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Title/Style of Cause:	Martin Pelico Coxic, Rosario Hernandez Grave, Manuel Hernandez Ajbac, Manuel Mendoza Jolocomox, Jesus Chaperon Marroquin, Gustavo Vasquez Peralta and Rogelio Cansi v. Guatemala
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Decided by:	President: Florentin Melendez; First Vice-President: Paolo Carozza; Second Vice-President: Victor Abramovich; Commissioners: Evelio Fernandez Arevalos, Clare K. Roberts, Freddy Gutierrez
Dated:	15 October 2007
Citation:	Pelico Coxic v. Guatemala, Case 11.658. Inter-Am. C.H.R., Report No. 80/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
Represented by:	APPLICANTS: , the Council of Runujel Junam Ethnic Communities and the International Law and Justice Center
Editor's Note:	References to footnotes 42 and 43 are missing in the body of the original text.
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I. SUMMARY

1. On August 6, 1996, the Council of Runujel Junam Ethnic Communities (CERJ) and the International Law and Justice Center (CEJIL) (hereinafter “the petitioners”) lodged a petition against the Republic of Guatemala (hereinafter the “State of Guatemala,” “Guatemala,” or “the State”) regarding a presumed violation of the rights established in the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”).

2. According to the petition, on June 27, 1995, Martín Pelicó Coxic, (hereinafter “the victim”), a Mayan Indian, a human rights advocate, and an active member of the Council of Runujel Junam Ethnic Communities (CERJ), was arbitrarily executed by members of the Civil Self-Defense Patrols [Patrullas de Autodefensa Civil] (hereinafter the “PAC”). The petition also alleged that following the arbitrary execution of Mr. Pelicó, family members, witnesses, and prosecution attorneys received a series of threats, including death threats, from PAC members. They requested that precautionary measures be adopted to protect Mrs. Rosario Hernández Grave and Messrs. Manuel Hernández Ajbac, Manuel Mendoza Jolocomox, Jesús Chaperón Marroquín, Gustavo Vásquez Peralta, and Rogelio Cási.

3. The petitioners alleged that the State was responsible for violating the right to life, right to a fair trial, and right to judicial protection established in Articles 4, 5, 8, and 25 of the

American Convention, to the detriment of Martín Pelicó Coxic, and Articles 5, 8, and 25 to the detriment of Rosario Hernández Grave, Manuel Hernández Ajbac, Manuel Mendoza Jolocomox, Jesús Chaperón Marroquín, Gustavo Vásquez Peralta, and Rogelio Cánsi; all of these articles are to be considered in relation to the general obligation of the State to respect and guarantee the rights enshrined in Article 1(1) of the Convention.

4. The State of Guatemala accepted the relevant institutional responsibility it incurred for failure to guarantee the physical security of Martín Pelicó Coxic, and regretted his disappearance (sic), which occurred in 1995. However, it has repeatedly contended that not all remedies under domestic law have been exhausted in this case, and that the State security forces have been pursuing action to arrest the persons accused.

5. The Commission declared the case admissible, and concluded that the State of Guatemala had violated Articles 4, 5, 8, and 25 of the Convention to the detriment of Martín Pelicó Coxic and his next of kin, and Articles 5, 8, and 25 of the Convention to the detriment of Mrs. Rosario Hernández Grave and Messrs. Manuel Hernández Ajbac, Manuel Mendoza Jolocomox, Jesús Chaperón Marroquín, Gustavo Vásquez Peralta y Rogelio Cánsi, all of these Articles to be considered in relation to Article 1(1) of the American Convention on Human Rights.

II. PROCEDURES OF THE COMMISSION

6. The Commission received the petition on August 6, 1996. The case was assigned number 11,658 and opened on August 7, 1996, in accordance with the Rules of Procedure in force on that date. The pertinent portions of the petition were transmitted to the State of Guatemala, which was asked to provide the information requested within a period of 90 days.

7. On August 23, 1996, the Commission requested that the State of Guatemala adopt precautionary measures to preserve the life and personal security of Rosario Hernández Grave, Manuel Hernández Ajbac, Manuel Mendoza Jolocomox, Jesús Chaperón Marroquín, Gustavo Vásquez Peralta, and Rogelio Cánsi, and it asked the State to report on the measures adopted and the results of same within 30 days.

8. The State's response to the request to adopt provisional measures was received on October 1, 1996, and the pertinent portions of the response were forwarded to the petitioners on October 2, 1996.

9. On November 8, 1996, the Commission received the State's response to the petition, which was transmitted to the petitioners, with a request that they send their observations within a period of 30 days. In a letter dated November 26, 1996, the petitioners submitted their observations, which were transferred to the State on January 14, 1997.

10. On February 25, 1997, the State sent its response to the petitioners' observations, which was in turn submitted to the petitioners for comment on March 14, 1997, along with a request that they make any comments deemed appropriate within a period of 30 days.

11. In a letter dated August 26, 1997, the petitioners submitted their comments, which were transferred to the State on September 24, 1997. The State sent a letter with its comments on October 27, 1997.

12. On February 26, 1998, during the 98th session of the Commission, it held a hearing with representatives of both parties present, in which the petitioners provided additional information, which was transmitted to the State on May 4, 1998.

13. On June 4, 1998, the State sent additional information, which was transmitted to the petitioners on June 25, 1998, with the request that they send their observations within 30 days. The request was repeated on August 3, 1999. The petitioners submitted their comments in a letter dated August 13, 1999, and these comments were transmitted to the State on August 30, 1999.

14. In a letter dated September 30, 1999, the State sent additional information, which was forwarded to the petitioners on October 19, 1999, along with a request to present their observations within 30 days. On February 3, 2000, the petitioners sent additional information, which was transmitted to the State on February 23, 2000.

15. On March 22, 2000, the petitioners requested that the possibility of initiating a friendly settlement procedure be considered in this case. On March 24, 2000, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement, in accordance with the provisions of Article 48(1)(f) of the Convention and Article 45(1) and (2) of its Rules of Procedure.

16. The State sent additional information in a letter dated May 3, 2000, but did not refer to its position on the possibility of a friendly settlement.

17. In a letter dated June 2, 2002, the petitioners submitted comments, and on October 1, the Commission sent them on to the State and asked it to submit its comments within a period of 60 days. On July 1, 2002, the Commission applied Article 37(3) of its Rules of Procedure, and requested the petitioners to submit observations on the merits, which they did on October 1, 2002. The State sent its observations on the subject in a letter dated December 2, 2002,

- Precautionary measures

18. The petitioners indicated in their report that during the court proceedings, both the family of Martín Pelicó Coxic and the witnesses and attorneys involved in the homicide case were the victims of death threats and acts of intimidation from the families of the defendants. On March 16, 1996, the Council of Runujel Junam Ethnic Communities (CERJ) filed a complaint with the United Nations Mission for Guatemala (MINUGUA), and in April of that year, the threats were also reported to the National Police and to the Office of the Prosecutor [Procuraduría] for Human Rights.

19. On August 23, 1996, the Commission granted precautionary measures for the protection of Rosario Hernández Grave and Manuel Hernández Ajbac, Manuel Mendoza Jolocomox, Jesús Chaperón Marroquín, Gustavo Vásquez Peralta, and Rogelio Cási.

III. POSITION OF THE PARTIES

A. Position of the petitioners

20. On August 6, 1999, the petitioners reported to the Commission the arbitrary execution of Martín Pelicó Coxic, and the death threats, harassment, and intimidation perpetrated against Mrs. Rosario Hernández Grave and Messrs. Manuel Hernández Ajbac, Manuel Mendoza Jolocomox, Jesús Chaperón Marroquín, Gustavo Vásquez Peralta, and Rogelio Cánsi, for whom precautionary measures were requested.

21. On the facts of the case, the petitioners reported that Martín Pelicó Coxic, an active member of the Council of Runujel Junam Ethnic Communities (CERJ) was executed extrajudicially on June 27, 1995. In the afternoon of that day, Mr. Pelicó accompanied his wife, Rosario Hernández Grave, on an errand in San Pedro Jocopilas. On the way, they met up with Pedro Acabal Chaperón, who invited him to go to Santa Cruz de El Quiché to do some work. That night, various persons saw Pedro Acabal Chaperón and Juan Chivalán Xam get out of a red car driven by Francisco Marroquín Vásquez. They picked up Martín Pelicó, and left him lying face down in the vicinity of his home. When his wife found him, she brought him into the house with the help of several neighbors. Pelicó had deep head wounds and bruises on other parts of his body, and he died moments later. On June 27, 1997, Mrs. Rosario Hernández filed a criminal complaint against Francisco Marroquín, Pedro Acabal, and Juan Chivalán, members of the Civil Self-Defense Patrols of San Pedro de Jocopilas, for the execution of her husband.[FN1]

[FN1] Although on the date the events occurred, the Civil Self-Defense Patrols had changed their name and were called Voluntary Civil Defense Committees, in practice they continued to be generally known as PAC.

22. With regard to the Civil Self-Defense Patrols, they indicated that they had been operating under the responsibility of the Defense Ministry since 1982, and that they were conceived as part of the “national security” policy and created under the de facto regime of General Efraín Ríos Montt, to counter the military action of groups of counter-insurgents. However, the power granted to these patrols went beyond purely military purposes, and they subjected the local people to heavy pressure to do as they told them. This pressure included physical and psychological violence, and has led to violations of the rights to life, liberty, and humane treatment of thousands of people, especially campesinos. The petitioners further stated that the structure of the PACs, their close relationship with the Army, which trains them and supplies them with weapons, their purpose to fight the guerrillas, the fact that they are under the authority of the military command, and their history of committing crimes with impunity all show that the PACs have always acted as agents of the Guatemalan State.

23. The petitioners further reported that during court proceedings, both the family of Martín Pelicó Coxic, as well as the witnesses and attorneys involved in this murder case were victims of death threats and acts of intimidation by the families of the accused. These threats intensified

when the court proceedings were ordered closed on July 18, 1996.[FN2] In view of this situation, on March 16, 1996, the CERJ filed a complaint with the United Nations Mission for Guatemala (MINUGUA), and in April of that year the threats were also reported to the National Police and the Office of the Prosecutor for Human Rights.

[FN2] Refer to the petitioners' brief of August 19, 1996.

24. With regard to admissibility arguments, the petitioners stated that domestic procedures had proven completely ineffective and that the courts had been biased in trying and punishing the persons responsible for the arbitrary execution of Martín Pelicó. There was also a premeditated, unjustified delay in handing down a decision in the case, and the steps required to detain the accused were not taken. Finally, there was a clear denial of justice through arbitrary acts by the court, which obstructed the proceedings and prevented them from developing normally and correctly. As a result of all these factors, the State failed to provide the victim's next of kin with effective remedies. Various years went by after the murder of Martín Pelicó Coxic, and after the only person arrested for the crime was set free, because, according to the trial judge, the Ministerio Público [Office of Public Prosecutor] did not conduct a complete investigation that would have made it possible to support the accusation against Mr. Marroquín Vásquez. The petitioners, nevertheless, maintain that it is the obligation of the courts to conduct a serious investigation in the event of any situation in which human rights protected by the Convention have been violated. They are meant to take it on as their legal duty, directed to effectively determining the truth. They further stated that the other persons accused of having perpetrated the crime were fugitives from justice.

25. As regards the requirement of exhaustion of domestic remedies, the petitioners pointed out that said requirement is not meant to be understood as the need to mechanically carry out formal procedures, but rather that the reasonable possibility of obtaining a remedy is to be examined in each case. This is why a system of exceptions was established, in an effort to ensure that the right to allege failure to exhaust the remedies of domestic law, as grounds for declaring a petition inadmissible, cannot be used "to hold up or delay international action to assist a defenseless victim, until it would be futile."

26. Martín Pelicó Coxic was executed extrajudicially by civil patrol agents on June 27, 1995. On that same day, his wife filed the relevant complaint with the justice of the peace of San Pedro Jocopilas. The preliminary investigation was initiated on the following day. Between July 3 and October 18, 1995, the three persons accused were detained. On November 10, 1995, they were all indicted. On March 11, 1996, the Ministerio Público requested that a trial be opened and announced the charges against the three defendants. From that time on, the administration of justice, under the jurisdiction of the Second Criminal Trial Court for Drug Activities and Crimes Against the Environment [Juzgado Segundo de Primera Instancia Penal Narcoactividad y Delitos Contra el Ambiente] of El Quiché, was characterized by unfounded and illegal decisions.

1) On July 18, the trial was declared provisionally closed, the preventive detention orders were revoked, and the accused were released, on the grounds that there was insufficient evidence

presented during the trial, without any explanation or evaluation of that evidence or any arguments in support of its insufficiency; 2) on appeal, the Ninth Chamber of the Court of Appeals of Antigua Guatemala revoked the previous ruling and ordered that the provisional closing of the trial was null and void as of October 22, 1996, which meant that the Judge of the Second Trial Court had to issue a new arrest warrant against the accused; however, in open disregard of the decision of the Ninth Chamber of the Court of Appeals, the judge issued a decision on November 14, 1996 maintaining his prior decision to revoke the judgment of November 18, 1995, which ordered the preventive detention and indictment of the accused.; 3) The prosecution filed an appeal [Recurso de Reposición] to reverse the decision of the Second Trial Court of Quiché, but on December 30, the judicial authority declared the appeal filed to be without merit, and, with the same failure to present any supporting arguments as before, stated that based on a careful study of the case files and the evidence gathered, he was certain that the accused did not participate in the acts, as alleged; 4) On January 21, 1997, the prosecuting attorneys presented a request to amend the Criminal Proceedings, as established in Article 67 of the Ley del Organismo Judicial, since it was evident that the basic official procedures had been violated in this trial. On January 22, 1997, the Judge of the Second Criminal Trial Court of El Quiché denied the petition presented, on the grounds that it was not an institution contained in the Code of Criminal Procedure; 5) It was not until May 14, 1997, that the Second Criminal Trial Court complied with the decision issued by the Ninth Court of Appeal in October 1996, in which revocation of the judgment provisionally closing the trial was confirmed. Subsequently, the presumed perpetrators were issued summons, and when they failed to appear, they were declared in contempt of court and ordered to be detained and held on bond; 6) Two years later, on March 20, 1999, Marroquín Vásquez was captured, tried, and acquitted in a judgment issued on May 2, 2000 by the Sentencing Court of El Quiché, on the grounds that the prosecution did not present conclusive evidence of the criminal liability of the accused. According to the judge, “the prosecution (Ministerio Público) did not present any evidence, as it is required to do, that would support the charges against the accused.” To date, over 4 years later, legal action in the Quiché Courts against the other perpetrators of the murder of Martín Pelicó is at a standstill for the simple reason that the security forces (the Police) have not captured the persons accused of his death, the former members of the Civil Self-Defense Patrols, Juan Chivalán Xam and Pedro Acabal Chaperón. The accused remain free despite the fact that the court issued the relevant arrest warrants and they are still in effect. Until these persons are arrested, judicial action against them cannot proceed, since formal charges cannot be filed, not to mention a date set for the public trial.

27. They added in this regard that it is therefore appropriate to apply international protective mechanisms, since the exceptions stipulated in Article 46(2) (b) and (c) of the Convention, which exempt the petitioners from exhausting domestic remedies, apply in this case.

28. The petitioners contend that in view of their argument in favor of an exception to the rule of exhaustion of domestic remedies, and of the fact that the victims petitioned the Commission within a reasonable period of time after the events occurred, the petition is admissible from the standpoint of time of presentation.

29. As regards the arguments on the merits, they stated that the extrajudicial execution of Martín Pelicó Coxic was perpetrated by State agents, who have not been either tried or punished,

and the threats made to the next of kin, the witnesses, and the attorneys of the next of kin are a flagrant violation of the provisions of the American Convention on Human Rights, which makes Guatemala responsible.

30. With respect to Articles 8 and 25 of the Convention, they stated that in this case criminal justice was sought so that the extrajudicial execution of Martín Pelicó Coxic would be investigated and the perpetrators punished. However, this did not happen. The following was apparent in the domestic proceedings: 1) failure to conduct a proper investigation; 2) arbitrary, unfounded, and biased judgments; 3) failure to proceed within a reasonable time, with judicial ineffectiveness as a corollary.

31. On the failure to conduct a proper investigation, they reported that during the investigative stage of the proceedings, few steps were taken to determine the facts and gather the necessary evidence to determine the identity of the perpetrators. As for investigative proceedings, during the court trial, only a post mortem certificate was recorded, an autopsy in which only the external condition of the corpse was noted along with a series of declarations. The proceeding did not meet the requirements of a serious, adequate investigation, and as a result access to justice was ineffective. With regard to the issue of arbitrary, unfounded, and biased judgments, the petitioners maintained that although initially the accused were arrested and deprived of their freedom, on July 18, 1996, the Second Trial Court issued a decision ordering the provisional closing of the proceeding, revocation of preventive detention, and the release of the accused. This action by the court was entirely arbitrary, since the judge did not indicate the grounds for his decision to close the proceeding, nor his reasons for determining that the criminal liability of the defendants was not proven, nor what evidence or arguments he used to nullify the copious existing evidence. In other words, the Second Trial Court ignored the fact that there were sufficient elements of proof to support the indictment, such as particularly serious testimony and documents, which taken together, left no room for doubt regarding the participation of the accused. The petitioners further reported that Guatemala had not guaranteed the right on the part of the victims or their next of kin to be heard in a fair trial within a reasonable period of time.

