in its lack of a true intention and capability of arresting, prosecuting and punishing Diego Granadillo Juárez, Santos Tzit and Gaspar López, who have been identified by the Guatemalan judicial authorities themselves as additional allegedly responsible persons for the extrajudicial execution of Tomás Lares Cipriano, notwithstanding that they had remained in their communities

109. Second, in the failure to identify the abettors and perpetrators. It follows from the reported events that, despite serious indications pointing towards the Command Headquarters of Military Zone No. 20, the Guatemalan judicial authorities did not follow the line of investigation. The execution of Lares Cipriano and especially the mutilation of his body sent a clear message to the leaders and community organizations opposed to forced recruitment to the civil self-defense patrols. How the murder was planned and who ordered it are crucial questions for the ascertaining of the facts; these questions the Guatemalan judicial authorities have yet to answer.

110. Third, the irregularities and obstruction of justice that formed part of this case, and which have been instrumental in the drawing out of the judicial proceedings regarding the extrajudicial execution of Lares Cipriano, at this time for more than 11 years, exceeding any reasonable time period. Among the noteworthy procedural irregularities reported by the petitioners as facts that in the end were accepted as such by the State, are those referring to the failure to weigh the evidence establishing that the parties of the criminal proceedings were patrolmen; the denial of the complainant’s requests for the collection of evidence, including: additional depositions of the witnesses for the prosecution; the line-up of the defendants for their identification by the witnesses; and the minutes recording the time at which the Patrol Leaders of the Municipality of Joyabaj took up their posts as well as the civil patrolmen rosters, which were in the possession of the Commanding Officer of Military Zone No. 20, headquartered in Santa Cruz del Quiché; finally, the refusal of the same officer to testify.

111. In addition, among the mechanisms used to obstruct justice in the instant case, the petitioners report the threats made to the police by members of Military Zone No. 20. Because of

these threats, when referring to the failure to carry out the arrest warrants, the Chief of Police of El Quiché stated that he would rather go to jail for disobeying orders than be killed; the dismissal of the Second Judge of the First Instance of El Quiché on grounds of corruption; the fire in the file room of the Second Court of the First Instance of El Quiché; the reports by the Second Judge of the First Instance of El Quiché that said fire could have been caused by members of the patrols, from whom he had also received threats.

112. In the instant case it has been proven that the Guatemala judicial authorities had several opportunities to effectively comply with their obligation to protect the rights of Tomás Lares Cipriano and investigate and punish the violations of his rights. On the one hand, the victim of threats and other acts of intimidation, Tomás Lares Cipriano made use of the recourse of habeas corpus and requested judicial protection. The judiciary did not respond in an effective manner, despite the seriousness of the risk he faced of being killed. The State had the possibility of acting to prevent his execution, but did not. On the other hand, in contrast to the great majority of human rights violations committed during the domestic armed conflict, from the beginning of this investigation the perpetrators of the acts were fully identified, were subject to the criminal process and, despite existing evidence, set free, only to reissue warrants for their arrest that have been standing for more than ten years. The intellectual authors of the crime remain in absolute impunity.

113. In the instant case the lack of proper judicial response has followed a pattern. The State has failed to comply with its duty to provide effective judicial protection and to investigate, prosecute and punish those responsible for the extrajudicial execution of Tomás Lares Cipriano, according to the standards set by the American Convention. In view of the foregoing, the Commission concludes that the Guatemalan State has violated Articles 8 and 25 of the American Convention with prejudice to Tomás Lares Cipriano and his family members.

3. Freedom of association

114. In the instant case the petitioners argued that the execution of Tomás Lares Cipriano also constituted a violation of the freedom of association provided for in Article 16 of the American Convention.

