

**REPORT No. 116/10**  
CASE 12.590  
ADMISSIBILITY AND MERITS (36.3)  
JOSÉ MIGUEL GUDIEL ÁLVAREZ AND OTHERS (“*DIARIO MILITAR*”)  
GUATEMALA  
October 22, 2010

**I. SUMMARY**

1. On December 9, 2005, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition lodged by Makrina Gudiel Álvarez, Laurenta Marina Sosa Calderón, Juan Francisco Barillas Barrientos, Reyna de Jesús Escobar Rodríguez, Renato Guzmán Castañeda, Ana Dolores Monroy Peralta, Sonia Guisela Calderón, María del Rosario Bran de Villatoro, Manuel Ismael Salanic Tuc, Natalia Gálvez Soberanis, Mirtala Elizabeth Linares Morales, Wendy Santizo Méndez, María Froilana Armira López, Efraín García Román, Paulo René Estrada Velásquez, Aura Elena Farfán, Miguel Ángel Alvarado Arévalo, Augusto Jordán Rodas Andrade,<sup>1</sup> and the Myrna Mack Foundation (hereinafter “the petitioners”), against the Republic of Guatemala (hereinafter “the State,” “the Guatemalan State,” or “the State of Guatemala”), for the forced disappearance of 27 persons and the torture and rape of a minor-aged girl, all of which took place between 1983 and 1985 during the Guatemalan armed conflict.

2. In their petition and subsequent observations, the petitioners alleged the Guatemalan State’s responsibility in the forced disappearance of 27 individuals – (1) José Miguel Gudiel Álvarez, (2) Orencio Sosa Calderón, (3) Óscar Eduardo Barillas Barrientos, (4) José Porfirio Hernández Bonilla, (5) Octavio René Guzmán Castañeda, (6) Álvaro Zacarías Calvo Pérez, (7) Víctor Manuel Calderón Díaz, (8) Amancio Samuel Villatoro, (9) Manuel Ismael Salanic Chiguil, (10) Carlos Guillermo Ramírez Gálvez, (11) Sergio Saúl Linares Morales, (12) Luz Haydeé Méndez Calderón, (13) the minor-aged child Juan Pablo Armira López, (14) the minor-aged child María Quirina Armira López, (15) Lesbia Lucrecia García Escobar, (16) Otto René Estrada Illescas, (17) Julio Alberto Estrada Illescas, (18) Rubén Amílcar Farfán, (19) Sergio Leonel Alvarado Arévalo, (20) Joaquín Rodas Andrade, (21) Alfonso Alvarado Palencia, (22) Zoilo Canales Salazar, (23) Moisés Canales Godoy, (24) Félix Estrada Mejía, (25) Crescencio Gómez López, (26) Luis Rolando Peñate Lima, and (27) Rudy Gustavo Figueroa Muñoz – in incidents that took place between 1983 and 1985. In addition, they claim that during the arrest of one of the victims, her daughter Wendy Santizo Méndez, aged 9, was tortured and raped by state agents. They claim that a document known as the *Diario Militar* (“Military Diary”), which came to light in 1999, was allegedly produced by the Guatemalan Army during the internal armed conflict, and that it proves that state agents were responsible for the illegal arrests, disappearances, extrajudicial killings, and torture described in the case at hand.

3. Regarding the admissibility requirements, the petitioners maintain that the second and third exceptions to the rule requiring the prior exhaustion of domestic remedies provided for in Article 46 of the American Convention are applicable, because at the time of these incidents the judiciary was unable to protect people following violations of their basic rights and freedoms and because, in spite of the years that have gone by since the filing of various habeas corpus remedies and complaints with the Public Prosecution Service, including the one brought in connection with the *Diario Militar*, to date the courts have not conducted a proper investigation and have not prosecuted or punished the individuals responsible for the human rights violations described in the

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<sup>1</sup> As requested by the petitioners in a note of October 2, 2006, the following persons were also included as petitioners: Amanda Lizeth Alvarado Sánchez, Yordín Eduardo Herrera Urizar, Salomón Estrada Mejía, Fredy Anelson Gómez Moreira, Luis Moisés Peñate Munguía, and Rudy Alberto Figueroa Maldonado.

petition. Regarding the merits of the complaint, they maintain that the State is responsible for the alleged violation of Articles 1 (obligation to respect rights), 2 (domestic legal effects), 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 13 (freedom of thought and expression), 16 (freedom of association), 19 (rights of the child), and 25 (judicial protection) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”).