32. As regards the right to life, the petitioners alleged that the perpetrators of the arbitrary execution of Martín Pelicó, namely, Juan Chivalán Xam, Francisco Marroquín Vázquez, and Pedro Acabal Chaperón, were identified from the beginning of the proceedings as civil patrol agents in San Pedro Jocopilas. According to the Inter-American Court of Human Rights, the Civil Self-Defense Patrols are to be considered as State agents and therefore their acts are to be imputed to the State, since the State is responsible for any violation of the rights recognized by the Convention that is committed by an act of public authorities or persons acting with the powers resulting from their official capacity. Thus, the State is responsible not only for the execution of Pelicó, but also for the failure to conduct an effective investigation.

33. The petitioners maintained that the right to humane treatment was also violated by the State of Guatemala in the case in point. From the records of this case, there is no doubt that Martín Pelicó died as a result of multiple knife wounds he received and that his death was not immediate. It would appear that the circumstances in which these wounds were produced showed

a clear possibility that they were inflicted as a form of torture, with the intent to cause the suffering and fear of the victim, who was at the mercy of his murderers.

34. The wife of Martín Pelicó Coxic, Rosario Hernández Grave, not only suffered the loss of her husband, but she was also powerless in view of the impunity of the murderers. This feeling of powerlessness was exacerbated when she became the victim of threats and acts of intimidation, to the extent that when she reported the crime, Rosario was so frightened that she refused to sign the declaration reporting the death of her husband, to avoid problems. Moreover, the constant denial of justice and the impunity involved in this case generated enormous suffering and anguish for the family, making the wife, the brothers, and the parents of Martín Pelicó Coxic victims as well.

35. In the view of the petitioners, this makes Guatemala responsible for the violation of the following rights recognized by the American Convention on Human Rights, to the detriment of the following victims: in the case of Martín Pelicó Coxic, responsibility for violation of Articles 4, 5, 8, and 25, considered in relation to Article 1(1) of the Convention; and, to the detriment of Manuel Mendoza Jolocomox, Rosario Hernández Grave, Manuel Hernández Ajbac, Jesús Chaperón Marroquín, and Gustavo Vásquez Peralta, violation of Articles 5, 8, and 25, considered in relation to Article 1(1) of the Convention.

B. Position of the State

36. In its initial letter dated November 8, 1996, the State of Guatemala stated that in the domestic arena, as observed from the court records for case number 1036-95, under the responsibility of the Court Officer [Oficial Segundo], processed in the Second Criminal Trial Court for Drug Activities and Crimes against the Environment, and in the Ministerio Público for El Quiché Department, the parties had access to the legal remedies provided for in Guatemalan legislation, and the national institutions in charge of judicial investigation and administration of justice in the country acted with full autonomy and independence, in accordance with the relevant constitutional precepts. The State added that the persons accused of the murder of Martín Pelicó Coxic, namely, Pedro Acabal Chaperón, Francisco Marroquín Vásquez, and Juan Chivalán Xam, were arrested by order of the competent judge, held for trial, and investigated. In addition, an order for their preventive detention was issued for the crime of homicide, and they were formally charged in an indictment; they also made use of the legal remedies available under Guatemalan legislation.

37. In that same letter, the State indicated that the Ministerio Público, the National Police and Forensic Medicine of El Quiché Department had met the requirements of the law and the respective institutions in the case in point. The State went on to say in the letter that among the functions of the Guatemalan government is the duty to prevent and prosecute crimes and, in so doing, to cooperate with the Ministerio Público and the courts, within the framework of the law. These are the institutions in charge of initiating criminal proceedings, with the support of the Political Constitution of Guatemala. The Guatemalan State also pointed out that none of the parties in this case had been denied access to legal remedies, and that they had appeared at the trial duly assisted by their attorneys, adding that an appeal filed by the Ministerio Público and the concurring plaintiff against the judgment of July 18, 1996, which declared the trial provisionally

closed, was awaiting a decision. Consequently, remedies under domestic law had not been exhausted.

38. On February 25, 1997, the State indicated that the use of domestic legal remedies to settle the case had proven to be effective, when used opportunely and appropriately. However, it regretted that the arrest warrants issued against the accused had not been executed because it was impossible to determine their whereabouts.

39. In subsequent letters,[FN3] the State reiterated that remedies under domestic law had not been exhausted in the present case, and that they were continuing to make every effort, through the competent agencies, to clarify the facts and bring the responsible parties to justice. The State added that it was public knowledge that the existence of fugitives from justice who evade legal action was a regrettable situation which occurs even in countries with a better infrastructure for combating crime than what exists in Guatemala, and asked that due regard be given to the action undertaken by the competent State institutions to comply with the court orders.

[FN3] See the letters of the State dated October 27, 1997, June 4, 1998, September 30, 1999, May 3, 2000, and December 2, 2002.

40. In its communication giving its observations on the merits, dated December 2, 2002, the State had the following to say about the trial:

The case was processed in the Second Criminal Trial Court for Drug Activities and Crimes Against the Environment of El Quiché, case N° 1036-95, under the responsibility of the Court Officer; the defendants were Francisco Marroquín Vásquez, Pedro Acabal Chaperón, and Juan Chivalán Xam, of whom only Francisco Marroquín Vásquez was tried, as the other two were fugitives from justice.

On May 2, 2000, the Court issued its verdict, acquitting Francisco Marroquín Vásquez for the crime of homicide committed against Martín Pelicó, arguing that the Ministerio Público did not present any evidence related to the participation of the defendant in this act. Consequently, the criminal liability of the accused Marroquín Vásquez could not be established.

By virtue of the foregoing, both the verdict issued by the Criminal Trial Court of Santa Cruz del Quiché, and the judgment handed down by the Ninth Chamber of the Court of Appeals, in the absence of any other appeal, would bring to an end the criminal prosecution of Francisco Marroquín Vásquez, the only defendant tried in this case, who was acquitted in the decision issued by the Guatemalan courts of justice in the case of Martín Pelicó.

In this regard, the Guatemalan government would advise the Commission that, despite government efforts, to date it has been difficult to apprehend the other persons accused in this case, but that it will be carrying out a revised plan [reorientación], in order to capture these persons and determine the facts of the case, so as to clarify the death of Martín Pelicó Coxic,

through a trial to take place in the courts of justice against Pedro Acabal Chaperón and Juan Chivalán Xam.

41. Moreover, the State made the following comments in its brief:

The Government of the Republic of Guatemala accepts the corresponding institutional responsibility for its failure to guarantee the physical security of Mr. Martín Pelicó Coxic, and at the same time it regrets his disappearance (sic) which occurred 7 years ago, and which has not been fully clarified, despite the formal investigation initiated in this case, permitting the victim's next of kin access to justice by due process against Francisco Marroquín Vásquez. It further regrets that the results were not satisfactory, in that the judgment handed down on May 2, 2000 was an acquittal, and that it has not been possible to apprehend the other two persons accused in this case, to try them in court and clarify the death of Mr. Pelicó Coxic.

The Government of the Republic of Guatemala is of the view that both the court proceedings and the decisions handed down at the referenced trial were in accordance with the laws of the country. On November 13, 2002, the Ninth Chamber of the Court of Appeals confirmed the lower court decision. Thus, legal remedies, including a possible appellate court decision, have not been exhausted, and this is the reason why the final result of the proceedings is pending further appeals.

The criminal proceedings in the death of Mr. Pelicó Coxic, it adds, are open, and legal remedies are available for the effective criminal prosecution of this crime.

Moreover, the State reports that the information related to the case has been passed on to the Attorney General [Fiscal General] of the Republic and the head of the Ministerio Público, Carlos de León Argueta, the Private Secretary of the Ministerio Público, Sergio Salazar Aguirre, and the District Attorney of Santa Cruz del Quiché, José Alberto López Coronado, so that their offices can examine the information in this case, include it in the corresponding case files, and consider reorienting or revising the steps considered relevant for apprehending and indicting the other two persons accused, and for punishing the parties guilty of the death of Martín Pelicó Coxic.

According to the official letter sent by National Civil Police Station No. 71, the Criminal Trial Court for Drug Activities and Crimes against the Environment and the Public Prosecutor of the Ministerio Público of Santa Cruz del Quiché were asked to provide information related to the arrest warrants for Juan Chivalam Xam and Pedro Acabal Chaperón, which are still in force.

As regards the precautionary measures requested by the illustrious Inter-American Commission on Human Rights, in favor of witnesses and family members of Martín Pelicó Coxic, National Civil Police Station No. 71 of Santa Cruz del Quiché has sent periodic reports to COPREDEH to inform it that these persons are receiving security.

Finally, the State reiterated that in the present case, the remedies under domestic law had not been exhausted and that the criminal proceedings were open and legal remedies were available for effective criminal prosecution of the case.

IV. THE FACTS

1. Death of Martín Pelicó Coxic

42. Martín Pelicó Coxic was a Mayan Indian who lived in San Pedro de Jocopilas, Department of Quiché. He was married to Rosario Hernández Grave, with whom he had three children, and he was a member of the Council of Runujel Junam Ethnic Communities (CERJ), a nongovernmental organization established in 1988 particularly for the purpose of defending the human rights of its members belonging to the Mayan community. CERJ, which initially was headquartered in El Quiché Department, was opposed to serving in the Civil Self-Defense Patrols.

43. On June 27, 1995, Martín Pelicó Coxic was executed extrajudicially. He was 27 years old at the time of his death, and his children, David, Marta, and Doris, were 7, 6, and 5 years old, respectively.

44. According to information in the case documents submitted to the IACHR, on that June 27th, in San Pedro de Jocopilas, Department of Quiché, at approximately two in the afternoon, Mr. Pelicó went with his wife, Rosario Hernández Grave, to the home of Margarito Hernández, and on his way he met up with Pedro Acabal Chaperón, who invited Mr. Pelicó to accompany him to go with him to Santa Cruz del Quiché to do some jobs. After leaving a bicycle belonging to Mr. Acabal Chaperón at the home of Margarito Hernández, at about three in the afternoon, Mr. Pelicó left in the company of Mr. Acabal.

45. On that same day, at approximately seven in the evening, at the corner of the home of Mr. Pelicó, two men got out of a red pickup truck or van [camioneta], while another one remained in the driver's seat, and they took Mr. Pelicó out of the back of the vehicle, left him lying in the street, and then fled.

46. The wife of Mr. Pelicó found him seriously injured and transferred him to their home, where he died moments later. According to the medical death certificate,[FN4] the cause of death was; cerebral attrition, asphyxiation by aspiration of water, skull fractures, and stab wounds puncturing the skull.[FN5]

[FN4] See page 17 of the criminal records.

[FN5] According to the autopsy report signed by forensic physician Ana García on June 29, 1995, the body of Mr. Pelicó had 10 puncture wounds to the skull, in addition to various lacerations.

2. The domestic judicial investigation

47. The Commission has viewed the main documents in the criminal case files opened in the death of Mr. Martín Pelicó, which were provided by the petitioners. The following information is taken from these documents:

48. On June 27, 1995, Rosario Hernández Grave, a Mayan woman who speaks Quechua, the widow of Martín Pelicó, who was 25 years old at that time, submitted a complaint to the police of San Pedro de Jocopilas, who transmitted the information to the justice of the peace or magistrate of that town. The justice of the peace ordered the following steps to be taken on that same day:

- a) The undersigned associate judge is required to go immediately to the place where the body of Martín Pelicó Coxic was found and proceed with an examination of the evidence and record the description of the body;
- b) The body of said person is to be sent to the morgue of Hospital Nacional Santa Elena of Santa Cruz del Quiché, for a forensic medical autopsy, under the authority of the appropriate officer, and the corresponding report is to be drawn up;
- c) The appropriate authority is to issue certification of the death of the murder victim;
- d) Testimony is to be taken from the persons who were present at the place of the event;
- e) The appropriate measures under the law are subsequently to be taken.

49. In addition, the justice of the peace ordered that the records be sent to the District Attorney's Office of the Ministerio Público, with a copy to the Second Criminal Trial Court for Drug Activities and Crimes Against the Environment of Santa Cruz de El Quiché, assigning number 1036-95 to the criminal case opened for the crime of homicide against Martín Pelicó Coxic.

50. On June 28, 1995, Mrs. Rosario Hernández formally accused Pedro Acabal Chaperón, in her declaration to the justice of the peace, but indicated that she did not want to sign the declaration, because "she did not want to have problems." [FN6]

[FN6] Later on, on July 12, 1995, Mrs. Rosario Hernández went to the trial court and signed the declaration.

51. On June 29, 1995, the Police of San Pedro de Jocopilas reported to the justice of the peace that Pedro Acabal Chaperón had been detained in the public jail for inebriation and constituting a public nuisance. The justice of the peace ordered that he give a signed declaration, since he was accused of having participated in the death of Martín Pelicó. On July 3, 1995, the trial court of Santa Cruz de El Quiché issued an order for the detention and indictment of Acabal Chaperón.

52. Between June 29 and August 1, 1995, according to the criminal case files, seven witnesses [FN7] testified that they recognized Francisco Marroquín Vásquez and Pedro Acabal Chaperón as the persons who, on that June 27, 1995, met with and/or left Martín Pelicó mortally wounded in front of his home, and they also said that a third person, whose name they did not know, participated as well.

[FN7] Refer, in the criminal case records, to the statements of Margarito Hernández Chaperón; Manuel Jolomocox Mendoza; María Pelicó Coxic; Catarina Marroquín Pu; Pablo Grave Pérez; Agustín Grave Us, and José Lol Jax.

53. During that same period of time, five witnesses[FN8] declared in the trial court that, during the afternoon of June 27th, they had seen Pedro Acabal Chaperón take leave of Martín Pelicó Coxic, on a friendly basis, in front of the latter's home.

[FN8] Refer, in the criminal case records, to the statements of Francisco Acabal Ixcoy; Santiago Acabal Ixcoy; María Pu Hernández; Rosalina Barrios, and Juan Grave Ordóñez.

54. On August 1, 1995, the lower court [tribunal de primera instancia] issued an arrest warrant for the accused Francisco Marroquín Vásquez, indicating in the pertinent decision that the investigation "of another unknown individual" was pending.

55. On August 29, 1995, Francisco Marroquín was arrested by national police officers, a signed statement was taken, and an order for his detention and an indictment against him were issued.

56. Between September 6 and September 11, 1995, according to the criminal case records, nine persons gave statements in defense of the accused persons.[FN9]

[FN9] Refer, in the criminal case records, to the statements of Encarnación Chacaj Raguax; Dionisio Ajbac Ixcoy; José Grave Xiloj; Valentín Tosí; Víctor Grave Hernández; Elena Xiloj Chaperón; Felipe Ajxup Mejía; Juan Chacaj Xiloj, and Jacinto Ixcoy López

57. On September 14, 1995, Rosario Hernández Grave formally accused Francisco Marroquín.

58. Between September 20 and October 30, 1995, according to the criminal records, ten witnesses gave statements for the prosecution.[FN10] In these statements, for the first time Juan Chivalán Xam was identified as one of the persons who had participated in the acts that occurred on June 27, 1995, and witnesses further identified the defendants as members of the Civil Self-Defense Patrols.

[FN10] Refer, in the criminal case records, to the statements of Jacinto Isaac Girón y Girón; Jesús Chaperón Marroquín; Martín Elías López; Isabel Domitila Girón Méndez; Cruz Ajmac Zapete; Gregorio Hernández; Ambrocio Grave; Juan Jax Us; Manuel Jolomocox Mendoza, and María Pelicó Coxic.

59. In the case files, on page 114 there is an official letter signed by the commander of military zone No. 20 of El Quiché to the District Attorney of the, in which he reports that Francisco Marroquín and Juan Chivalán performed the duty of military agents and that in that capacity that were permitted to carry weapons.

60. In relation to the arguments in defense of Mr. Marroquín, in his signed statement he declared that on June 27, 1995, he was in the parish church from three in the afternoon until 10 at night, which was confirmed by witnesses. However, on page 126 of the case records, there is a document signed on October 8, 1995 by the parish priest of San Pedro de Jocopilas Parish, the president of the parish board, the chairman of the pro-fiesta committee, and the vice-chairman of the pro-improvement committee, in which it is indicated that the statements by Marroquín are false, because he does not belong to the parish organization and he was not participating in meetings at the parish on June 27, 1995.

61. On October 30, 1995, Clemente Penaleu N., the parish priest of San Pedro de Jocopilas Catholic Church gave a statement in court and confirmed what was stated in the aforesaid document, adding that Francisco Marroquín did not belong to any church in any district.

62. On November 29, 1995, Juan Chivalán Xam was arrested by national police officers, his signed statement was taken, and an order for his detention and an indictment against him were issued.