115. Article 16 of the Convention provides that “Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.” Freedom of association has been understood as the right of the individual to meet with others in a voluntary and ongoing manner to jointly pursue lawful objectives.[FN76] As for their nature, the Commission has emphasized that the rights to freedom of assembly and of association have been broadly recognized as significant individual civil rights that protect against arbitrary interference by the state when persons choose to associate with others, and are fundamental to the existence and functioning of a democratic society.[FN77]

[FN76] Separate opinion of Judge Rafael Nieto Navia, Inter-American Court of Human Rights, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism

(Arts. 13 and 29, American Convention on Human Rights), Advisory Opinion OC-5/85, November 13, 1985. Series A, para. 6.

[FN77] See IACHR, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116, 22 October 2002, para. 359.

116. In relation to this case, the Commission takes into account that the most serious human rights violations, such as extrajudicial execution and forced disappearance, are usually intended to silence specific leaders or activists or remove them from the political arena. It finds, therefore, that the violation of the right to life, for example, can constitute an extreme repressive measure taken in retaliation for the victim's community, social, or political activities. Although it would be reasonable to state, therefore, that the right to freedom of association or expression had been violated, from a strictly conceptual legal standpoint the denial of those rights would be subsumed under the impairment of the right to life.

117. Therefore, under the circumstances of this case, the Commission concludes that the right to freedom of association is subsumed under the right to life, enshrined in Article 4 of the American Convention; consequently, the Commission declines to rule on the petitioners' claims in this regard and refers to the opinions and conclusions set forth in the chapter on the violation of the right to life.

4. The duty of the State to respect and guarantee the individual rights

118. The foregoing analysis proves that the Guatemalan State did not fulfill its obligation of respecting the rights of persons within its jurisdiction, provided for in Article 1(1) of the Convention, when it violated the rights contained in Articles 4, 8, and 25 of same, with prejudice to Tomás Lares Cipriano and the latter two Articles also with prejudice to his family members

119. As the Court has said, "[a]ccording to Article 1(1), any exercise of public power that violates the rights recognized by the Convention is illegal. 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 Article. [FN78]

[FN78] I/A Court H.R., Velásquez-Rodríguez Case. Judgment of July 29, 1988. Series C, No. 4, paragraph 169.

120. The second duty provided for in Article 1(1) is that of guaranteeing free and full exercise of the rights and freedoms provided for in the Convention. The Commission concludes that, in violating the right to an effective judicial protection of the victim, with prejudice to him, the Guatemalan State failed to comply with its obligation to ensure the free and full exercise of his rights to any person subject to its jurisdiction.

VII. ACTIONS SUBSEQUENT TO REPORT No. 41/05

121. On March 8, 2005, during its 122nd regular session, the IACHR adopted Report No. 41/05, in keeping with Article 50 of the American Convention. On April 15, 2005, the State of Guatemala was informed of Report No. 41/05, along with the related recommendations, and was granted a period of two months to comply with the recommendations.

122. On April 15, 2005, the petitioners were informed that the IACHR had adopted Report 41/05; were requested to advise the Commission, within one month, of their position on the referral of the case to the Court, the position of the relatives of the victim, and the details of the victim's relatives; and were further requested to provide, within one month, a power of attorney attesting to their standing as representatives of the victim's relatives. The petitioners did not respond to this request.

123. On July 8, 2005, the IACHR received a communication from the State reporting on its degree of compliance with the recommendations set forth in Report No. 41/05. As for the investigation, the state reported that, on June 2, 2005, the Attorney General had been requested to reopen the criminal investigation of the death of Mr. Tomás Lares Cipriano. As for reparations, the state reported that a meeting was to be held on July 13, 2005, between officials of the Office of the President of the Republic and relatives and representatives of the victim in Guatemala, to initiate a friendly settlement process.

124. On July 13, 2005, the state submitted to the Commission a request for a three-month extension of the deadline for compliance with the recommendations of the Commission. On July 15, 2005, the Commission granted an extension until October 15, 2005. On October 7, 2005, the state requested an additional three-month extension. On October 13, 2005, the Commission granted an extension to January 15, 2006.