4. The State, in turn, did not dispute the facts alleged by the petitioners and did not oppose the admissibility of the petition, but stated that the acceptance of admissibility must not be understood as an admission of the merits of the matter. It also provided information on the internal proceedings related to the alleged facts.

5. On December 14, 2006, the IACHR resolved to implement Article 37 of the Rules of Procedure of the Inter-American Commission on Human Rights in force at the time (hereinafter “the IACHR’s Rules of Procedure”), to open the case as No. 12.590, and to postpone the analysis of its admissibility until the debate and decision on the merits.

6. In connection with the admissibility requirements, and without prejudging the merits of the case, after analyzing the positions of the parties and in accordance with the requirements set forth in Articles 46 and 47 of the American Convention, the Commission decides to rule the case admissible for the purpose of examining the alleged violation of the rights enshrined in Articles 4, 5, 7, 8, 13, 16, 19, and 25 of the American Convention, in conjunction with Articles 1.1 and 2 thereof. In addition, under the principle of *iura novit curia*, the Commission decides to rule the petition admissible as regards the alleged violation of the rights enshrined in Articles 3, 11, 17, 22 and 23 of the American Convention. Under that same principle, it decides to rule the petition admissible as regards Article 1 of the Inter-American Convention on Forced Disappearance of Persons (hereinafter “the IACFDP”), Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter “the IACPPT”), and Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (hereinafter “the Convention of Belém do Pará”). The Commission also decides to notify the parties of this decision, to publish it, and to include it in its Annual Report to the OAS General Assembly.

7. Regarding the merits of the case, and based on its analysis of the claims and evidence submitted by the parties, the Commission concludes that under Article 50 of the American Convention, the State of Guatemala violated Articles 3, 4, 5, 7, 8, 11, 13, 16, 17, 19, 22, 23 and 25 of the American Convention, in conjunction with Articles 1.1 and 2 thereof, as well as Article 1 of the Inter-American Convention on Forced Disappearance of Persons, Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, and Article 7 of the Convention of Belém do Pará, with respect to the victims and their next-of-kin.

## **II. PROCESSING BY THE IACHR**

8. On December 9, 2005, the Commission received the petition and recorded it as No. 1424-05. On January 20, 2006, in compliance with the provisions of Article 30.3 of the IACHR’s Rules of Procedure, it forwarded the relevant parts of the complaint to the State and asked that it return its response within the following two months. On March 8, 2006, the State requested a three-month extension of that deadline, and an extension of two months was granted. The State lodged its reply on May 26, 2006.

9. During the first stage of the process, the IACHR received information from the petitioners on the following dates: July 12, 2006; September 26, 2006;<sup>2</sup> October 2, 2006;<sup>3</sup> and October 16, 2006.<sup>4</sup> Similarly, during the first stage of the process, the IACHR received information from the State on September 6, 2006, and on October 19, 2006.

10. On November 17, 2006, the IACHR resolved to combine Petitions 9.565 (Otto René Estrada Illescas), 9.554 (Rubén Amílcar Farfán), and 9.326 (with respect to Sergio Leonel Alvarado) with Petition 1424-05. The IACHR based that decision on Article 29.1.d of its Rules of Procedure, which provides for such a procedure when two or more petitions address similar facts, involve the same persons, or reveal the same pattern of conduct. In the instant case, the IACHR found that the petitions involved the same persons.

11. On December 14, 2006, the IACHR decided to open the case as No. 12.590 and, under Article 37.3 of its Rules of Procedure (current Article 36.3), to defer its treatment of admissibility until the debate and decision on the merits. In compliance with Article 38.1 of its Rules of Procedure, it asked the petitioners to convey their comments on the merits within a period of two months. On March 15, 2007, after an extension was granted, the petitioners submitted their observations on the merits.