63. On February 29, 1996, Rosario Hernández Grave presented a private criminal complaint and civil suit against the accused. On March 11, 1996, the Ministerio Público requested that a trial be opened for this case and formally charged the three defendants.

64. On July 18, 1996, the judge of the lower court ordered the provisional closing of the proceedings, revoked the preventive detention orders, and issued an order to release the accused persons, stating in his decision that “in correctly analyzing the elements of proof brought in the context of this trial, it is found that they are insufficient to request the opening of the trial, since the guilt of the defendants, and the accusation that they committed the act or participated in it, have not been demonstrated clearly...”.

65. The Ninth Chamber of the Court of Appeals of Antigua Guatemala, after hearing an appeal filed by Rosario Hernández Grave, in her capacity as the concurring accuser, revoked the aforesaid decision, and nullified the provisional closing of the proceedings as of October 22, 1996. However, the Second Trial Court of Quiché did not comply with the order of the higher court and, in a decision issued on November 14, 1996, it confirmed its decision to revoke the November 18, 1995 judgment that ordered the preventive detention and indictment of the accused.

66. The prosecution filed an appeal with the local court to reverse its decision [recurso de reposición], and on December 30, 1996, the lower court judge dismissed the appeal, indicating that on the basis of a careful review of the case records and the evidence gathered, he was certain that the accused had not participated in the crime in question.

67. On January 21, 1997, the prosecuting attorneys submitted a petition to amend the criminal procedure contained in Article 67 of the Ley del Organismo Judicial, on the grounds of violation of the basic formal requirements in the court proceedings. On January 22, 1997, the judge decided to deny the petition, arguing that it was not an institution contained in the Code of Criminal Procedure.

68. On May 8, 1997, after a change in the head of the Second Criminal Trial Court, Francisco Marroquín Vásquez, Pedro Acabal Chaperón, and Juan Chivalán Xam were issued summons to give statements on the 12th of that same month. Since they did not appear, on May 15, 1997, the court ordered that they be arrested and held on bond for homicide.

69. On March 20, 1999, Francisco Marroquín Vásquez was captured, tried, and acquitted in a judgment issued on May 2, 2000 by the Sentencing Court of El Quiché, on the grounds that the prosecution did not present conclusive evidence of the responsibility of the accused. According to the judge, “the accusing entity (Ministerio Público) did not present any evidence, as was its obligation to do so, to support the charges against the accused.”

70. The Guatemalan police have not apprehended Juan Chivalán Xam and Pedro Acabal Chaperón. As of the date of this report, no persons have been convicted for the death of Martín Pelicó.

V. ANALYSIS ON ADMISIBILITY

71. In view of the fact that the petition was presented on August 6, 1996, and that the parties have had ample and numerous opportunities to set out their factual and legal arguments on the conditions for admissibility and on the merits of the case, the Commission decided to apply the exception provided for in Article 37(3)[FN11] of its Rules of Procedure. As a result, a determination will be made as to both the admissibility and the merits of the case in this report.

[FN11] See the letter from the IACHR to the parties dated July 2, 2002.

A. Competence

72. The petitioners are authorized by Article 44 of the American Convention to lodge petitions with the IACHR. The petition gave the names of individual persons as the presumed victims, in respect of whom the Guatemalan State is committed to respect and guarantee the rights established in the American Convention. As regards the State, the Commission points out that Guatemala has been a party to the American Convention since May 25, 1978, the date on which it deposited its instrument of ratification. Therefore, the Commission has competence *ratione personae* to examine the petition.

73. The Commission has competence *ratione loci* to take cognizance of the petition, because it alleged that violations of the rights protected in the American Convention occurred within the

territory of a state party to that agreement. The IACHR has competence *ratione temporis* because the obligation to respect and guarantee the rights protected in the American Convention was already in effect for the State on the date that the acts alleged in the petition occurred. Finally, the Commission has competence *ratione materiae*, because violations of human rights protected by the American Convention are reported in the petition.

B. Requirements for Admissibility

1. Exhaustion of domestic remedies and deadline for presentation of the petition

74. The State argued that there is a criminal proceeding pending and that the security forces are continuing to take various steps to successfully apprehend the parties accused of the murder of Martín Pelicó Coxic, and that consequently the complaint of the petitioners does not fulfill the requirement stipulated in Article 46(1) of the American Convention on prior exhaustion of domestic remedies.

75. The petitioners, for their part, maintained that in the criminal process initiated in 1995, the murder of Martín Pelicó Coxic has still not been clarified, and that there is an unjustified delay in concluding the criminal investigation.

76. It is therefore necessary to clarify what are the domestic remedies that must be exhausted in the present case. The Inter-American Court has pointed out that only adequate remedies to correct the presumed violations must be exhausted. Adequate remedies are considered to have the following meaning:

[T]he function of these remedies within the domestic legal system should be suitable for protection *vis-à-vis* the violated legal situation. In all domestic legal systems, there are many remedies, but not all are applicable in all circumstances. If, in a specific case, a remedy is not adequate, it is obvious that it does not have to be exhausted. This is clear in the principle that a legal provision is directed to producing an effect, and cannot be interpreted in the sense that it does not produce any effect or that the result of it is patently absurd or unreasonable.[FN12]

[FN12] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 63.

77. The jurisprudence of the Commission recognizes that whenever a crime that can be judicially prosecuted is committed, the state has the obligation to initiate and expedite criminal proceedings to their ultimate consequences,[FN13] and that, in those cases, this is the most suitable way to clarify the facts, judge the responsible parties, and establish the corresponding criminal sanctions, in addition to providing for other methods of pecuniary compensation. The Commission considers that the facts alleged by the petitioners in the present case involve the presumed violation of fundamental rights which are specified in domestic law as crimes to be judicially prosecuted, hence it is this process, expedited by the state itself, that should be considered for the purpose of determining the admissibility of the petition.

[FN13] IACHR, Report N° 52/97, Case 11,218, Arges Sequeira Mangas, 1997 Annual Report of the IACHR, paras. 96 and 97. Also refer to Report N° 55/97, para. 392, Report 57/00 La Granja, Ituango, 2000 Annual Report of the IACHR, para. 40.

78. In addition, the Commission notes that the petitioners have demonstrated in this case, with the copies of the criminal case records sent to the Commission, that the spouse of Martín Pelicó Coxic participated actively in the criminal complaint initiated in the domestic courts. In fact, Mrs. Hernández filed the complaint with the Guatemalan authorities in relation to the acts which occurred on June 25, 1995, the same day on which her husband died, participated as the accusing party, filed all the necessary appeals to obtain justice, through her legal representatives, made formal charges, presented witnesses, offered documentary evidence, and petitioned the court to adopt certain legal measures. She even acted as a concurring complainant or accuser [querellante adhesiva] and filed a civil suit. These measures, however, proved to be ineffective, as the proceedings against the defendants were stayed or dismissed and/or the defendants were acquitted.

79. As regards the exception to compliance with the requirement of exhaustion of domestic remedies referred to by the petitioners, Article 46(2)(a) of the Convention establishes that this requirement does not apply when:

- a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

80. As already mentioned, and as apparent from the information provided by the parties, over eight years have lapsed since the death of Martín Pelicó Coxic, while the investigation into the case has not been concluded, and the arrest warrants issued against the accused linked to the investigation have not been effective, all of which are indications of a delay. Although the State of Guatemala has reported to the Commission that the arrest warrants issued against the accused are pending, it has not provided any information on the specific steps taken to make them effective.

81. As a general rule, a criminal investigation must be conducted promptly to protect the interests of victims, preserve evidence, and even to safeguard the rights of any persons considered as suspects in the context of the investigation. According to the Inter-American Court, although all criminal investigations must meet a series of legal requirements, the rule of prior exhaustion of domestic remedies should not cause international procedures to assist victims to be held up or delayed to the point where they are useless.[FN14]

[FN14] Inter-American Court of Human Rights, Velásquez Rodríguez Case, preliminary exceptions, judgment of June 26, 1987, para. 93.

82. To the foregoing we would add the circumstances in which the investigation was conducted, which presumably have affected its effectiveness as a way of ensuring judicial clarification of the facts. The threats to family members, witnesses, and attorneys of the victim, which led them to request the IACHR to adopt precautionary measures, show that the prospects of an effective judicial investigation are far from being equivalent to those of a remedy that is required to be exhausted prior to recourse to international protection of human rights. On this point, the Commission appreciates the steps taken by the Guatemalan State to implement the precautionary measures granted by the Commission on August 23, 1996.

83. Therefore, in view of the characteristics and the circumstances of the present case, the Commission is of the view that the exception stipulated in Article 46(2)(c) of the Convention is applicable, hence the requirements pertaining to exhaustion of domestic remedies in the American Convention are not applicable, and as a result, neither is the six month period for presentation of the petition.

84. Finally, application of the exceptions to the rule of exhaustion of domestic remedies, as stipulated in Article 46(2) of the Convention, is closely linked to the determination of possible violations of certain rights established therein, such as guarantees of access to justice. However, Article 46(2), by its nature and purpose, is an autonomous provision separate from the substantive provisions of the Convention. Therefore, a determination as to whether the exceptions to the rule of exhaustion of domestic remedies, as stipulated in subparagraphs (a), (b), and (c) of that Article, are applicable to the case in point should be made prior to and separate from the examination of the merits of the case, since it relies on a different evaluation standard than the one used to determine a violation of Articles 8 and 25 of the Convention. It should be noted that the causes and the effects that prevented exhaustion of domestic remedies will be analyzed in the report to be adopted by the IACHR on the substance of the controversy, in order to ascertain if they constitute violations of the American Convention.

2. Duplication of procedures and res judicata

85. It does not appear from the case records that the petition is pending in another international proceeding, or that it replicates a petition already examined by this or another international organization. It therefore meets the requirements established in Articles 46(1) (c) and 47(d) of the Convention.

3. Characterization of the alleged acts

86. The Commission considers that the allegations of the petitioners regarding the presumed violation of the right to life, humane treatment, a fair trial, and judicial protection for victims and their family members could be characterized as a violation of the rights guaranteed in Articles 4, 5, 8, and 25, considered together with Article 1(1), of the American Convention.

4. Conclusions on admissibility

87. The Commission is of the opinion that the case is admissible and that it is competent to examine the petition presented by the petitioners regarding the presumed violation of Articles 4, 5, 8, and 25 of the American Convention, considered together with Article 1(1) of that instrument, in accordance with the requirements stipulated in Articles 46 and 47 of that Convention.

VI. ANALYSIS OF THE MERITS

88. The Commission considers the facts set forth in section IV of this report as established for the purposes of this analysis. It will now examine the rights to life, humane treatment, a fair trial, and judicial protection established in the American Convention, all of which will be considered in relation to the article on the obligation to respect the rights established in this international instrument and in light of the facts which are considered as proven.

A. Right to life

89. Article 4.1 of the American Convention establishes 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.

90. The right to life is the fundamental basis of the exercise of the other rights. Compliance with Article 4 of the American Convention, in relation with Article 1.1, not only presumes that no persons is to be deprived of his life arbitrarily (negative obligation), but it also requires states to adopt appropriate measures to protect and preserve the right to life (positive obligation). The Inter-American Court has had the following to say on this point:

The right to life is a fundamental human right, and enjoyment of this right is a prerequisite for the exercise of all other human rights. If it is not respected, all the rights become meaningless. Because of the fundamental character of the right to life, no restrictions to it are admissible. In essence, the fundamental right to life includes not only the right of all human beings not to be deprived of their life arbitrarily, but also the right not to be prevented access to the conditions guaranteeing a decent existence. States have the obligation to ensure creation of the conditions needed to ensure that this basic right is not violated, and they specifically have the duty to prevent their agents from violating this right.[FN15]

[FN15] Inter-American Court of Human Rights, Street Children Case, judgment on the merits, November 91, 1999, para. 144.

91. The Human Rights Committee, established by the United Nations International Covenant of Civil and Political Rights, has held that [p]rotection against the arbitrary deprivation of life, which is specifically required by the third paragraph of Article 6.1 of the International Covenant

of Civil and Political Rights, is of supreme importance. The Committee considers that states parties must adopt measures not only to prevent and punish deprivation of life [caused by] criminal acts, but also to prevent arbitrary homicides committed by their own security forces. Deprivation of life by state authorities is a matter of the utmost gravity. As a result, the state must strictly control and limit the circumstances in which [a person] may be deprived of his life by such authorities.[FN16]

[FN16] Inter-American Court of Human Rights, Street Children Case, judgment on the merits, November 19, 1999, para. 145.

92. According to the statements of witness and the documents contained in the criminal case records, the persons who left Martín Pelicó Coxic mortally wounded at the corner of his house were Pedro Acabal Chaperón, Francisco Marroquín Vásquez, and Juan Chivalán Xam; the first two are military agents[FN17] and the last one is a member of the Civil Self-Defense Patrols (PACs).

[FN17] Refer to the document signed by the commander of military zone N° 20 of El Quiché, dated September 25, 1995, where it states that Francisco Marroquín and Juan Chivalán served as military agents [comisionados militares]. The document is in the case records in the possession of the IACHR.

93. The Civil Self-Defense Patrols emerged in the early 1980's as groups of civilians organized "by force, by the army, which wanted to isolate the guerrilla movement and control the communities. In April 1983, they were legally recognized by Government Agreement 222-83, which created the National Department for Coordination and Control of Civil Self-Defense [Jefatura Nacional de Coordinación y Control de la Auto Defensa Civil] under the authority of the military command. The key objectives of the PACs were to organize the civilian population against guerrilla movements and to ensure the physical and psychological control of the population. They had a major impact on Guatemalan social structures and especially in rural areas with a predominant indigenous population.

94. In 1986, the PACs became known as Voluntary Civil Defense Committees (CVDC), but this was purely a change in name, and they continued to be called PACs and to be a part of the Army's counter-insurgent strategy. Their members continued to come under the authority of the armed forces.

95. The institution of military agents [comisionados militares] was created in July 1938, and from the beginning of the internal armed conflict, they were the Army's representatives in all rural communities. When the PACs were created in 1981, these agents generally began to perform the functions of heads of the civilian self-defense patrols, because of their proximity to the army. The activities carried out by the military agents included "cooperation in military recruitment and with the Army's information network, control and vigilance of the civilian

population, pursuit of criminals, denunciations, captures of victims, interrogation and torture, execution of women and children, participation in counter-insurgent operations, use of clandestine cemeteries, collaboration with large landowners, and settlement of personal problems, among others.”[FN18]

[FN18] CEH Report, “Los Comisionados Militares””. Volume II, page 169.

96. As a rule, the members of the PACs, called “patrulleros” [“patrolmen”], operated under specific orders of the military or exercised with impunity the power delegated to them by the Army to perform control and vigilance, arrests, and armed operations, including death and torture of persons, destruction of communities, sexual attacks, and inhumane acts with former combatants, among other acts in violation of human rights and international humanitarian law. As for membership of the local people in the PACs, although it was meant to be voluntary, in actual practice it was frequently coercive, and in many cases it was a way for the civilian population to survive.[FN19]

The forced involvement of the civilian population in the internal armed conflict, by means of the PACs, was significantly more prevalent in departments with a majority Mayan population. It is important to identify some of the reasons why there was a greater presence of the PACs in Mayan communities. First of all, the introduction of the PACs constituted a new way of using the indigenous work force extensively, at no cost, as was done in the Colony and in the early days of the Republic. In this case, the indigenous peoples were used for military purposes. Secondly, it was an attempt to destroy the structure of the strong community ties, trust among neighbors, and networks of solidarity; this would prevent the guerrillas from relying on the community structures. By breaking down the structure of the indigenous people’s own systems of authority and control, it would be possible to make these communities dependent on the military structures and command, and made them vulnerable to attacks, while restructuring them on the basis of military logistics.[FN20]

[FN19] There are no official data on the number of members of the PACs. However, in 1982-83, they had gathered around 900,000 campesinos between 15 and 60 years of age, or in other words about 80% of the male population in the rural indigenous areas. During the administration of Vinicio Cerezo (1986-1990), the members of the PACs decreased to 500,000, and there were around 350,000 members at the time they were dissolved. The Human Rights Office of the Archbishopric of Guatemala, Report of the Interdiocesan Project for Recovery of the Historic Memory, Guatemala Nunca Más, Volume II, page 119.

[FN20] CEH, Volume II, para. 1289.

97. The military agents and the PACs committed a large number of arbitrary executions during the armed conflict in Guatemala, and especially in the Departments of Quiché, Alta Verapaz, Baja Verapaz, and Huehuetenango.[FN21]

[FN21] CEH, Volume II, pages 347 and 351.

98. On September 11, 1995, the institution of military agents was dissolved, by government decision 434/95.[FN22] The PACs were formally dissolved in 1996, by Decree 143-96, in compliance with the Peace Agreement on strengthening the civilian authority and the function of the army in a democratic society.

[FN22] Beginning in the mid-1980's, the military agents continued to perform their functions under the protection of the Army, although the intensity of the conflict had diminished considerably. Despite the fact that they were increasingly less involved in human rights violations, they continued to take advantage of their power within the communities. CEH Report, "Los Comisionados Militares", volume II, page 167.