125. On December 2, 2005, the Commission was informed that the relatives of Mr. Tomás Lares Cipriano had indicated they were not interested in continuing legal action in an international forum. This information was corroborated by the State after making several attempts to locate the relatives of the victim.

126. In this case, the relatives of the victim are not interested in continuing action in an international forum. Therefore, in keeping with Article 44 of the Rules of Procedure of the Commission, on "Referral of the Case to the Court," the Commission unanimously decided not to refer the case to the Court, in view of the position of the relatives of the victim.

127. Considering that, in this case, the State of Guatemala has expressed its intention to comply with the recommendations of Report No. 41/05, the Commission urges it to continue its efforts to do so. The Commission notes that the recommendations issued in paragraph 124, subparagraphs (1), (3), and (4), of Report No. 41/05 can and must be fulfilled by the State, even without the participation or acquiescence of the relatives of the victim. As for the recommendation issued in paragraph 124 (2) of the report in question, the state is urged to establish a special fund for reparations to the relatives of the victim in the event they decide to accept reparations in the future.

128. In accordance with everything stated above, and with Article 51.1 and 51.2 of the American Convention, the Commission sees fit to reiterate the conclusions and recommendations set forth in Report N° 41/05 and to request the state to comply with the recommendations issued in this case within the three months following notification of this report.

VIII. CONCLUSIONS

129. Based on the considerations of fact and law contained in this report, the Commission ratifies its conclusion that the State of Guatemala is responsible for violating the human right to life established under Article 4 of the American Convention, in conjunction with Article 1.1 of that instrument, on account of the extrajudicial execution of Tomás Lares Cipriano by State agents on April 3, 1993.

130. The Commission further concludes that the State of Guatemala is responsible for the violation of the human rights to humane treatment, to a fair trial, and to judicial protection, provided for in Articles 5, 8 and 25 of the American Convention, in connection with Article 1.1 of same, as a result of the events that took place on April 3, 1993 and the ensuing consequence of impunity, with prejudice to Tomás Lares Cipriano, and his family members.

131. Based on the above, the Commission concludes that the State has not complied with its duty to respect human rights and guarantees provided for in Article 1(1) of the American Convention.

IX. RECOMMENDATIONS

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

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS TO THE STATE OF GUATEMALA:

1. To carry out a complete, impartial and effective investigation of the events reported, to judge and punish all those responsible, either as abettors or perpetrators, for human rights violations with prejudice to Tomás Lares Cipriano and his family members.
2. To make reparation for the violation of the aforementioned rights as established in paragraph 128 of this report.
3. To effectively prevent the resurgence and reorganization of the Civil Self-defense Patrols.
4. To adopt the necessary measures to avoid similar events in the future, pursuant to the duty of prevention and guarantee of fundamental human rights, recognized by the American Convention.

X. PUBLICATION

133. On February 28, 2006, the Commission adopted Report No. 11/06 – transcribed above – pursuant to Article 51 of the American Convention. On March 23, 2006, the Commission transmitted this report to the State of Guatemala and to the petitioners, as required by Article 51.1 of the American Convention and gave the State one month to report on compliance with the

above-mentioned recommendations. This deadline has passed without the Commission receiving a reply from the State on this matter. In light of the above, the Commission considers that the aforementioned recommendations have not been implemented.

134. In view of the above considerations and pursuant to Article 51.3 of the American Convention and Article 45 of its Rules of Procedure, the Commission sees fit to reiterate the conclusions contained in paragraphs 130 through 132 and the recommendations made in paragraph 133, to publish this report, and to include it in its Annual Report to the OAS General Assembly. In compliance with its mandate, the Commission will continue to assess the measures taken by the State of Guatemala regarding the recommendations put forward, until they have been fully implemented.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on the 21st day of the month of October, 2006. (Signed): Evelio Fernández Arévalos, President, Paulo Sérgio Pinheiro, First Vice-president; Florentín Meléndez, Second Vice-president, Freddy Gutiérrez, Paolo Carozza and Víctor Abramovich, members of the Commission.