12. On May 30, 2007, the IACHR received the State's comments on the merits, in which it also expressed its intent to work toward a friendly settlement agreement. In connection with this, during a working meeting held in Guatemala City in July 2006 and attended by the parties, the possibility of initiating friendly settlement proceedings was raised. However, the petitioners declined that possibility and, on subsequent occasions, they reiterated that position.

13. In addition, during this stage, the IACHR received information from the petitioners on the following dates: March 26, 2007; August 21, 2007; October 12 and 17, 2007; December 27, 2007; and July 23, 2008. Similarly, the IACHR received comments from the State on the following dates: November 27, 2007; March 5, 2008; and April 7, 2008.

14. On August 1, 2008, the IACHR asked the State for copies of the criminal case files covering its investigations of the facts related to the alleged victims in Case 12.590 and copies of the documents held in the National Police's Historical Archives<sup>5</sup> related to the alleged victims in this case. On September 5, Guatemala's Ombudsman for Human Rights (PDH) asked for an itemization of the information from the National Police's Historical Archives (hereinafter "the National Police Archives") that was being sought. On October 1, 2008, the IACHR repeated its request that the State furnish information. On October 10, the office of Guatemala's Ombudsman for Human Rights

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<sup>2</sup> The petitioners requested the joinder to this case of the following petitions already before the IACHR: P 9.565 (Otto René Estrada Illescas), P 9.554 (Rubén Amílcar Farfán), and P 9.326 (Sergio Leonel Alvarado Arévalo). On November 17, 2006, the Commission informed the parties of its decision to combine those petitions with the instant case, in accordance with Article 29.1.d of its Rules of Procedure.

<sup>3</sup> In their note the petitioners requested the inclusion of the following persons as alleged victims: Alfonso Alvarado Palencia, Zoilo Canales Salazar, Moisés Canales Godoy, Félix Estrada Mejía, Crescencio Gómez López, Luis Rolando Peñate Lima, Benjamín Rolando Orantes Zelada, Rudy Gustavo Figueroa Muñoz, Alma Ledy Poza Gudiel, and their next-of-kin.

<sup>4</sup> In their note the petitioners informed the Commission that for strictly personal and family reasons, the next-of-kin of the victims Benjamín Rolando Orantes Zelanda and Alma Ledy Poza Gudiel had decided to withdraw their complaint from the proceedings before the IACHR.

<sup>5</sup> In July 2005 the Office of the Human Rights Ombudsman of Guatemala found the Historical Archive of the National Police, which contains documentation related to the functioning of the National Police and operations carried out by that institution from 1882 to 1997. Office of the Human Rights Ombudsman. *El Derecho a Saber. Informe Especial del Archivo Histórico de la Policía Nacional*. Guatemala: PDH, 2008, p. ix. Available at: [http://www.pdh.org.gt/index.php?option=com\\_content&task=blogcategory&id=38&Itemid=139](http://www.pdh.org.gt/index.php?option=com_content&task=blogcategory&id=38&Itemid=139).

sent the requested information.<sup>6</sup> On October 6, 2008, the State reported problems with gathering the information requested by the IACHR. On October 17, 2008, the IACHR received copies of the criminal case files, which were conveyed to the petitioners on October 21, 2008.

15. The IACHR received further information from the petitioners on the following dates: October 22, 2008; January 22, 2009; March 23, 2009; May 18, 2009; August 5, 2009; September 21, 2009; October 2, 2009; December 8, 2009; June 4, 2010; and June 22, 2010. The IACHR also received additional information from the State on March 20, 2009, and April 24, 2009.

16. The notes sent by each party were duly forwarded to the other party.

17. During the processing of this case, the following working meetings and public hearings were held: (1) Working meeting attended by both parties on July 14, 2006, during the IACHR's 125th special session, in Guatemala City. (2) Working meeting attended by both parties on October 20, 2006, during the IACHR's 126th regular session. At that meeting, the representatives of the victims and the representatives of the State signed a document in which the State indicated that it did not dispute the admissibility of the case and acknowledged that forced disappearance is a crime of a permanent nature. (3) Public hearing attended by both parties on October 12, 2007, during the IACHR's 130th regular session.<sup>7</sup> On that occasion, the petitioners submitted the testimony of Mirtala Elizabeth Linares Morales and Josefa Elizabeth Andrade Reyes, and the expert testimony of Katharine Doyle. (4) Public hearing attended by both parties on October 22, 2008, during the IACHR's 133rd regular session.<sup>8</sup>