99. Martín Pelicó was one of thousands of young Mayans who refused to serve in the PACs, and he became a member of CERJ when he learned of its objectives,[FN23] taking on the task of promoting the organization in his community, and informing the people of the existence of CERJ as an organization for the promotion and defense of human rights. According to CERJ members, Martín did an extraordinary job of disseminating information on the Constitution of the Republic of Guatemala and on the Universal Declaration of Human Rights and the American Convention on Human Rights.

[FN23] The main objectives of CERJ were the promotion and defense of human rights, education of the people in human rights, and training of legal assistants in the defense of human rights.

100. One of the main objectives of CERJ and Martín Pelicó, as a human rights advocate, was to inform the Mayan people, and especially the youth, that they were not required to serve in the PACs, and to support them in their decision to leave the PACs.

[T]here were responses of rejection or struggle against the forced membership in the PACs. Beginning in 1986, some of these forms of resistance to the PACs gave rise to the beginning of an incipient social movement, the Council of Runujel Junam Ethnic Communities (CERJ), which little by little gained strength and, in the first part of the 1990's, became the organized expression of an increasingly strong open rejection of the PACs, which led to their dissolution in 1996.[FN24]

[FN24] See in Guatemala, NUNCA MÁS, Human Rights Office of the Archbishopric of Guatemala, Report REMHI, Volume II "The Mechanism of Horror", page 141.

101. In March 1991, the home of Martín Pelicó was searched by members of the PACs of San Pedro de Jocopilas, and he later received death threats from the head of the PACS in that town, Francisco Ixcoy López.[FN25]

Three years before [the extrajudicial execution, Martín Pelicó] had rejected the PACs and refused to pay the “fines” of Q 20.00 imposed by the patrols for not making “rounds.” This earned him the accusation of being a “guerrilla.”[FN26]

[FN25] See the complaint presented by Rosario Hernández Grave to the CERJ on June 30, 1995. The document appears in the file. [the IACHR].

[FN26] Human Rights Office, Archbishopric of Guatemala, 1995 Annual Report, page 22.

102. The PACs in San Pedro de Jocopilas were characterized by abuses committed against the rights of the local people in the region, where they had enough political power to unilaterally decree a curfew, require monetary contributions to members of the patrols, take disciplinary measures and impose punishment, and kidnap and torture neighbors.

The Voluntary Civil Self-Defense Committees [the former PACs] displayed the local power in the communities, and in the specific case of San Pedro de Jocopilas, “the patrol members took over the right to impart justice, taking the law in their own hands,” and were responsible for various murders with guaranteed impunity.[FN27]

“San Pedro de Jocopilas is a municipality is a community in conflict, where the members of the patrols are the ones in power.”[FN28]

[FN27] Human Rights Office, Archbishopric of Guatemala, 1993 Annual Report, pages 348 and 351.

[FN28] In a complaint by the justice of the peace, Ernesto Solís Chávez, to the Supreme Court and to the Prosecutor for Human Rights, filed in 1994, following threats received from members of the PACs regarding his investigation in the case of the extrajudicial execution of Jorge Carpio Nicolle. Amnesty International, “Guatemala, extrajudicial executions continue with the government of the former Prosecutor for Human Rights,” AI INDEX: AMR 34/031/1994, July 1, 1994.

103. On June 13, 1994, the Human Rights Office of the Archbishopric, ODHA, presented a case of amparo to the Supreme Court of Justice, to order the Defense Minister to disarm the PACs in San Pedro de Jocopilas, in order to supervise their activities and protect the life and safety of the local people. The court did not issue a decision on the petition.[FN29]

The PACs [of San Pedro de Jocopilas] are armed with rifles, galiles, mausers, M-1 and M-6. The commanders have grenades. Every night the patrols fire shots in the neighborhoods to intimidate

the local people. In the middle of the day, the market is deserted because of the insecurity of the people. Clemente Peneleu, the parish priest, has been accused of being a member of the guerrillas because he was working for the Human Rights Committee there.

They organize meetings (on January 5 in Santabal II canton, on January 12 in the municipal chamber of San Pedro de Jocopilas) in which they force the people to sign documents rejecting the group working for human rights. People who decide to leave the patrol are accused of being guerrillas or criminals. They keep the people under a virtual curfew, from 19:00 to 6:00. In some cantons, they require boys of 13 and 14 years of age to patrol, and they give them arms.”[FN30]

[FN29] Human Rights Office, Archbishopric of Guatemala, 1995 Annual Report, page 18.

[FN30] Human Rights Office, Archbishopric of Guatemala, 1995 Annual Report, page 22.

104. The Commission accepts as a fact in the present case that on June 27, 1995, three persons who were known and have been proven to be members of the institutions known as “comisionados militares” and “patrullas de defensa civil” arbitrarily executed Martín Pelicó Coxic.[FN31]

[FN31]In a letter dated October 29, 1998, the United Nations Special Rapporteur on Torture wrote to the government that he had received information on the case of Martín Pelicó Coxic from San Pedro Jocopilas, a member of the Council of the "Runujal Junam" Ethnic Communities (CERJ), who had been kidnapped, tortured, and executed in June 1995. A military agent and two members of the Committee of Civil Defense Volunteers (CVDC) were detained because they had committed the torture and execution. Subsequently, in July 1996, the judge in charge of the case released them for lack of evidence. Guatemala/ ordinary communications and responses received; E/CN.4/1999/61, paragraphs 280 and 281.

Martín Pelicó Coxic had been kidnapped, tortured, and executed in June 1995 by a military agent and two members of the Voluntary Civil Defense Committees (CDVC), who were arrested and then released in July for a lack of evidence (see E/CN.4/1999/61, para. 281). The government reported that an investigation into the case was being conducted by the National Civil Police, through the Criminal Investigation Service, under the direction of the Ministerio Público. The court in charge of the investigation was the Second Criminal Trial Court for Drug Activities and Crimes against the Environment of El Quiché Department. The forensic report confirmed multiple wounds on the body of Martín Pelicó Coxic. There was an order to arrest the three persons accused in this case, and an operation was carried out in the Municipality of San Pedro Jocopilas, El Quiché Department, to comply with the arrest warrants, but the accused had left the place, and their whereabouts at the time were unknown. The investigations remain open. E/CN.4/2000/9, para. 473.

Another cause for concern to Amnesty International has to do with a member of the Council of «Runujel Junam» Ethnic Communities, Martín Pelicó Coxir, who was kidnapped and tortured, and died in June 1995. The expert reports indicate that he had head wounds and that he had been asphyxiated. Martín Pelicó, from San Pedro Jacopilas, El Quiché Department, had left his local Voluntary Civil Defense Committee three years before, and had refused to pay the fines imposed

by the leaders of the Voluntary Committees for nonparticipation. As a result, he had been labelled a subversive. On the day they killed him, he left the community at three in the afternoon to buy some spare parts for his automobile. Six hours later, his body was thrown out of a truck about 150 meters from his house. Some witnesses identified the three men in the pick-up truck, who were later arrested and charged with homicide. One of them was a military agent, and two were members of the Voluntary Civil Defense Committees. They were released in July 1996 when the case was closed. The wife of Martin Pelicó and the witnesses were threatened by some unidentified men and by the families of the accused. Certain unidentified men followed the attorneys representing the Pelicó family. Two of the persons accused of the homicide of Martin Pelicó were also implicated in the homicide of Diego Velásquez Soc, a member of the CERJ in San Pedro Jocapilas, who was shot down in May 1993. However, despite the fact that there were eye witnesses who identified the perpetrators, no charges were pressed against them. Pedro Velásquez, Diego's brother, reported that members of the Voluntary Civil Defense Committees had repeatedly harassed him. These persons went to his home very early in the morning and fired their rifles. Amnesty International, AI INDEX: AMR 01/001/1996, May 22, 1996

105. The Human Rights Office of the Archbishopric of Guatemala had the following to say on the death of Martín Pelicó: the PAC and the comisionados of San Pedro de Jocapilas added another victim this year to their already extensive list of violations of the right to life.[FN32] With crimes such as the one committed against Martín Pelicó, a message of terror is transmitted to the entire population and especially to the members of CERJ.

[FN32] Human Rights Office, Archbishopric of Guatemala, 1995 Annual Report, page 21.

1. Responsibility of the Guatemalan State for the human rights violations committed by the military agents and by members of the civil self-defense patrols

106. The Historical Clarification Commission [Comisión de Esclarecimiento Histórico] (hereinafter the "CEH")[FN33] concluded in its report that "the State is responsible for violations committed by the PACs to the extent that they were organized by it, were acting on its orders, or under the powers the State delegated to them, or with its concurrence, knowledge, or tolerance, and were under the control and supervision of higher authorities. Moreover, the state is responsible for the failure to investigate, prosecute, and punish the responsible individuals in each case."[FN34]

[FN33] The period of investigation of the Historical Clarification Commission (CEH), according to its mandate, was from the start of the armed conflict until the signing of the firm, lasting peace agreement, or from 1962 to December 1996.

[FN34] Refer to IACHR Report N° 39/00, Case 10,586 et al, Extrajudicial Executions, Guatemala, April 13, 2000, paragraphs 81 to 94.

107. With regard to international liability of states for acts committed by their agents, the Inter-American Court determined as follows in 1988:

It is therefore clear that, in principle, the state is responsible for any violation of the rights recognized by the Convention committed by an act of the police power or persons who are acting on the authority derived from their official capacity. However, the situations in which a state is required to prevent, investigate, and punish violations of human rights, or the cases in which its responsibility may be compromised by the loss of or harm to these rights, does not end there. In fact, an illicit act in violation of human rights which initially may not be directly imputable to a state, for instance, because it was committed by a private person or because the author of the transgression was not identified, may entail the international responsibility of the state, not for the act in and of itself, but as a result of its failure to ensure due diligence to prevent the violation or to deal with it in the terms required by the Convention.[FN35]

[FN35] Inter-American Court of Human Rights, Velásquez Rodríguez Case. Judgment of July 29, 1988, Serie C No. 4., para. 172.

108. At the time of the extrajudicial execution of Martín Pelicó Coxic, the military agents and the civil patrols acted as agents of the state.[FN36] In fact, on June 27, 1995, both the institution of military agents and the civil self-defense patrols were operating under the authority of the Army. They were not only under its authority by law, but also in fact. In the Blake Case, the Court concluded:

[T]he civil patrols had an institutional relationship with the Army, they carried out operations in support of the functions of the armed forces and, what is more, they received resources, arms, training, and direct orders from the Guatemalan Army, and operated under its supervision. Various human rights violations have been attributed to these patrols, including summary and extrajudicial executions and forced disappearances of persons.[FN37]

[FN36] This institutional relationship is apparent in the very decree establishing the Civil Defense Committees (CDC), and in the 1996 Guatemala Peace Agreements, which in the latter case establish that the CDCs, “including the ones previously demobilized, shall cease to have any institutional relationship with the Guatemalan Army, and shall not be reconverted to restore this relationship” (Agreement on Strengthening the Civilian Authority and the Function of the Army in a Democratic Society, paragraph 61). Furthermore, Decree Number 143-96 of the Guatemalan Congress, issued on November 28, 1996 to derogate Decree-Law Number 19-86, which gave legal status to the Civil Defense Committees, establishes in one of its preambular clauses that: “the function of certain civil self-defense patrols, now know as Voluntary Civil Defense Committees, has been distorted over the years... and they have come to take on the work of the regular organs of the state, to the point that members of said committees have caused repeated human rights violations.” Inter-American Court of Human Rights, Blake Case, Judgment of January 24, 1998, Series C No. 36, paragraph 77.

[FN37] Inter-American Court, Blake Case, Judgment of January 24, 1998. Series C No. 36, paragraph 76.

109. Extrajudicial or summary executions are characterized as deliberate, illegitimate acts causing deprivation of life on the part of state agents, usually acting on orders or at least with the consent and acceptance of the authorities. Therefore, extrajudicial executions are illegal acts committed by precisely those persons who have been invested with the power originally conceived to protect and guarantee the security and life of the people.

110. In the Blake Case, the Court declared that the support or consent of the State of Guatemala with respect to the activities of control and repression carried out by the civil patrols makes it possible to conclude that these patrols must be regarded as agents of the state, hence the acts they engage in are imputable to the state.[FN38] In this regard, the Court had the following to say:

This institutional relationship is apparent in the very decree establishing the Civil Defense Committees (CDC), and in the 1996 Guatemala Peace Agreements, which in the latter case establish that the CDCs, “including the ones previously demobilized, shall cease to have any institutional relationship with the Guatemalan Army, and shall not be reconverted to restore this relationship” (Agreement on Strengthening the Civilian Authority and the Function of the Army in a Democratic Society, paragraph 61). Furthermore, Decree Number 143-96 of the Guatemalan Congress, issued on November 28, 1996 to derogate Decree-Law Number 19-86, which gave legal status to the Civil Defense Committees, establishes in one of its preambular clauses that: “the function of certain civil self-defense patrols, now known as Voluntary Civil Defense Committees, has been distorted over the years... and they have come to take on the work of the regular organs of the state, to the point that members of said committees have caused repeated human rights violations.” Inter-American Court of Human Rights, Blake Case, Judgment of January 24, 1998, Series C No. 36, paragraph 77 (underlining is not in the original).[FN39]

[FN38] Inter-American Court, Blake Case, Judgment of January 24, 1998, Series C, No. 36, paragraph 78.

[FN39] Inter-American Court, Blake Case, Judgment of January 24, 1998, Series C, No. 36, paragraph 77.

111. The Commission is of the opinion that the execution of Martín Pelicó Coxic was done in a violent and arbitrary way by state agents. The modus operandi of the persons involved in the execution of the victim, and the acts of obstruction and harassment during the investigations conducted by family members of the victim are part of a pattern of disappearances and extrajudicial executions committed by the military agents and patrols during the internal armed conflict in Guatemala. This is compounded by the failure to conduct an investigation, which was tolerated by the state, and the fact that the judicial proceedings were conducted with delays and with a lack of interest.

112. Based on the aforementioned arguments, the Commission considers that the execution of Martin Pelicó Coxic was arbitrarily and violently made by agents of the Guatemalan State.”

2. Pattern of extrajudicial executions against members of the Council of Runujel Junam Ethnic Communities (CERJ)

113. In the case in point, the Commission notes that the death of Martín Pelicó Coxic is part of a pattern of extrajudicial executions committed by military agents and PAC members against members of CERJ. The Commission states in its 1990-91 Annual Report that CERJ members had been the target of attacks since the organization was created, and that about 13 members had been murdered or were victims of forced disappearance to date. In 1990, the Commission received petitions referring to seven CERJ members, who were murdered between March and October 1990 by members of the Civil Patrols or groups of civilians acting with the complicity of government authorities.[FN40]

[FN40] IACHR, 1990-91 Annual Report. Also refer to the 1991 Annual Report, in which it is stated that the campaign of persecution and intimidation directed against members of the Council of Runujel Junam Ethnic Communities (CERJ) was reported with particular alarm.

114. In its report 39/00 on the merits, the Commission reported the following:

“Many of the selective extrajudicial executions perpetrated in 1990-91 were committed against victims chosen for their participation in social and political organizations. The Commission and other sources reported during this period of time that campaigns of violence and intimidation against human rights defenders, and especially against members of CERJ, persisted [.]”[FN41]

[FN41] IACHR, Report N° 39/00, Case 10,586 et al, Extrajudicial Executions, Guatemala, April 13, 2000, paragraph 113.

115. In the same report on the merits, the Commission established that the extrajudicial executions alleged in all the cases under study were perpetrated in rural areas, where civil self-defense patrols had a strong presence and great power. Moreover, in all cases the victims had been threatened by PAC members prior to their death, either because they refused to join the PACs or because they had quit them. Of the fifteen victims of extrajudicial executions, at least nine were indigenous people. At the same time, of these fifteen victims, at least seven were members of CERJ, a situation which is congruous with the practice prevailing at the time of persecuting and intimidating members of human rights organizations, and especially members of CERJ. What is more, eight of the extrajudicial executions occurred in San Pedro de Jocopilas.[FN44]

[FN42] IACHR, Report N° 39/00, Case 10,586 et al, Extrajudicial Executions, Guatemala, April 13, 2000, paragraph 113.

[FN43] Refer to IACHR Report N° 11/98; Case 10,606; SAMUEL DE LA CRUZ GÓMEZ, GUATEMALA; April 7, 1998, paragraph 41.

[FN44] IACHR, Report N° 39/00, Case 10,586 et al, Extrajudicial Executions, Guatemala, April 13, 2000, paragraph 113.

116. The response to action by CERJ was threats, intimidation, murder, and forced disappearance, carried out by members of the armed forces, military agents, and PAC members. The Commission determined that the crimes against members of CERJ did not lead the state to respond with precautionary measures or investigations, functions it had the obligation to perform.[FN45]

[FN45] Refer to IACHR Report N° 11/98; Case 10,606; SAMUEL DE LA CRUZ GÓMEZ, GUATEMALA; April 7, 1998, paragraph 41.

117. This assertion is regrettably confirmed in some of the reports which the Commission itself has drawn up, and which involve serious violations of human rights committed against CERJ members. In its report No. 11/98 on the merits,[FN46] it is reported that Samuel de la Cruz Gómez, a member of CERJ, was the victim of kidnapping and forced disappearance, events which occurred on July 12, 1990, in Chimatzaz Canton, Municipality of Zacualpa, El Quiché Department, by men dressed in civilian clothing and linked to the state security forces of the Republic of Guatemala.

[FN46] Refer to IACHR Report N° 11/98; Case 10,606; SAMUEL DE LA CRUZ GÓMEZ, GUATEMALA, April 7, 1998.

118. At the same time, the Commission determined that the following members of CERJ were extrajudicially executed by members of the PACs:

María Mejía, on March 17, 1990, in the community of Parraxtut Segundo, Municipality of Sacapulas, El Quiché.[FN47]

Pedro Tau Cac, on July 2, 1990 in the village of Chiop, Santa María Chiquimula.[FN48]

José Vicente García, on April 10, 1990, in San Pedro Jocopilas.[FN49]

José Maria Ixcaya Pixtay, on May 1, 1990 in Sololá.[FN50]

Celestino Julaj Vicente, on June 28, 1991 in San Pedro Jocopilas.[FN51]

Camilo Aiquí Gimón, on April 14, 1991 in Zacualpa.[FN52]

Tomás Ventura Chon, on July 13, 1991 in the hamlet of Quiejel.[FN53]

José Sucunú Panjoj, on October 29, 1994 in Guatemala City.[FN54] [FN55]

[FN47] The Commission considers that there is sufficient evidence to confirm that military agents murdered María Mejía and caused serious injuries to Pedro Castro Tojín on March 17, 1990... The Commission also concluded that the information appearing in the court documents for this case proves that 39 members of the community of Parraxtut Segundo, persons who were working with CERJ and who had refused to serve in the PACs and who were related to the murder case of María Mejía, were the victims of threats and harassment by military agents and leaders of the PACs in Parraxtut Segundo. This harassment and intimidation included a threat by military agents at the burial of María Mejía, where family members of María Mejía who were present were warned that they were going to be killed within ten days. It was determined that these 39 persons had to leave their community to escape the threats and attacks, and that many of them were obligated to take refuge in the offices of CERJ in Santa Cruz del Quiché for an extended period of time. Refer to the IACHR Report N° 32/96 on Admissibility and the Merits, Case 10,553, Guatemala, October 16, 1996, paragraphs 52 and 55.

[FN48] Pedro Tau Cac was attacked while he was working the land, by men dressed in civilian clothing who are assumed to be members of the PACs. They detained him, taking him to an unknown destination. A few days later, his body was found lifeless on a bare piece of land, with signs of having been tortured. Refer to IACHR Report N° 59/01, Case 10,626 et al, Guatemala, April 7, 2001.

[FN49] José Vicente García. On April 10, 1990, José Vicente García left his home at 9:30 in the morning, in the company of his wife, Juana Sarat Ixcoy, his son, Pedro Vicente Sarat, and his sister-in-law, Cratina Ixchop Ixcoy. When they approached the border of San Pedro/La Montaña, two men appeared and shot Vicente García four times in the head. He died immediately. Refer to IACHR Report N° 59/01, Case 10,626 et al, Guatemala, April 7, 2001.

[FN50] José María Ixcaya Pixtay. On the day he was murdered, José María Ixcaya left his home at 5:00 a.m. for Guatemala City to participate in a Labor Day demonstration. As he left his house, several men appeared from the bushes and shot him, causing his immediate death. Refer to IACHR Report N° 59/01, Case 10,626 et al, Guatemala, April 7, 2001.

[FN51] Celestino Julaj Vicente. On the day of his death, Julaj Vicente had been out of his house all day, together with his wife, María Lolmet Xam, and his daughter. When the family returned home in the afternoon, Celestino was attacked by an unknown man, who threw him to the ground and shot him. Refer to IACHR Report N° 59/01, Case 10,626 et al, Guatemala, April 7, 2001.

[FN52] Camilo Aiquí Gimón was taken from his home by three unknown men, who killed him within a few hours. Mr. Aiquí was a former member of the PACs and when he left, he began to receive many threats from its members, since he had quit serving in it and he was a member of CERJ. Refer to IACHR Report N° 59/01, Case 10,626 et al, Guatemala, April 7, 2001.

[FN53] Tomás Ventura Chon. In the hamlet of Quiejel, Municipality of Chichicastenango, El Quiché Department, several armed men, presumably linked to the state security forces, killed Tomás Ventura Chon with a knife. He was a member of the Council of Runujel Junam Ethnic

Communities (CERJ). Refer to IACHR Report N° 39/00, CASO 10.586 et al, Extrajudicial Executions, April 13, 2000, paragraph 179.

[FN54] On October 29, 1994, at 5:00 p.m., José Sucunú Panjoj said good-bye to several family members at the Zone 4 bus terminal in Guatemala City and left for his home in Chichicastenango. He has not been seen since, nor has there been any news of him. At the time of his disappearance. Mr. Sucunú Panjoj was 59 years old, he was married, and the father of 11 children. Mr. Sucunú Panjoj was working as a loader at the Zone 4 bus terminal in Guatemala City, and he traveled constantly between that place and his domicile located in the Canton of Quiejel, Municipality of Chichicastenango, El Quiché Department. In addition, he had been a member of the Council of Runujel Junam Ethnic Communities (CERJ) since 1988, and he was working on its human rights and public education programs. In the report, it stated that Mr. Sucunú Panjoj had been intimidated and criticized on many occasions by members of the civil self defense patrols and by local military agents, because of his work with CERJ . The intimidation included false accusations of being a member of the guerrillas and death threats against him and his family, formulated by a former member of the PAC, Sebastián Macario Ventura. Refer to IACHR Admissibility Report N° 21/98, Case 11,435, JOSÉ SUCUNÚ PANDOJ, March 2, 1998 and Friendly Settlement Report 19/00, Case 11,435, JOSÉ SUCUNÚ PANJOJ, Guatemala, February 24, 2000.

[FN55] Also refer to the following admissibility reports that refer to reports on extrajudicial executions of members of CERJ committed by PAC members: N° 32/96, Case 10,553, 16 October 1996; N° 32/99, Case 11,677, DIEGO VELÁSQUEZ SOC and MATÍAS VELÁSQUEZ, 11 March 1999.

119. The execution of Mr. Pelicó was not an isolated incident within the internal armed conflict in Guatemala, but rather it was part of a pattern of extrajudicial executions committed by military agents and members of the civil self defense patrols by order of the Army or with its consent. In this specific case, it has been demonstrated that members of the Council of Runujel Junam Ethnic Communities (CERJ) were victims of extrajudicial executions and other serious human rights violations because of their open, public opposition to the forced recruitment of members of the Mayan people to join the civil self defense patrols.

120. The Inter-American Court has established that the existence of a pattern of extrajudicial executions generates a climate incompatible with the effective protection of the right to life.

[W]hen there is a pattern of extrajudicial executions tolerated and fostered by the state, this generates a climate which is incompatible with the effective protection of the right to life. As this Court has stated, the right to life plays a fundamental role in the American Convention, since it is the essential corollary to the exercise of the other rights. When the right to life is not respected, all rights become meaningless. States have the obligation to guarantee that the conditions required to ensure that violations of this inalienable right do not occur prevail, and, in particular, they have the duty to prevent their agents from violating that right. Compliance with Article 4, as related to Article 1.1 of the American Convention, not only presupposes that no persons are to be deprived of their life arbitrarily (negative obligation), but it also requires states to adopt appropriate measures to protect and preserve the right to life (positive obligation), as part of its duty to ensure the full and free exercise of the rights of all persons under its

jurisdiction. This active protection of the right to life on the part of the state not only involves its legislators, but all state institutions, and all persons responsible for ensuring security, whether it be the police force or the armed forces. Consequently, states must take the necessary steps not only to prevent and punish deprivation of life as a consequence of a criminal act, but also to prevent arbitrary executions on the part of their own security forces.[FN56][FN57]

[FN56] Inter-American Court, Case of Juan Humberto Sánchez, judgment of June 7, 2003, paragraph 110.

[FN57] Inter-American Court, Case of Juan Humberto Sánchez, judgment of June 7, 2003, paragraph 110.

121. With regard to cases of human rights violations committed in the context of state practices and tolerated by it, the Inter-American Court has found that:

[I]f it is demonstrated in this specific case that it is part of the pattern of extrajudicial executions, it is reasonable to assume and conclude that the state has international liability.[FN58]

[FN58] Inter-American Court, Case of Juan Humberto Sánchez, judgment of June 7, 2003, paragraph 108.

122. The death of Martín Pelicó Coxic perpetrated by state agents is part of the pattern of serious human rights violations that occurred at that time. This pattern of extrajudicial executions tolerated and even promoted by the state generated a climate that was incompatible with the effective protection of the right to life.

States have the obligation to guarantee that the conditions required to ensure that violations of this inalienable right do not occur prevail, and, in particular, they have the duty to prevent their agents from violating that right. Compliance with Article 4, as related to Article 1.1 of the American Convention, not only presupposes that no persons are to be deprived of their life arbitrarily (negative obligation), but it also requires states to adopt appropriate measures to protect and preserve the right to life (positive obligation), as part of its duty to ensure the full and free exercise of the rights of all persons under its jurisdiction. This active protection of the right to life on the part of the state not only involves its legislators, but all state institutions, and all persons responsible for ensuring security, whether it be the police force or the armed forces. Consequently, states must take the necessary steps not only to prevent and punish deprivation of life as a consequence of a criminal act, but also to prevent arbitrary executions on the part of their own security forces.[FN59]

[FN59] Inter-American Court, Case of Juan Humberto Sánchez, judgment of June 7, 2003, paragraph 109.

123. Article 4 of the American Convention, taken together with its Article 1(1), imposes the positive obligation on states to adopt appropriate measures to protect, preserve, investigate, and punish violations of the right to life. However, in the case in point, the state failed to comply with its obligation to conduct a serious and impartial investigation, because it did not engage in the necessary investigative procedures, it omitted evidence, and it did not exhaust all the statements of witnesses that would have been critical to the investigation.

124. The European Court of Human Rights has indicated that safeguarding the right to life implicitly requires a type of effective, official investigation whenever persons die as a result of the use of force by state agents. On this point, it has stated: “[t]he general prohibition applied to state agents to refrain from arbitrarily depriving an individual of his life [...] would be ineffective, in practice, if there were no procedure whereby the legality of the use of lethal force on the part of said authorities could be reviewed. According to the obligation regarding protection of the right to life, taken together with the general obligation [...] of the state [...] to ‘ensure that all individuals under its jurisdiction enjoy the rights and freedoms in the Convention,’ an effective official investigation must be conducted whenever an individual has died as the result of the use of force.”[FN60]

[FN60] Inter-American Court, Case of Juan Humberto Sánchez, judgment of June 7, 2003, paragraph 111.

125. In this case, the state violated both the negative obligation entailed in the fundamental human right to life, and its positive obligation. In fact, at the time the events occurred, CERJ members were the victim of various forms of persecution, including threats, harassment, torture, and extrajudicial executions. As a result of these circumstances, there was a substantial number of complaints to which the state had the duty to respond by ensuring effective investigations, court proceedings, and punishments. However, the responsible state agents were seldom investigated or convicted, giving rise to de facto impunity which permitted and even encouraged these violations against CERJ members to continue.

3. Acceptance of institutional responsibility by the Guatemalan State

126. On December 2, 2002, the Guatemalan State accepted the institutional responsibility it had incurred by failing to guarantee the physical security of Martín Pelicó Coxic.

The government of the Republic of Guatemala accepts the institutional responsibility incumbent on it for failing to have guaranteed the physical security of Martín Pelicó Coxic, and at the same time it regrets his disappearance (sic) seven years ago and that it has not been clarified, despite the official investigation opened in this case.[FN61]

[FN61] Refer to the letter from the State of Guatemala dated December 2, 2002.

127. The recognition by the Guatemalan Government on December 2, 2002, of the state's institutional responsibility for failure to comply with the obligations imposed by Article 4 of the Convention, to the detriment of Martín Pelicó Coxic, has full legal force, in accordance with the principles of international law,[FN62] and obligates it to provide for effective reparations with respect to the violations committed under the mandate of the American Convention.

[FN62] Among other things, see the Permanent Court of International of Justice, 1933, P.C.I.J., Ser A/B N° 53, 71 (Norway v. Denmark).

128. The Commission notes that the declaration of recognition of institutional responsibility also includes acceptance of the facts of the case by the state, in what is technically understood as tacit agreement to the factual aspects of the petition. These facts have, moreover, been duly and sufficiently established by various evidentiary methods, testimony, and supporting documents, which were gathered during the processing of this case by the Commission.

129. However, despite the state's recognition of institutional responsibility in 2002, the Commission notes that it has not fulfilled the obligation to make reparations to the family members of the victim, nor has it complied with its duties to investigate, bring to trial, and punish the parties guilty of the extrajudicial execution of Martín Pelicó Coxic. In addition, the Commission notes that the international responsibility of the state is not limited to guaranteeing the physical security of the victim.

130. On these grounds, the Commission concludes that the State of Guatemala violated the right to life established in Article 4 of the American Convention, to the detriment of Martín Pelicó Coxic and his next of kin, by virtue of the extrajudicial execution committed by state agents on June 27, 1995 against Mr. Pelicó, which was carried out as part of a pattern of extrajudicial executions committed against members of the Council of Runujel Junam Ethnic Communities (CERJ).

B. Right to humane treatment

131. As stated earlier, on June 27, 1995, Martín Pelicó was found by his spouse a few meters from his house, in the throes of death, and died a few moments later.

132. The Commission believes that the conditions in which Martín Pelicó was found allow one to infer that he was subjected to various types of torture,[FN63] according to the information taken from the forensic medical autopsy report, which included the following:

External examination: constitution: robust; Discoloration on the back of the body; Bluish area around the mouth. Wounds: a) Three lacerations in the area of the ribs and left hypochondriac. b) Contusion in the occipital region of the scalp. c) Ten stab or puncture wounds penetrating to the bone, from which particles of the brain were coming out, wounds of 1 millimeter in diameter.

Internal examination:: Skull: Parietal and occipital bones with multiple perforations (10); Hemorrhaging and attrition of the brain. Thorax: Thick layer of fat in the thorax. Normal ribs. Lungs congested, swollen, increased in size, and when pressed, a large amount of water came out of the nose and mouth, and the bronchial tubes, after they were cut. Abdomen: stomach: slight alcohol content. Generalized abdominal and visceral congestion.

CONCLUSIONS: a) Attrition of both cerebral hemispheres. b) Signs of asphyxiation. c) Fractures of the bones of the skull. d) Multiple puncture wounds to the skull.

CAUSE OF DEATH: 1) Cerebral attrition. 2) Asphyxiation by aspiration of water; 3) Skull fractures; 4) Puncture wounds to the skull.

Crossed out. INTERNAL EXAMINATION: OMIT.[FN64]

[FN63] Article 2 of the Inter-American Convention to Prevent and Punish Torture, ratified by Guatemala on January 29, 1987, states:

For the purposes of this Convention, torture shall be understood to be 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. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.

[FN64] Forensic medical autopsy report signed by Dr. Ana Lissette García de Crocker, forensic physician of the Department of El Quiché, dated June 29, 1995.

133. The marks of violence found on the body of Martín Pelicó were typical of the pattern of extrajudicial executions at the time his murder occurred, and are evidence of the intent to cause suffering and fear to the victim, who was at the mercy of his murderers.

134. Article 5(1) and (2) of the Convention state:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

135. The Inter-American Court has maintained in this regard:

[T]he violation of the physical and mental integrity of persons is a type of violation that has various connotations and degrees, and that covers everything from torture to other types of taunting or cruel, inhuman or degrading treatment, whose physical and mental consequences

vary in intensity depending on endogenous and exogenous factors (...) The degradation is expressed in feelings of fear, anxiety, and inferiority, for the purpose of humiliating, degrading, and breaking the physical and moral resistance of the victim.”[FN65]

[FN65] Inter-American Court of Human Rights, Loayza Tamayo Case, Judgment of September 17, 1997, Series “C” N° 33, para. 57.

136. Turning to the physical and mental integrity of the next of kin of victims of human rights violations, the Court has had the following to say:

[T]he next of kin of victims of human rights violations may be victims in turn.[FN66]

[FN66] Inter-American Court of Human Rights, Juan Sánchez Case, Judgment of June 7, 2003, para. 101.

137. As stated by the petitioners, the spouse of Martín Pelicó Coxic, Rosario Hernández Grave, not only experienced suffering at the loss of her husband, but she also suffered impotence in view of the impunity of the murderers. This feeling of impotence was exacerbated when she was the victim of threats and acts of intimidation. The documents submitted to the IACHR show that at the time that Mrs. Rosario reported the death of her husband, she refused to sign the report, for fear of retaliation. [FN67]

[FN67] Refer to the testimony of Rosario Hernández Grave in the criminal records.