18. In addition, with reference to the case at hand, it must be borne in mind that in Resolution 25/86,<sup>9</sup> the IACHR declared that "the responsibility of those who, in the discharge of their duties, during the period covered by this resolution (1978-1985), under the administrations of General Romeo Lucas García, General Efraín Ríos Montt, and General Óscar Humberto Mejía Víctores, ordered the arrest, made the arrests, detained and summarily executed without trial, or caused the disappearance of thousands of Guatemalan citizens who have not been found in the Republic of Guatemala, is condemnable and serious." In that same resolution, the IACHR resolved to "suspend consideration of the individual and collective cases of the missing persons although, in those cases in which new and important evidence comes to light, the Commission may reopen its consideration and again begin to study them."

19. The IACHR notes that complaints were lodged with the IACHR with respect to five of the alleged victims prior to Resolution 25/86. Under operative paragraph 6 of the aforesaid resolution, the Commission will include in this matter, for reference purposes, the following cases: 9.264 (Amancio Samuel Villatoro), 9.550 (Manuel Ismael Salanic Chiguil), 9.555 (Carlos Guillermo Ramírez Gálvez), 9.570 (Luz Haydeé Méndez Calderón), and 9.558 (Lesbia Lucrecia García Escobar). This is because with the information furnished by the parties in Case 12.590, new and important

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<sup>6</sup> Compact disc containing information on the documents from the National Police's Historical Archive processed as of October 6, 2008. Submitted to the IACHR by the office of Guatemala's Ombudsman for Human Rights on October 10, 2010.

<sup>7</sup> IACHR, Public Hearing of October 12, 2007, on Case 12.590, José Miguel Gudiel Álvarez and others (*Diario Militar*), Guatemala, (Witness Statement), 130th regular session. See hearing at <http://www.cidh.org>.

<sup>8</sup> IACHR, Public Hearing of October 22, 2008, on Case 12.590, José Miguel Gudiel Álvarez and others (*Diario Militar*), Guatemala, 133rd regular session. See hearing at <http://www.cidh.org>.

<sup>9</sup> IACHR, *Annual Report 1985-1986*, OEA/Ser.L/V/II.68. Doc. 8, of September 26, 1986. Original: Spanish. Available at: <http://www.cidh.org>.

evidence was revealed that enabled the Commission to reopen their processing and embark afresh on their analysis.<sup>10</sup>

### III. POSITIONS OF THE PARTIES

#### A. Petitioners

20. The Myrna Mack Chang Foundation lodged a complaint against the State of Guatemala for violating the rights protected in Articles 1.1, 2, 4, 5, 7, 8, 13, 16, and 25 of the American Convention, with respect to José Miguel Gudiel Álvarez, Orencio Sosa Calderón, Óscar Eduardo Barillas Barrientos, José Porfirio Hernández Bonilla, Octavio René Guzmán Castañeda, Álvaro Zacarías Calvo Pérez, Víctor Manuel Calderón Díaz, Amancio Samuel Villatoro, Manuel Ismael Salanic Chiguil, Carlos Guillermo Ramírez Gálvez, Sergio Saúl Linares Morales, Luz Haydeé Méndez Calderón, the child Juan Pablo Armira López, the child María Quirina Armira López, Lesbia Lucrecia García Escobar, Otto René Estrada Illescas, Julio Alberto Estrada Illescas, Rubén Amílcar Farfán, Sergio Leonel Alvarado Arévalo, Joaquín Rodas Andrade, Alfonso Alvarado Palencia, Zoilo Canales Salazar, Moisés Canales Godoy, Félix Estrada Mejía, Crescencio Gómez López, Luis Rolando Peñate Lima, and Rudy Gustavo Figueroa Muñoz; and for violating the rights enshrined in Article 19 of the American Convention with respect to the minors Juan Pablo Armira López and María Quirina Armira López and their next-of-kin. The petitioners claim that the State of Guatemala violated the rights enshrined in Articles 1.1, 2, 5, 8, 13, and 25 with respect to the victims' next-of-kin and Articles 8, 19, and 25 with respect to Wendy Santizo Méndez, for the rape and torture she suffered at the hands of state agents at the age of 9.