138. The Commission notes in this regard that it has been established in this case that the members of the patrols and the military agents in San Pedro de Jocopilas at the time of Mr. Pelicó’s death exercised power there arbitrarily and violently, a situation that terrorized the families, witnesses, and victims of human rights violations, and inhibited them from reporting illicit acts committed by the agents and patrol members. At the same time, the Commission appreciates the action taken by the widow of Mr. Pelicó, and by the witnesses and attorneys for the prosecution who, despite threats and harassment, continued to report the extrajudicial execution of Martín Pelicó.

139. In the present case, the violation of the right to mental and moral integrity [humane treatment] of the family of Martín Pelicó Coxic is a direct consequence of his illegal and arbitrary execution on June 27, 1995, which occurred by means of torture committed with extreme cruelty against the victim, who was then flung in the throes of death close to his home, where his spouse and small children were at the time. It is also a consequence of the uncertainty of not knowing the whereabouts of Mr. Pelicó after he had to leave with a known military patrol agent, of the marks of extreme violence on the victim’s body, the threats and harassment

received by the spouse and father of the victim by state agents, and the lack of an investigation and the failure to punish the persons responsible for these acts. All of this has caused his immediate family members to experience suffering, anguish, insecurity, frustration, and impotence vis-à-vis the state authorities. For this reason, the next of kin should be regarded as victims of cruel, inhuman, and degrading treatment.

140. As a result of the foregoing, the Commission considers that the State of Guatemala violated Article 5(1)(2) of the American Convention, to the detriment of Martín Pelicó Coxic and his next of kin.

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

141. According to the jurisprudence of the Inter-American Court of Human Rights, any person affected by a human rights violation is entitled to seek clarification of the acts causing the violation from the competent state agencies and to determine the liable parties, through an investigation and judgment as stipulated in Articles 8 and 25 of the Convention.[FN68]

[FN68] Inter-American Court, Barrios Altos Case, Judgment of March 14, 2001, paragraph 48.

142. Article 25 of the Convention establishes 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.

143. Article 8(1) of the Convention stipulates as follows on the subject:

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.

144. The protection offered by the provisions transcribed above is reinforced by the general obligation to respect human rights imposed in Article 1(1) of the Convention. The Court has specifically determined as follows in this regard:

Article 25, taken together with Article 1.1 of the American Convention, requires the state to guarantee everyone access to the administration of justice, and especially prompt and simple recourse in order to ensure, among other results, that the parties responsible for the human rights violations are judged and reparations are obtained for the damages suffered... [A]rticle 25 “is one of the basic pillars of both the American Convention and the very rule of law in a democratic society...”. This article is directly related to Article 8.1 ... which establishes the right of every person to be heard with due guarantees ... to determine their rights of any kind.[FN69]

[FN69] Inter-American Court, Loayza Tamayo Case, Judgment on reparations of November 27, 1998, para. 169; Velásquez Rodríguez Case, Fairén Garbi and Solís Corrales Case and Godínez Cruz Case, Preliminary Exceptions, paras. 91, 90 and 93, respectively.

145. Consequently, the states parties have the obligation to take whatever steps are required to ensure that nobody is deprived of judicial protection and of the possibility of exercising the right to a simple and effective remedy.[FN70] In this context, the state has the obligation to investigate human rights violations, to judge the responsible parties, to compensate the victims, and to prevent impunity.

[FN70] Inter-American Court, Barrios Altos Case, Judgment of March 14, 2001, paragraph 43.

146. The Inter-American Court has interpreted this provision to mean that the states parties to the American Convention are required to provide effective judicial remedies to victims of human rights violations.[FN71] These remedies must be substantiated in accordance with the rules of due legal process (Article 8(1)), and all of this is part of the general obligation of the States Parties to guarantee the free and full exercise of the rights recognized for persons under the jurisdiction of said Article 1(1). In addition, Article 25(1) of the American Convention incorporates the principle of effectiveness or efficacy of the procedural instruments or measures designed to guarantee the rights protected by it. Therefore, the nonexistence of effective domestic remedies leave victims of human rights violations in a defenseless situation and justifies international protection.

[FN71] Inter-American Court, Velásquez Rodríguez Case, Preliminary Exceptions, para. 91; Advisory Opinion OC-9/97 of October 6, 1987 "Judicial Guarantees in States of Emergency", para. 24; Fairén Garbi and Solís Corrales Case, Preliminary Objections, Judgment of June 26, 1987, Ser. C N° 2 (1987), para. 92.

147. Moreover, the Inter-American Court has ruled that the obligation to investigate and to punish any violation of the rights recognized in the Convention is derived from Article 1(1) of the Convention, as a means for guaranteeing those rights.[FN72]

[FN72] Inter-American Court, Case of the Street Children, Judgment on the merits of November 19, 1999, paragraph 225.

148. The Commission has maintained that a basic purpose of any criminal proceeding is to clarify the truth of the act under investigation. The judicial investigation should be undertaken diligently and in good faith, and it should be exhaustive, impartial, and directed to exploring all possible lines of investigation so as to identify the authors of the crime, so that they can be subsequently tried and punished.[FN73] In specific cases, that obligation is related to the right to be heard in a court of law and the right to a prompt, effective remedy, as established in Articles 8 and 25 of the Convention.

[FN73] IACHR, Case 11,481, Monseigneur Arnulfo Romero, Report N° 37/00, April 13, 2000, paragraph 80.

149. As for the scope of the powers of the organs of the system to control the judicial proceedings of states, the Inter-American Court has stated that in order to establish whether a state has violated its international obligations by virtue of the procedures of its judicial organs, the relevant domestic processes may have to be examined as a whole, including the decisions of the appellate courts. This, on the understanding that the function of an international court is to determine whether the procedures in their entirety, and the way in which the evidence was produced, were fair.[FN74]

[FN74] Inter-American Court, Case of the Street Children, Judgment on the Merits of November 19, 1999, paragraph 222.

150. In the present case, the Commission found that in the course of the criminal proceedings, the judicial authorities engaged in a series of irregularities, which not only affected the right to a fair trial, as guaranteed in Article 8 of the American Convention, but also ensured impunity for the perpetrators, to the detriment of the provisions of Articles 25 and 1(1) of the Convention.

151. As a rule, a criminal investigation must be conducted promptly, to protect the interests of the victims, preserve the evidence, and even to safeguard the rights of all persons regarded as suspects in the investigation.[FN75]

[FN75] IACHR, Report N° 34/01, Case 12,250, Mapiripán Massacre, Colombia, February 22, 2001.

152. An investigation must be undertaken seriously, and not as a simple formality doomed in advance to be futile.

[The investigation] must have a meaning and must be undertaken by the state as its own legal duty, and not as a simple act on behalf of private interests, relying on the procedural initiative of the victim or his next of kin, or on the private contribution of elements of proof, without an effective effort by the public authority to seek the truth. This is true no matter who the agent to whom the violation may be attributed may be.”[FN76]

[FN76] Inter-American Court, Case of Velásquez Rodríguez, Judgment of July 29, 1988, Series “C “ N° 4; paragraph 177.

153. The “Principles pertaining to effective prevention and investigation of extralegal, arbitrary, or summary executions,”[FN77] of the United Nations contain the following provisions:

An exhaustive, immediate, and impartial investigation shall be conducted in all cases in which there is a suspicion of extralegal, arbitrary, or summary executions, including those cases in which complaints from relatives or other reliable reports lead one to believe that there was a death resulting from unnatural causes in the circumstances referred to. Governments shall maintain institutions and investigative procedures to carry out these inquiries. The objective of the investigation shall be to determine the cause, manner, and time of death, the responsible party, and the procedure or practice that might have provoked it. During the investigation, an adequate autopsy shall be performed and all the material and documentary evidence shall be compiled and analyzed, and statements shall be taken from witnesses. The investigation shall distinguish between death by natural causes, death by accident, suicide, and homicide.

[FN77] Adopted by the United Nations Economic and Social Council by Resolution 1989/65 of May 24, 1989.

154. In addition, the United Nations “Manual on Effective Prevention and Investigation of Extralegal, Arbitrary, or Summary Executions,”[FN78] reiterates that the gathering and analysis of evidence are essential to an effective investigation of extrajudicial executions, with the first step being the recovery or preservation of all physical evidence, by means of an investigation of the scene of the crime.[FN79] The Model Protocol for the Investigation of Extrajudicial, Arbitrary, or Summary Executions of the United Nations stresses the fact that to meet the general objective of an investigation during the discovery period, the officials in charge of the investigation have the duty to “recover and preserve evidence related to the death, in order to assist in any effort to prosecute the responsible parties.[FN80] This Protocol also stipulates that in the investigation of the evidence, it “must be gathered, analyzed, packaged, labeled, and stored appropriately in a secure place to prevent it from being contaminated or lost.”[FN81]

[FN78] Manual on effective investigation and prevention of extralegal, arbitrary, or summary executions, published by the United Nations, document ST/CSDHA/12, New York 1991.

[FN79] The procedure for gathering evidence must conform to certain criteria, some of which are indicated below:

- a) The area adjacent to the body must be closed off. Only investigators and their staff will be permitted to enter that area.;
- b) Color photographs must be taken of the victim, since, when compared with black and white photographs, they could reveal in greater detail the nature and circumstances of the death of the victim;
- c) The scene of the crime (inside and outside) must be photographed, as well as all the physical evidence;
- d) The position of the body and the condition of the clothing must be noted;
- e) The following factors, which are used to determine the time of death, must be noted:
 - (i) Temperature of the body (warm, tepid, cold);
 - (ii) Location and degree of bruises or discoloration;
 - (iii) Rigidity of the corpse; and
 - (iv) State of decomposition.
- f) All evidence of the existence of weapons, such as firearms, shells, bullets, and cartridges or cases, must be taken and preserved. Whenever appropriate, tests to determine the residue of shots and/or to detect metals must be conducted.

[FN80] United Nations, Document ST/CSDHA/12.

[FN81] Ibidem.

155. According to the information in the case files, forensic procedures to determine the cause of death of Martín Pelicó Coxic were confined to a description of the wounds on his body. However, there was no examination of possible elements left by third parties, prints or traces, hair, etc., which could have been left on the victim's body and would have made it possible to find evidence pertaining to the persons responsible for the murder. Moreover, according to the case records, there were no photographs taken of the body, and the autopsy did not determine elements such as the characteristics of the sharp weapon that might have been used to cause the wounds, and it did not refer to the intensity of the blows received.

156. Furthermore, it appears from the information in the criminal records reviewed by the Commission that the courts did not order the relevant security agencies to conduct the necessary investigations in this type of case, such as searches for the purpose of detaining the perpetrators or of seeking evidence.

157. The Commission considers that in the present case, the Guatemalan authorities flagrantly disregarded the fundamental principles that should guide investigations of extrajudicial executions. In fact, in the opinion of the Commission, the State of Guatemala violated the principles of meticulousness and timeliness, especially with regard to preservation of the elements of proof and the promptness of procedures and practices involving the evidence. In summary, during the investigative stage, the Guatemalan authorities did not take the necessary

steps to determine clearly the identity of the persons responsible for the death of Martín Pelicó Coxic.

158. As regards the production and evaluation of the evidence, the investigative procedures during judicial proceedings were limited to drawing up a post mortem certificate, conducting a relatively superficial autopsy, and receiving a series of statements from the accused and witnesses. As far as the witnesses are concerned, it is obvious that there is a contradiction between what was said by the witnesses for the prosecution and what was said by the witnesses for the defense. However, the lower court which received the testimony did not carry out the necessary procedures to elucidate these contradictions.

159. In the course of the processing of this case by the Commission, the state never objected to the conclusions of the petitioners regarding these irregularities. Instead, it limited its observations to pointing out that domestic legislation contained provisions regulating due process for the protection of the rights the petitioners considered to be violated.

160. With regard to the arrest warrants pending against Pedro Acabal Chaperón and Juan Chivalán Xam, the state has indicated that the impossibility in some cases of apprehending the presumed perpetrators of crimes is not a phenomenon exclusive to Guatemala, and that in this case, the accused were subject to preventive detention. However, by virtue of a judicial decision, they were released. This decision was subsequently amended by the pertinent Court of Appeals, but by the time the higher court's decision took effect, the accused could not be caught. On this point, the state has insisted that the arrest warrants are pending, and that the security forces are pursuing various steps to apprehend Pedro Acabal Chaperón and Juan Chivalán Xam. The petitioners, however, have reported to the Commission that both Pedro Acabal Chaperón and Juan Chivalán Xam have been seen in San Pedro de Jocopilas with a certain frequency.

161. In this regard, the Commission considers that the irregularities described earlier are clear evidence of the failure to comply with the laws governing a fair trial in a domestic system, and the failure to use due diligence, in accordance with the provisions of the American Convention. In the opinion of the Commission, it is evident that the judicial authorities failed to take the necessary steps to ensure that due diligence would be exercised in order to obtain all the necessary information. On the contrary, they did not order the fundamental procedures that would have made it possible to obtain definitive elements of proof to determine the motive of the murder and to evaluate the witnesses efficiently, or to gather the basic information on the participation and investigative activities of the different state security agencies and the results of those activities.

162. The Commission does not consider it appropriate to analyze whether one of the persons charged in the criminal proceeding should or should not have been acquitted.[FN82] What is apparent in the opinion of the Commission is that in this case, the persons responsible for the extrajudicial execution of Martín Pelicó Coxic acted with impunity, as the material and intellectual authors of the execution have not been judged and punished, and the judicial proceedings carried out by the state to clarify the responsibility of the perpetrators of the extrajudicial execution of Martín Pelicó do not meet the requirements of a fair trial and due judicial protection established in the American Convention.

[FN82] On this point, refer to the Inter-American Court, Case of the Street Children, judgment on the merits of November 19, 1999, para. 228.

163. Finally, the Commission is of the view that the acts of intimidation, harassment, threats, and other acts of violence against persons working in the justice system, witnesses, and members of the victim's family constitute a determining factor in guaranteeing this impunity. In fact, nobody has been either identified or criminally punished by the judicial authorities as the author of these acts.

“And I also fear for my life, because I am a witness, they have threatened me because during the week of July three to seven, men who were members of the patrols in San Pedro canton came and there was a lot of noise outside in the night, and the next day a boy found a bullet shot near an[aguacatal that I have at my house, and I am afraid because these men are the bullies of the town and they could not care less about killing people, and they have done that and they were even implicated in the death of Carpio.”[FN83]

[FN83] Statement by a witness in the criminal case records.

164. The Commission concludes, based on the arguments given above, that the state has failed to comply with its obligation to judge and punish the perpetrators of the extrajudicial execution of Martín Pelicó Coxix, in accordance with the standards established in Articles 8(1) and 25 of the American Convention, and with its duty to ensure the fulfillment of its obligations pursuant to Article 1(1) of this instrument.

165. Consequently, the Commission concludes that the State of Guatemala has violated Articles 8, 25, and 1(1) of the American Convention, to the detriment of Martín Pelicó Coxix and his next of kin. Moreover, the State of Guatemala has violated Articles 8, 25, and 1(1) of the Convention to the detriment of Mrs. Rosario Hernández Grave and Manuel Hernández Ajbac, Manuel Mendoza Jolocomox, Jesús Chaperón Marroquín, Gustavo Vásquez Peralta, and Rogelio Cánsi, for acts of harassment and threats to them during the judicial investigation carried out in conjunction with the extrajudicial execution of Martín Pelicó Coxix. In fact, nobody has been identified or punished criminally by the judicial authorities as the author of these acts.

D. The obligation of the state to respect and guarantee individual rights

166. Based on the foregoing analysis, it is clear that the Guatemalan State has failed to comply with its obligation to respect the rights of the persons under its jurisdiction, as specified in Article 1(1) of the Convention, as it has violated the rights established in Articles 4, 5, 8, and 25 of the Convention, to the detriment of Martín Pelicó Coxix and his next of kin, and Articles 5, 8, and 25 of that instrument, to the detriment of Mrs. Rosario Hernández Grave and Messrs.

Manuel Hernández Ajbac, Manuel Mendoza Jolocomox, Jesús Chaperón Marroquín, Gustavo Vásquez Peralta, and Rogelio Cánsi.

167. As the Court has found, “Pursuant to Article 1(1), any type of exercise of public authority that violates the rights recognized by the Convention is illicit. In this sense, no matter what the circumstances in which a state organ or official, or a public institution unduly harms one of these rights, it is presumed to be in noncompliance with the duty to respect such rights established in that Article.”[FN84]

[FN84] Inter-American Court, Case of Velázquez Rodríguez, Judgment of July 29, 1988, Series C No. 4, para. 169.

168. The second obligation stipulated in Article 1(1) is the obligation to ensure the free and full exercise of the rights and freedoms recognized in the Convention. The Commission concludes that on violating the right to effective judicial protection, to the detriment of the victim, the Guatemalan State failed to comply with the obligation to ensure the free and full exercise of the rights of all persons under its jurisdiction.

VII. CONCLUSIONS

169. Based on the considerations of fact and law contained in this report, the Commission concludes that the State of Guatemala is responsible for violating the human rights to life, humane treatment, a fair trial, and judicial protection, in accordance with Articles 4, 5, 8, and 25 of the American Convention, taken together with Article 1(1) of that instrument, as a result of the acts which occurred on June 25, 1995 and the consequent impunity, to the detriment of Martín Pelicó Coxic and his next of kin.

170. Further, the State of Guatemala is responsible for violating the human rights to humane treatment, a fair trial, and judicial protection, in accordance with Articles 5, 8, and 25 of the American Convention, taken in relation to Article 1(1) of that instrument, as a result of acts of intimidation, harassment, and threats to the detriment of Mrs. Rosario Hernández Grave and Messrs. Manuel Hernández Ajbac, Manuel Mendoza Jolocomox, Jesús Chaperón Marroquín, Gustavo Vásquez Peralta, and Rogelio Cánsi.

171. Therefore, the Commission concludes that the State has failed to comply with its obligations to respect the human rights and guarantees imposed by Article 1(1) of the American Convention.

VIII. RECOMMENDATIONS

172. On the basis of the analysis and the conclusions of this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS TO THE STATE OF GUATEMALA THAT IT DO THE FOLLOWING:

1. Conduct a full, impartial, and effective investigation into the acts reported in the petition, in order to prosecute and punish the material and intellectual authors of the human rights violations committed to the detriment of Martín Pelicó Coxic and his next of kin, and to the detriment of Mrs. Rosario Hernández Grave and Messrs. Manuel Hernández Ajbac, Manuel Mendoza Jolocomox, Jesús Chaperón Marroquín, Gustavo Vásquez Peralta, and Rogelio Cánsi.
2. Make reparations for the consequences of the violation of the rights indicated.
3. Effectively prevent the resurgence and reorganization of the Civil Self-Defense Patrols.
4. Promote in Guatemala the principles established in the “Declaration on the right and duty of individuals, groups, and institutions to promote and protect the universally recognized human rights and fundamental freedoms” adopted by the United Nations, and take the necessary steps to ensure respect for the freedom of expression of those persons who have taken on the task of advocating fundamental rights, to protect their life and their personal safety.
5. Adopt the necessary measures to prevent similar events from occurring in the future, in accordance with the duty of prevention, and the duty to guarantee the fundamental rights recognized in the American Convention.

173. The Commission agrees to transmit this report to the State of Guatemala and to grant it a period of two months to comply with the recommendations formulated herein. These periods will begin on the date this report is transmitted to the State. In addition, the Commission has decided to notify the petitioners of the approval of a report under Article 50 of the Convention.

IX. PROCEEDINGS FOLLOWING REPORT N° 48/03

174. On October 8, 2003, during its 118th regular session, the IACHR approved Report N° 48/03, in accordance with article 50 of the American Convention and notified the State of Guatemala of this decision on December 29, 2003, granting it two months to comply with the recommendations set forth in paragraph 172 herein.

175. On December 29, 2003, the IACHR notified the petitioners of the approval of Report N° 48/03 and requested that they respond within one month’s time with regard to their position on submitting the case to the Court, the position of the victim, and the grounds for their opinion that the case should be referred to the Court. It likewise requested that they forward, within the same time period, information concerning the victim; the power of attorney confirming their status as representatives of the victim; any available evidence in addition to that submitted during the proceedings before the Commission; information from witnesses and experts that they intend to present to the Court; and their expectations with regard to reparations and legal costs. On January 28, 2004, the petitioners requested an extension of the time allotted, which was granted on February 3, 2004, for a period of 15 days. In a communication dated February 16, 2004 and received by the IACHR on February 18 of that year, the petitioners expressed their intent to submit the case to the Inter-American Court of Human Rights.

176. On March 3, 2004 the IACHR received a request from the State for a 30-day extension to report on compliance with the recommendations. On March 8, 2004, the Commission granted the extension requested by the State until March 22, 2004. On March 24, 2004, the IACHR received another request from the State for an extension of the deadline to comply with the

recommendations set forth in Report No. 48/03. On this occasion, the State included its interpretation that, should its request for an extension be granted, the time period for submitting a case to the Court established in article 51.1 of the American Convention would be suspended for three months. At the same time, the State explicitly waived the right to file any preliminary objections with respect to compliance with the time period set forth in article 51.1 of that instrument. On March 26, 2004, the IACHR notified the State of Guatemala that in a decision adopted on March 25, 2004, it granted the three month extension as requested, counting from March 22, 2004, during which time the period established in article 51.1 of the American Convention for referring case 11.658 to the Inter-American Court would be suspended.

177. On May 28, 2004, the IACHR received a communication from the State, dated May 27 of that year, declaring its intent to reach a reparations agreement with the victim's next of kin. The communication was forwarded to the petitioners on June 3, 2004, with the request that they submit their observations within 7 days. In a note dated June 10, 2004, and received on June 14, 2004, the petitioners expressed their acceptance of the proposal for reparations from the State. The petitioners' note was forwarded to the State on June 15, 2004, for its observations.

178. On June 22, 2004, the State requested a three month extension to reach a reparations agreement with the victim's next of kin. At the same time, the State conveyed its interpretation that, should the extension be granted as requested, the time period for submitting a case to the Court established in article 51.1 of the American Convention would be suspended for three months, and it explicitly waived its right to file preliminary objections with respect to compliance with that time period. On June 24, 2004, the Commission decided to grant the extension as requested.

179. On August 23, 2004, the petitioners submitted a proposal for reparations and costs to the IACHR, which was duly forwarded to the State on August 26, 2004, with a 15 day period to submit its observations.

180. On September 28, 2004, the State requested another three month extension to reach an agreement with the petitioners on compliance with the recommendations. On this occasion, it reiterated its interpretation that, should the extension be granted as requested, the time period for submitting a case to the Court established in article 51.1 of the American Convention would be suspended for three months and explicitly waived its right to file preliminary objections with respect to compliance with that time period. On September 28, 2004, the Commission decided to grant the extension as requested.

181. On November 22, 2004, the IACHR requested updated information from the parties concerning a possible agreement for compliance with the recommendations.

182. On November 30, 2004, the State sent a communication concerning compliance with the recommendations from Report N° 48/03, which was forwarded to the petitioners on December 1, 2004, for their observations.

183. On December 8, 2004, the IACHR received a response from the petitioners, which was forwarded to the State on December 10, 2004, with a period of five days to submit its

observations. The State presented its response on December 16, 2004, which was forwarded to the petitioners on December 20, 2004.

184. In a communication dated December 17, 2004, and received by the IACHR on December 20, 2004, the State requested that the Commission grant it additional time to continue with the talks and reach a final agreement on compliance with the recommendations. The State expressed its interpretation that, should the extension be granted, the time period for submitting a case to the Court under article 51.1 of the American Convention would be suspended and explicitly waived the right to present preliminary objections concerning compliance with that time period. For their part, in a communication dated December 21, 2004, and received by the IACHR on December 22, the petitioners expressed their consent to the extension as long as it was for the purpose of carrying out the established recommendations and, to the contrary, requested that the Commission submit the case for the consideration of the Court.

185. The Commission granted the 3-month extension in the terms requested by the State, counting from December 22, 2004. On March 17, 2005, the IACHR received from the State a copy of the proposal for compliance with the recommendations, which was forwarded to the petitioners on March 21, 2005, with a request to present their observations within three days.

186. On March 22, 2005, the State requested that the IACHR grant another extension in order to continue talks with the petitioners and reach a concrete agreement which, if granted, would suspend the time period set forth in 51(1) of the American Convention. At the same time, the State explicitly waived its right to file preliminary objections with respect to the time period set forth in that article. In addition, on March 24, 2005, the petitioners submitted their observations on the proposal and timeline for carrying out the recommendations presented by the State.

187. On March 28, 2005, the IACHR granted the three month extension, counting from that same date, for the State to comply with the recommendations formulated by the Commission in Report No. 48/03, during which time the time period established for submitting the case to the Court would be suspended. In addition, the Commission requested that during the extension period, the State of Guatemala report to it every three weeks concerning the implementation of the timeline for compliance with the recommendations and asked that it bear in mind the petitioners' observations concerning the timeline.

188. On April 21, 2005, the IACHR received from the State a report on compliance with the recommendations, which was forwarded to the petitioners on April 25 with a period of five days in which to respond. On May 3, 2005, the IACHR received the petitioners' observations, which were forwarded to the State on June 22, 2005, for a five day period. On that same June 22, information dated June 21, 2005 was received from the State, and this was forwarded to the petitioners on the following June 24, for a five day period.

189. On June 28, 2005, the IACHR received a request for an extension to arrive at an agreement for compliance with the recommendations, reiterating the interpretation that the extension would result in the suspension of the time period under article 51.1 of the Convention and waiving the right to file preliminary objections with respect to compliance with that time

period. On June 29, 2005, the IACHR granted the State a one-month extension and simultaneously suspended the time period for approaching the Inter-American Court.

190. In a working meeting held on July 19, 2005, in Guatemala City, the parties signed an Agreement for Compliance with the Recommendations from Report N° 48/03, in the presence of Commissioner Susana Villarán.

191. On July 29, 2005, the State requested another extension until July 30, 2006, to fulfill its commitments under the Agreement for Compliance with Report N° 48/03. The State expressed its interpretation that, should the extension be granted, the time period set forth in article 51(1) of the American Convention would be suspended and it explicitly waived its right to file preliminary objections with respect to compliance with that time period. On the same date, the IACHR granted the extension as requested, suspending the time period to submit the case to the Inter-American Court, and requesting that the State report to it every two months during the period in which the extension was in effect, on the progress made in carrying out the recommendations formulated in Report N° 48/03 and in the agreements signed by the parties.

192. On the same date, July 29, the petitioners submitted observations to the IACHR regarding compliance with the commitments acquired, which were forwarded to the State on August 16, 2005. On the following August 29, the IACHR received additional observations from the petitioners. On September 7, 2005, the State submitted information on compliance. On December 15, the IACHR received the petitioners' observations dated December 7 of that year, which were forwarded to the State on December 29, 2005, with a one-month period in which to respond. On December 20, 2005, the State's communication of November 9, 2005, was forwarded to the petitioners, granting them a one month period to respond. On December 27, 2005, the IACHR received the petitioners' observations dated December 26 of that same year.

193. A working meeting was held on July 14, 2006 in Guatemala City, attended by the petitioners' representatives, the victim's next of kin, representatives of the State, and Commissioner Víctor Abramovich. At the meeting, the status of compliance with the IACHR's recommendations and with the agreements between the parties was assessed. In particular, the State pledged to execute the outstanding arrest warrants against the alleged perpetrators in the death of Martín Pelicó Coxic.

194. On August 11 and 22, 2006 respectively, the State submitted a request for a three-month extension in the same terms as the previous requests, in order to fulfill the remaining commitments. On August 28, 2006, the IACHR notified the State that the new extension to comply with the recommendations would expire on October 30, 2006, and granted it one month to forward the information it deemed pertinent. On the same date, the IACHR requested that the petitioners submit, within one month, the information they deemed pertinent concerning the State's compliance with the recommendations.

195. On September 27, 2006, the petitioners forwarded their observations, and on September 29, 2006, the State's report was received, which was forwarded to the petitioners the following October 2 for their observations.

196. On October 13, 2006, the IACHR received the petitioners' observations which were forwarded to the State on the following October 20.

197. On October 26, 2006, at its 126th regular session, the Commission decided not to submit the case to the Court and to continue to follow up on the recommendations, in accordance with the provisions of article 51 of the American Convention.

198. The State submitted its observations on October 26, 2006, and on November 17, sent additional information on compliance with the recommendations; both communications were forwarded to the petitioners on December 8, 2006, for their perusal.

X. COMPLIANCE WITH THE RECOMMENDATIONS

199. In the instant case, on July 19, 2005, the parties signed an "AGREEMENT FOR COMPLIANCE WITH THE RECOMMENDATIONS FROM REPORT 48/03," under the following terms:

BACKGROUND

FACTS

Martín Pelicó Coxic was a Mayan Indian who lived in San Pedro Jocopilas in El Quiché department. He was married to Rosario Hernández Grave with whom he had three children, and he was a member of the Consejo de Comunidades Étnicas Runujel Junam (CERJ), a nongovernmental organization founded in 1988 to defend the human rights of the Mayan people. The CERJ was opposed to service in the Patrullas de Autodefensa Civil [Civil Self-defense Patrols].

On June 27, 1995, Martín Pelicó Coxic was executed extrajudicially. He was 27 years old at the time of his death and his children; David, Marta, and Doris were 7, 6, and 5 years old respectively.

According to the background information in the file before the IACHR, on that 27th of June, at approximately two o'clock in the afternoon in San Pedro Jocopilas, Mr. Pelicó and his spouse, Rosario Hernández Grave, were heading toward the home of Margarito Hernández and along the way they encountered Mr. Pedro Acabal Chaperón, who invited Mr. Pelicó to accompany him on some errands in Santa Cruz del Quiché. Mr. Pelicó left in the company of Mr. Acabal.

At seven o'clock in the evening on the same day, two men emerged from a red pick-up truck at the corner of Mr. Pelicó's street, while another remained in the driver's seat; they removed Mr. Pelicó from the back of the pick-up, dumping him in the street and fleeing the area.

Mr. Pelicó's spouse found him mortally wounded and took him into their house, where he died a few moments later.

According to paragraph 104 of Report 48/03 of the Inter-American Commission on Human Rights: “In the Commission’s view, it has been demonstrated that the three individuals who arbitrarily executed Martín Pelicó Coxic belonged to the institutions known as the “Comisionados Militares” [military commissioners] and the Civil Self-defense Patrols.”

On August 6, 1996, the CERJ and CEJIL lodged a petition before the Inter-American Commission on Human Rights denouncing the aforementioned events. On December 2, 2002, the State of Guatemala accepted its institutional liability for having failed to ensure the physical security of Mr. Martín Pelicó Coxic and expressed regret over his death.

The Inter-American Commission on Human Rights issued Report 48/03 on October 8, 2003, which concluded as follows:

Based on the foregoing arguments of fact and of law, the Commission concludes that the State of Guatemala is responsible for the violation of the right to life in accordance with article 4, of the American Convention on Human Rights, in relation to article 1(1) of that instrument, for the extrajudicial execution committed by State agents on June 27, 1995 to the detriment of Martín Pelicó Coxic.

The Commission likewise concludes that the State of Guatemala is responsible for the violation of the human rights to personal integrity, judicial guarantees, and judicial protection in accordance with articles 5, 8, and 25 of the American Convention in relation to article 1(1) of that instrument due to the events of June 27, 1995, and the attendant situation of impunity, to the detriment of Martín Pelicó Coxic.

In light of the foregoing, the Commission concludes that the State has failed to fulfill its obligations with respect to the human rights and guarantees set forth in article 1(1) of the American Convention, and therefore the Commission recommended as follows:

1. Conduct a complete, impartial, and effective investigation into the alleged facts leading to the prosecution and punishment of the material and intellectual authors of the human rights violations committed to the detriment of Martín Pelicó Coxic and his relatives.
2. Make reparations for the consequences of the violations of the aforementioned rights.
3. Effectively prevent the reemergence and reorganization of the civil self-defense patrols.
4. Promote in Guatemala the principles set forth in the United Nations “Declaration of the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,” and take the necessary measures to ensure respect for the freedom of expression of those who have undertaken to work for the respect of fundamental rights and to protect their lives and personal integrity.
5. Adopt all necessary measures to prevent the recurrence of similar acts, in accordance with the duty to prevent and to guarantee the fundamental rights recognized in the American Convention.”

CONTENTS OF THIS AGREEMENT

SYMBOLIC REPARATIONS AND GUARANTEES OF NON-RECURRENCE

Justice

By virtue of the fact that a trial was held resulting in an acquittal and that no appeal is available to reverse the verdict, the condition of res judicata applies. Steps will be taken to reactivate the outstanding arrest warrants and, if necessary, further steps will be taken to give them international effect, so that the case pending against the alleged perpetrators can proceed to their trial and punishment. The Government pledges to deliver a report to the petitioners concerning the status of issuing the international arrest warrants.

In view of the res judicata declaration in favor of one of the alleged perpetrators, COPREDEH,[FN85] in conjunction with the Supreme Court of Justice, shall hold a Forum at the highest level to examine the problems facing the administration of justice system. COPREDEH pledges to submit a logistical and methodological proposal for this forum in August and the forum is tentatively scheduled for October 8, 2005.

[FN85] Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos [Presidential Commission to Coordinate Executive Policy on Human Rights].

Holding a forum on the problems facing the justice system in Guatemala does not signify unwillingness on the part of the State to fulfill its responsibility to proceed with the investigation and punishment of those responsible for the events, but rather is a way to strengthen the justice system in Guatemala.

Education

The Government of Guatemala shall grant a scholarship to the child Marta Raquel Pelicó Hernández beginning in the 2006 school year. The necessary steps will be taken so that the renewal of the scholarship is not contingent upon the academic performance of the beneficiary.

The Government shall grant a scholarship to Eliseo David Pelicó Hernández, in consultation with the beneficiary.