21. The petitioners allege that: (i) 27 of the victims, including one minor-aged girl and one minor-aged boy, were forcibly disappeared by the Guatemalan security forces, while the remaining victim was arbitrarily and illegally detained and then raped during the arrest and subsequent forced disappearance of her mother; (ii) the State failed in its obligation of conducting a serious, effective, and exhaustive investigation of those forced disappearances and of the rape of the minor Wendy Santizo Méndez; (iii) the brutality with which the disappearances were carried out and the feelings of anguish that the situation of impunity fueled among the victims' families constituted a violation of their physical integrity; (iv) the State's repressive policies deeply affected the victims' children because of the severing of their emotional ties to their parents and the impact on their families caused by the disappearance of their loved ones; (v) the State undermined the right of free expression and the right of free association of the victims – who were disappeared with the aim of silencing them and destroying their organizations – together with the freedom of expression of their families, by creating a climate of terror through acts of intimidation and aggression intended to dissuade them from lodging complaints; (vi) in forced disappearance cases, the State has the duty of clearing up the facts and of identifying and punishing the masterminds and perpetrators, and so the absence of a serious investigation constitutes a violation of the duty of respecting rights; (vii) the absence of a legal framework and of actions intended to find and locate the disappeared, to restore the violated rights, and to provide their next-of-kin and the survivors with comprehensive redress entail violations of the duty of adopting domestic legal effects.

22. They claim the forced disappearances took place between 1983 and 1985, under the *de facto* government of Gen. Óscar Humberto Mejía Víctores, when the State's intelligence apparatus – chiefly the presidential intelligence office, known as “the Archive,” and the Intelligence

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<sup>10</sup> In the Commission's *Third Report on the Situation of Human Rights in the Republic of Guatemala*, adopted on October 3, 1985, reference is made to the following cases: 9.264 (Amancio Samuel Villatoro), 9.550 (Manuel Ismael Salanic Chiguil), 9.555 (Carlos Guillermo Ramírez Gálvez), 9.570 (Luz Haydeé Méndez Calderón), and 9.558 (Lesbia Lucrecia García Escobar).

Directorate of the National Defense General Staff, known as the G-2 (hereinafter “the Archive” and “the G-2,” respectively) – was given a broad arena for action in urban areas. In the petitioners’ opinion, the forced disappearance of the victims was part of a systematic state policy designed to eliminate and annihilate presumed or real political opponents involved in the insurgency during the 1980s, in accordance with the tenets of the National Security Doctrine set down in the 1965 Constitution, in force at the time of the incidents.

23. They note that under the National Security Doctrine, the Guatemalan Army defined the State’s “internal enemy” as “all those individuals, groups, or organizations that, through illegal actions, seek to rupture the established order, represented by elements that, in pursuit of the goals of international communism, pursue so-called revolutionary war and the subversion of the country [...] those individuals, groups, or organizations that, while not communists, seek to rupture the established order” (*Counter-subversive War Manual of the Guatemalan Army*, 1978). They say that the Commission for Historical Clarification (hereinafter “the CEH”) identified that the definition of the internal enemy used by the Guatemalan Army was not restricted to members of guerrilla organizations, but also included all those individuals who, for whatever reason, did not support the government. In that context, they claim that various organizations were classified as enemies of the State in its military campaign plans. For example, the “Victory 82” Campaign Plan identified trade unions, associations, and church cooperatives as grassroots revolutionary organizations, while the “National Stability 85” Campaign Plan stated that the actions made in support of claims by trade unions, such as those of the company Centroamérica de Vidrios, S.A., (CAVISA), the municipal government of the country’s capital, and the University of San Carlos (hereinafter “the USAC”), were considered mass struggle activities carried out by subversives. They state that the members of those organizations were frequently targeted by military intelligence. Those campaigns were part of a counterinsurgency strategy that, after 1983 in particular, focused its operations in Guatemala City. They also claim that government pressure on trade unions and students was particularly intense, as can be seen by the inclusion of several trade unionists and students in the *Diario Militar*.