In the case of Martha Pelicó Hernández and Doris Sulamita Pelicó Hernández, who have stated that they do not wish to continue their studies and that they would prefer that each be provided with a sewing machine, the Government shall provide one sewing machine immediately upon signing this agreement and the other in October. If it is not possible to provide a sewing machine, a sum of money equivalent to its market value shall be paid.

Family Home

The Government of Guatemala pledges to provide land for a house for the widow and four children of Mr. Pelicó Coxic, valued at six thousand dollars (\$6,000.00) based on the exchange rate used in the negotiation process and the value indicated by the petitioners.

The Government of Guatemala pledges to pay ten per cent (10%), equivalent to six hundred dollars (\$600.00), as an advance on the sum allocated for the housing issue prior to July 28, 2005, in order to reserve the land, and will complete payment of the total amount by the end of 2005.

The Government of Guatemala pledges to provide construction materials during 2005 for the dwelling, which shall consist of three bedrooms, a living room, dining room, kitchen, and bathroom, and to this end, shall take the necessary steps in the Secretariat of Executive Coordination of the Office of the Presidency by July 28, 2005.

Family Support

The Government of Guatemala shall provide training to Martha Pelicó Hernández and Doris Sulamita Pelicó Hernández in dressmaking, and shall take steps so that the widow, Rosario Hernández Grave, and children of Martín Pelicó Coxic, receive assistance, training, and inputs to establish another family productive activity which shall consist of the delivery of five hogs (4 females and one male) for breeding.

Health Care

The Government of Guatemala, through the appropriate entity, shall provide a physical examination to the widow and children of Mr. Martín Pelicó Coxic to determine their state of health and should they require health care and medication, shall provide it until any health problems they may have are improved, which shall be determined by a physician from the national hospital network or one designated by the Ministry of Public Health.

In order to fulfill this commitment, on July 22, 2005, the entire family shall report to the Hospital General de Santa Cruz, El Quiché, to complete any remaining tests and to schedule the next appointments.

Acknowledgment of International Liability and Apology to the Victim's Next of Kin

In the Speech of the President of the Republic delivered on February 25, 2004, the Government of Guatemala stated as follows: "In my capacity as President of the Republic, I wish to take advantage of this commemorative act honoring the victims of violence as a special opportunity to ask forgiveness, on behalf of the State of Guatemala, of each and every one of the victims' relatives, for the suffering caused by this fratricidal conflict that we Guatemalans suffered for four decades."

Based on the foregoing, the Government pledges to present privately, in deference to the family's wishes, a written communication addressed to the family of Mr. Martín Pelicó Coxic, recognizing the State's liability for the violation of the constitutional rights and the rights enshrined in the American Convention on Human Rights of the victim and his relatives, which is not to imply an acknowledgment of the individual liability of the alleged authors, which the State has the mandate and duty to establish through the domestic legal system.

ECONOMIC REPARATIONS

The Government of Guatemala recognizes the right of Martín Pelicó Coxic's next of kin to reparations for the violations they suffered due to his death and, to this end, the negotiation shall take into account national and international standards.

Material damages

- Loss of profits

Loss of profits represents all income the family may have earned if Martín Pelicó Coxic had not died, as well as the income that the family no longer received as a result of those events.

For loss of profits, the amount of Q 461,478.21 (\$60,490.00) is considered appropriate.

- Consequential damages

Consequential damages refer to the harm caused as a direct consequence of the events. In this case, they should include the expenses incurred by the victim's family as a direct consequence of the reported events.

Therefore, for consequential damages, the funeral expenses shall be taken into account and the sum of Q7000.00 (\$917.55) is considered appropriate.

- Moral damages

The individuals who should be compensated for moral damages are: 1) Martín Pelicó Coxic (victim), 2) Rosario Hernández Grave (spouse), 3) Eliseo David Pelicó Hernández (son), 4) Martha Pelicó Hernández (daughter) 5) Doris Sulamita Pelicó Hernández (daughter), 6) Marta Raquel Pelicó Hernández (daughter).

For moral damages the sum of Q 457,740.00 (\$60,000.00) is considered appropriate.

The total amount for Loss of profits, Consequential Damages, and Moral Damages comes to Q. 926,218.21.

For the purchase of a plot of land for the family of Martín Pelicó Coxic, this financial compensation package shall also include the amount of Q. 45,774.00 (\$6,000.00).

The total amount shall be broken down as follows:

Rosario Hernández Grave	Q. 250,000.00
The following sum shall be divided in equal parts between the Mr. Pelicó Coxic's four children.	Q. 676,218.21

TOTAL Q. 926,218.21

The market value of a sewing machine for the daughters of Martín Pelicó Coxic shall also be included.

These two categories come to a total of Q 45,774.00 (\$ 6,000.00).

Payment of financial compensation shall be made before the end of the first quarter of 2006.

The petitioners' representatives, CEJIL and CERJ, waive all legal fees in this case.

TIME PERIODS

The time periods established in this agreement for compliance may be extended with the consent of both parties, or in situations of force majeure or in case of accident, in accordance with Guatemalan law.

LEGAL BASIS

This Agreement is signed based on articles 1, 2, 3, 44, 46 y 183(a) and on the fundamental principles set forth in the Political Constitution of the Republic of Guatemala and in the Peace Accords signed by the Government of the Republic of Guatemala and the Guatemalan National Revolutionary Unity (URNG), and on respect for the human rights enshrined in articles 1.1, 4, 5, 6, 22.1, 8, 25 y 63.1 of the American Convention on Human Rights. In Guatemala City, July 2005. [FN86]

[FN86] Acuerdo de Cumplimiento de Recomendaciones del Informe 48-03 de la Comisión Interamericana de Derechos Humanos, Martín Pelicó Coxic, IACHR 11.658. Signed by the State and the petitioners on July 19, 2005, in Guatemala City.

200. According to the information provided by the petitioners and by the State up to the date of this report, the following commitments assumed by the State in the Agreement of July 19, 2005 have been fulfilled.

- Justice

201. With regard to the matter of justice and the outstanding arrest warrants, Mr. Juan Chivalán Xam was arrested on August 15, 2006, in San Miguel Petapa, by agents of the National Civilian Police and was brought before the 24-hour court (tribunal de turno). According to the information supplied by the parties, the pre-trial detention order issued for Chivalán Xam was revoked on August 21, 2006, and he was ordered released. However, the State reported on October 25, 2006, that he remained in custody because, even though he could not be included in this case since the relatives of Martín Pelicó had withdrawn, he remained incarcerated for his

role in the death of Diego Velásquez Soc. (IACHR, Case 11.677, Diego Velásquez Soc and Matías Velásquez).

202. Mr. Pedro Acabal Chaperon was arrested on September 21, 2006, by agents of the National Civilian Police, and was brought before the Justice of the Peace of Amatitlan, Department of Guatemala.

203. Also in this category, COPREDEH and the Supreme Court of Justice of Guatemala organized a forum titled, “Debilidades y Desafíos del Sistema de Justicia Guatemalteco” [Weaknesses and Challenges of the Guatemalan Justice System], which was held on September 22, 2005 to address the problems facing the administration of justice system.

- Education

204. The State granted scholarships to Marta Raquel Pelicó and Eliseo David Pelicó. With regard to the latter, the State asserted that the scholarship included a sum for room and board, but that the beneficiary had dropped out of the study program. The petitioners explained that in fact David Pelicó had attended the State-sponsored program “my first job,” which provides an opportunity to study and a monthly scholarship in the amount of \$800 quetzales. However, the family reported that the scholarship was insufficient to cover the requisite room, board and transportation costs so that he could continue his studies and, as a result, he had been obliged to return to the family home in El Quiché. In view of this, the petitioners requested that the State grant a scholarship beginning in 2007 to enable David Pelicó to finish secondary school.

205. The State delivered two sewing machines to Martha and Doris Sulamita Pelicó Hernández.

- Family home

206. The State paid the amount stipulated for the purchase of a plot of land during 2005; as of the date of this report, the delivery of materials for construction of the house remains pending.

- Family support

207. With regard to family support, the State has fulfilled its commitment to provide training in dressmaking to Martha Pelicó Hernández. With respect to Doris Sulamita Pelicó Hernández, the State was informed that she would not be taking the course for personal reasons. The five hogs for breeding also were delivered.

- Health care

208. The health status of the members of the Pelicó Hernández family was evaluated in September 2005 and the required medications were provided to them.

- Acknowledgment and apology to the victim’s relatives

209. At the request of the victim's next of kin, the State carried out the request for forgiveness for what had occurred in a private ceremony held on November 9, 2006, during which the president of COPREDEH presented a letter to the family in their home.

- Economic reparations

210. In December 2005, the State issued a payment to the widow and children of Martín Pelicó in the amount corresponding to economic reparations for loss of profits, consequential damages, and moral damages which, at the time of payment, was equivalent to U.S. \$121,407.55.

211. In view of the foregoing, the Commission considers that in the instant case the State of Guatemala has complied with the majority of its commitments in the area of reparations set forth in the Agreement for Compliance with the Recommendations from Report 48/03 of the Inter-American Commission on Human Rights," signed by the parties on July 19, 2005; still pending are the delivery of materials for the construction of a family home and the creation of a scholarship so that David Pelicó may finish his schooling in his place of residence. In the area of justice, the Commission recommended that the State conduct a complete, impartial, and effective investigation into the events leading to the prosecution and punishment of the material and intellectual authors of the human rights violations committed to the detriment of Martín Pelicó Coxic and his next of kin. To date, however, the legal investigation remains pending.

212. On October 26, 2006, at its 126th regular session, the Commission decided by unanimous vote not to submit the case for the consideration of the Court and to continue to follow up on the pending recommendations, in accordance with the provisions of article 51 of the American Convention.

XI. CONCLUSIONS

213. The Commission concludes that the State of Guatemala violated the right to life through the extrajudicial execution carried out by State agents on July 27, 1995, to the detriment of Martín Pelicó Coxic, in accordance with article 4 of the American Convention in its relation to article 1.1 of that instrument. The Commission likewise concludes that the State of Guatemala is responsible for the violation of the right to personal integrity, judicial guarantees, and judicial protection, under articles 5, 8, and 25 of the American Convention in relation to article 1.1 of that instrument, due to the events of June 27, 1995, and the attendant situation of impunity, to the detriment of Martín Pelicó Coxic and his next of kin.

214. The Commission notes with satisfaction the agreement for compliance with the recommendations signed by the State of Guatemala and the petitioners, and the important progress made in carrying it out.

XII. RECOMMENDATIONS

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

1. Conduct a complete, impartial, and effective investigation of the reported events leading to the prosecution and punishment of the material and intellectual authors of the human rights violations committed to the detriment of Martín Pelicó Coxic and his next of kin.
2. Effectively prevent the reemergence and reorganization of the Civil Self-defense Patrols.
3. Promote in Guatemala the principles set forth in the United Nations “Declaration of the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,” and take the necessary measures to ensure respect for the freedom of expression of those who have undertaken to work for the respect of fundamental rights and to protect their lives and personal integrity.
4. Adopt all necessary measures to prevent the recurrence of similar acts, in accordance with the responsibility to prevent and to guarantee the fundamental rights recognized in the American Convention.”
5. Comply with the obligations still pending in the area of reparations to the victim’s next of kin.

215. In virtue of the foregoing and the provisions of article 51.1 and 2 of the American Convention, the Commission decides to request that the State, within three months counting from the date of notification of the instant report, send a detailed report on compliance with the recommendations that remain pending.

XIII. PUBLICATION

215. On March 8, 2007, the Commission approved Report No. 12/07 – reproduced above – pursuant to Article 51 of the American Convention. On March 15, 2007, the Commission transmitted this report to the State of Guatemala and to the petitioners, in accordance with Article 51.1 of the American Convention, and granted the State a period of three months to report on compliance with the above-mentioned recommendations.

216. On June 4, 2007, the State presented a detailed report on compliance with the recommendations issued by the IACHR in Report on the Merits 48/03 and with respect to the commitments undertaken in the “Agreement on Compliance with Recommendations of Report 48/03,” signed by the parties on July 19, 2005. The State’s report was forwarded to the petitioners on June 13, 2007 and they presented their observations on June 22, 2007. The latter were forwarded to the State on June 25, 2007. On July 20, 2007, the Commission received the observations of the State, which were forwarded to the petitioners on July 26, 2007. The petitioners presented their observations on August 29, 2007.

217. The Commission considered (supra 211) that in the instant case the State of Guatemala had complied with many of the commitments undertaken with respect to reparation in the “Agreement on Compliance with Recommendations of Report 48/03 of the Inter-American Commission on Human Rights,” signed by the parties on July 19, 2005. It also considered that still pending were the delivery of materials with which to build a home and the determination of a scholarship to enable David Pelicó to complete his studies in the area in which he lives. With respect to justice, the Commission stated that a court investigation was still pending.

218. According to the information provided by the parties, delivery was made of the construction materials for a home, while the matter of a scholarship to enable David Pelicó to complete his studies in the area in which he lives is still pending. The petitioners consider that, with regard to the investigation and punishment of those responsible for the death of Martín Pelicó, the State of Guatemala is formally obliged to investigate violations such as those committed against Mr. Pelicó, even though the family has relinquished the pursuit of judicial proceedings.

219. With respect to justice, the State reported in its note dated July 20, 2007 that, according to witnesses, those allegedly responsible for the execution of Martín Pelicó Coxic were Juan Chivalam Xam and Pedro Acabal Chaperón.

220. Regarding Juan Chivalam Xam, the State advised that on November 14, 2006, the Criminal Court of First Instance, Narcotics Activities, and Crimes against the Environment of the Department of El Quiché resolved to revoke, definitively, the preventive custody and indictment against him, and that he had been free since December 2006. The State adds that the Judge of the aforementioned Court notified that “At the request of Mrs. Rosario Hernández Grave (the wife of Martín Pelicó), this Court, on October 10, 2006, regards as accepted, in favor of JUAN CHIVALAM XAM, the relinquishment of all criminal and civil action.”

221. As for Pedro Acabal Chaperón, the State reported that on September 21, 2006, he was captured by members of the Civilian National Police. It adds that on April 24, 2007, the Presiding Judge for Criminal Cases, Narcotics Activities and Crimes against the Environment of the Department of El Quiché reported that on September 29, 2006, Mrs. Rosario Hernández Grave waived her rights and fully relinquished, in favor of Pedro Acabal Chaperón, all civil and criminal action, and that the Court had resolved to consider that application accepted. The State goes on to report that on December 8, 2006, Mr. Pedro Acabal Chaperón asked for his legal status to be reviewed. The Court acceded to that request, granting him the alternative measure of being obliged to appear in person to sign the register of persons subject to alternative measures at the Court of the Judge of the Peace of the municipality of Amatitlán. Subsequently, the State reported that the Court had scheduled the oral and public debate hearing in proceedings on the merits for July 10, 2007.

222. Finally, with respect to the situation of Juan Chivalám Xam, the State advised that according to a communication dated June 1, 2007, issued by the Office of the Attorney General (Ministerio Público), the three witnesses on whom the request and order to arrest him had depended had retracted their testimony.

223. In light of the above consideration and pursuant to Article 51.3 of the American Convention and Article 45 of its Rules of Procedure, the Commission decides to reiterate its satisfaction that most of the commitments undertaken in the “Agreement on Compliance with Recommendations of Report 48/03,” signed by the parties on July 19, 2005, have been honored. It also decides to reiterate the requirement to comply with the still pending obligation to provide a scholarship to enable David Pelicó to complete his studies in the area in which he lives.

224. At the same time, as regards recommendation 2 (supra XII), regarding the duty of the State to avoid a resurgence or re-organization of the Civil Self-Defense Patrols, the Commission takes note of the fact that the Government has not expressly reported the adoption of any measures to that effect and that there are still instances of tensions and pressure exerted by former patrol members to the detriment of the population in some regions of the country, including the area in which the aforementioned events took place. In addition, with respect to recommendation 3 (supra XII), the Commission has noted a series of steps taken by the Presidential Commission for Coordinating the Executive's Human Rights Policy to promote respect and protection for those who have taken it upon themselves to promote respect for fundamental rights. However, these steps have been clearly insufficient, given the current plight in Guatemala of human rights defenders.

225. In light of the above, the Commission decides to reiterate recommendations 2 and 3 (supra XII) and to recommend completion of an impartial and effective investigation of the events denounced, in order to try and punish the perpetrators and instigators of the human rights violations committed to the detriment of Martín Pelicó Coxic and his family.

226. Finally, the Commission decides to publish this report and to include it in its Annual Report to the OAS General Assembly. Pursuant to its mandate, the Commission will continue to evaluate the measures adopted by the State of Guatemala in connection with the aforementioned recommendation, until it has been fully implemented.

Done and signed in the city of Washington, D.C., on the 15th day of the month of October, 2007.
Signed: Florentín Meléndez, President; Paolo G. Carozza, First Vice-President; Víctor E. Abramovich, Second Vice-President; Evelio Fernández Arévalos, Clare K. Roberts, and Freddy Gutiérrez, members of the Commission.