24. They note that the National Security Doctrine was implemented on a systematic basis by all the agencies of the State. In connection with this, they recall that the executive branch was in the hands of the military junta and that the legislature furthered the repressive policies by enacting laws that legitimized states of emergency and illegitimately restricted civil and political rights. They also note that the judicial branch did not halt the serious abuses committed during those years and that those within the judiciary who resisted the State’s policies in turn suffered its repression. They claim that the co-opting of the legislative bodies by the groups in power meant the closure of forums for democratic participation and criticism, which violated the rights of free expression and free association of thousands of Guatemalans. They hold that thinking and expressing critical positions regarding matters of public interest was a dangerous act that meant exposure to threats, torture, disappearance, or death. In particular, they note the conclusions of the Commission for Historical Clarification indicating that one favored strategy in the repression of those years was to stigmatize and place blame on the victims and their organizations, so that public opinion would see them as criminals and, consequently, as legitimate targets for repression.

25. The petitioners point out that in these 27 cases of alleged forced disappearance, the victims matched the profile of the supposed “internal enemy” set out in the campaign plans and military manuals. The *modus operandi* used in those cases was consistent with the patterns followed in clandestine military intelligence operations. They state that the material resources for carrying out the forced disappearances could only have come from the State’s militarized structure, because the operations involved large numbers of armed agents, who traveled in vehicles with tinted windows and used radios to communicate with each other. They maintain that the Army did not use its intelligence to dismantle opposition groups in accordance with procedures in line with the rule of law; instead, their goal was the destruction and elimination of those groups, using any means available. They report that the *Counter-subversive War Manual of the Guatemalan Army* of

1978 stated that going after “ideologically compromised” individuals – even if they did not belong to any armed organization – was a state policy.

26. The petitioners claim that the abductees were confined, kept incommunicado, and tortured in secret prisons in a clandestine network of detention centers, including private homes, military bases or posts, and police stations. These locations, they claim, had facilities ready to torture the detainees. The methods used to capture the abductees and the conditions in which they were held were set out in official documents (for example, the “Victory 82” Campaign Plan). The detention centers were secret, illegal, and beyond the oversight of the judicial authorities. Only authorized personnel within the chain of command of the military structure was allowed access to the detainees, and all requests for information made by their families and/or the judicial authorities were systematically denied.

27. The petitioners state that the interrogation of those individuals held at the clandestine prisons was generally carried out by members of the G-2 or of the Archive, whose methods included physical and psychological torture, including rape or forcing the abductees to watch other people – on occasions their own loved ones – being tortured. After they had been tortured, most of the victims were executed. They claim that the torture usually involved rape when the victims were women. Personal degradation was a part of the systematic plan of repression, since torture was seen by the Army as being an effective system for obtaining information, which was then used to continue with the repressive policies of detaining, interrogating, and ultimately murdering those individuals classified as the State’s “internal enemies.” However, this information was only known in part by the units in charge of carrying out the repression. According to the petitioners, only the top echelon of the repressive structure, the Intelligence Directorate of the National Defense General Staff, had access to all the information. They claim that this secrecy and the compartmentalization of the information was intended to ensure that the masterminds behind the incidents could not be identified. Consequently, they maintain, in abduction operations there was a clear separation of tasks between those agents involved in monitoring and observing the targets, those responsible for clearing the area, and those who carried out the abductions. Officers of the National Police, Army troops, members of the G-2 and the Archive, and other security forces were all involved.

28. The petitioners state that the *Diario Militar* revealed the existence in Guatemala of a planned and prepared strategy of forced disappearances in urban areas between 1983 and 1985, organized at the highest levels of the State’s structure. This document, comprising 73 typed pages with handwritten annotations, recorded the actions of a counterinsurgency operations plan that obeyed the National Security Doctrine and the “Resolve 83,” “Institutional Reencounter 84,” and “National Stability Plan 85” campaign plans. According to the petitioners, the Military Diary is a detailed intelligence record setting out truthful information on political opponents who were abducted, executed, and forcibly disappeared by state agents during the military government of Óscar Mejía Víctores.

29. The petitioners report that the document was made public on May 20, 1999, when an Army officer handed it over to a Washington-based human rights organization that later passed it on, for analysis and study, to the National Security Archive, a research institute based in Washington, D.C., that specializes in collecting and analyzing documents from state archives. The study concluded that the *Diario Militar* was authentic and that it came from the files of Guatemalan military intelligence. In addition, in June 1999, the office of Guatemala’s Ombudsman for Human Rights authenticated the *Diario Militar* at the U.S. State Department and legalized the document through the Guatemalan Embassy in Washington. The petitioners report that the State prepared a document titled “The Authenticity of the Military Diary in Light of the Historical Documents of the National Police,” in which it acknowledged that the *Diario Militar* “represents irrefutable proof of the actions and the abhorrent counterinsurgency logic followed by the State’s security forces.”

30. The *Diario Militar* comprises six sections. The first five contain information on the organization of intelligence files, a list of items seized during a raid on a private home, a list of individuals whose disappearance was reported by the members of the Mutual Support Group (hereinafter "GAM"), brief overviews of Guatemalan opposition groups, and a chronological record of raids on homes and of weapons, propaganda, and documents seized during the first six months of 1984. The sixth section contains a day-to-day record of the activities of the Guatemalan security forces involving abductions, torture, forced disappearances, and executions. This final section sets out, in chronological order, the personal details of 183 individuals, with their full names and sundry additional information. Alongside each name appears a photograph, most of which, according to testimony from the next-of-kin, were the ones that appeared on their official ID papers. The 27 forced disappearances reported by the petitioners are set out in this sixth section of the *Diario Militar* as numbers 9, 17, 30, 41, 42, 47, 49/51, 55, 65, 66, 74, 83, 86, 94, 116, 133, 156, 134, 138, 174, 58, 75, 77, 131, 158, 165, and 166.

31. As regards the truthfulness of the information set out in the *Diario Militar*, together with the truthfulness of the diary itself, the petitioners claim it is consistent with what is known about the operations of Guatemalan military intelligence during the period in question. Most of the victims were executed after their abductions, and this circumstance is indicated with execution codes "300," "taken by Pancho," or "left (+)." They also state that the testimony given supports the truthfulness of the *Diario Militar*. For example, the testimony of Álvaro René Sosa Ramos, who managed to escape his captors and gave a statement to the IACHR on June 24, 1985, is in line with the contents of the *Diario Militar* as regards some of the victims whom he saw while in captivity. In addition, they describe how the *Diario Militar* followed the format of a Section Diary: that is, a document intended to provide input for the production of intelligence and to control the daily activities carried out by the corresponding section of the repressive apparatus.<sup>11</sup> They also claim that the style of drafting is consistent with military intelligence, together with the use of codes to refer to other organizations, agencies of the repressive apparatus, etc. They say that the *Diario Militar* establishes the involvement of various state security forces, including the National Police, in surveillance operations and abductions.

32. The alleged victims' personal details set out in the *Diario Militar*, together with the information on the circumstances of their abductions, were confirmed as truthful by their next-of-kin and by other documents related to human rights violations dating back to the 1980s, such as reports from the Interdiocesan Project for the Recovery of Historical Memory, from the U.S. Embassy, from Amnesty International, etc. In light of those arguments, they conclude that the *Diario Militar* is an authentic document and a reliable source of evidence of the State's international responsibility in the alleged forced disappearances, torture, and extrajudicial killings.

33. The petitioners provide overviews of the alleged victims' lives and the circumstances of their disappearances, indicating in each case the efforts made to locate them or, failing that, the reasons why those efforts were not undertaken until the end of the most intense period of the repression (in general, fear and/or threats). According to the petitioners' information, José Miguel Gudiel Álvarez was 23 years old at the time of his forced disappearance; he was the third of seven

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<sup>11</sup> The petitioners also state that the existence of a document recording the clandestine operations of security forces was in line with the practices of various repressive regimes found across the world. In particular, they claim that the National Security Doctrine adopted and adapted by the State of Guatemala stated that during intelligence operations, detailed records of activities should be kept and that, upon their conclusion, the documents created must be destroyed and their destruction recorded in a deed of incineration. In this way, the secrecy of the activities, the anonymity of the physical perpetrators and of the masterminds, and the hindrance of judicial investigations would be assured. With this, they indicate that the *Diario Militar* shows how the records of the National Police and the General Migration Directorate were used as sources of information for purposes of repression.



siblings and worked as a bricklayer's assistant to maintain his family because his father was being sought by the security forces. Orencio Sosa Calderón, aged 39 at the time of his disappearance, was married with four children and was a surgeon by profession. Óscar Eduardo Barillas Barrientos, aged 35 at the time of his disappearance, had two siblings and belonged to the Guatemalan Labor Party (PGT). José Porfirio Hernández, aged 36 at the time of his disappearance, had three children, was a farmer, and was a member of the PGT. Octavio René Guzmán Castañeda, aged 21 at the time of his disappearance, was a primary-school teacher and a student at the University of San Carlos. Álvaro Zacarías Calvo Pérez, aged 27 years at the time of his disappearance, was married with a son and was a primary-school teacher. Víctor Manuel Calderón Díaz, aged 26 at the time of his disappearance, had three children, worked as a tailor, and was a trade-union leader. Amancio Samuel Villatoro, aged 47 at the time of his disappearance, had five children and was a trade-union leader. Manuel Ismael Salanic Chiguil, aged 18 years at the time of his disappearance, was the eldest of three children and was in the final year of his teacher-training education at the Rafael Aqueche Institute. Carlos Guillermo Ramírez Gálvez, aged 19 at the time of his disappearance, had five siblings and was a student at the Training and Productivity Technical Institute. Sergio Saúl Linares Morales, aged 30 at the time of his disappearance, had two children and worked as a technology and systems specialist. Luz Haydeé Méndez Calderón, aged 35 at the time of her disappearance, had two children, studied at the University of San Carlos, and was involved in political activities. Wendy Santizo Méndez, the daughter of Luz Haydeé Méndez Calderón, was nine years old when she was abducted and raped. The siblings Juan Pablo and María Quirina Armira López, aged 12 and 15 respectively at the time they disappeared, were students whose father had had to abandon the family because the Army was pursuing him. Lesbia Lucrecia García Escobar, aged 26 at the time of her disappearance, was the youngest of three children and was a union leader and a member of the PGT. Otto René Estrada Illescas, aged 31 at the time of his disappearance, was married with a son and was a student leader and a member of the PGT. His brother Julio Alberto Estrada Illescas, aged 32 at the time of his disappearance, studied at the University of San Carlos and was a student leader. Rubén Amílcar Farfán, aged 40 at the time of his disappearance, was the third of five children, worked and studied at the University of San Carlos, and was a trade unionist. Sergio Leonel Alvarado Arévalo, aged 20 at the time of his disappearance, was the youngest of five children, studied at the University of San Carlos, and was involved in the student movement and the PGT. Joaquín Rodas Andrade, aged 23 at the time of his disappearance, had three siblings, was a university student, and was active in the PGT. Alfonso Alvarado Palencia, aged 36 at the time of his disappearance, had three children and a pregnant wife and was a trade unionist. Zoilo Canales Salazar and his son Moisés Canales Godoy, who lived with his pregnant girlfriend, were arrested and disappeared in 1984. Félix Estrada Mejía, aged 25 at the time of his disappearance, was one of seven children and was involved with the Patriotic Working Youth. Crescencio Gómez López, aged 41 at the time of his disappearance, had been Conflicts Secretary of the Coca-Cola Company trade union. Luis Rolando Peñate Lima, 25 years of age, was married with a pregnant wife and worked as a school teacher. Rudy Gustavo Figueroa Muñoz, aged 33 at the time of his disappearance and death, had three children, was a professor at the University of San Carlos and was a member of the trade union of the Guatemalan Social Security Institute.

34. Regarding the actions taken to secure justice and reveal the victims' whereabouts, the petitioners report that during the armed conflict numerous suits for *habeas corpus* were lodged with the agencies of the judiciary, but these filings were generally sent to the archive given the refusal of the military, police, and civilian authorities to acknowledge the illegal arrest of the persons being held in the clandestine detention network. They explain that those refusals meant that *habeas corpus* remedies were not effective for protecting personal liberty and integrity. The victims families went to various authorities to obtain news of their loved ones, and some were received by the serving *de facto* president. They report, however, that these actions were useless in revealing the whereabouts of their relatives.

35. Regarding the investigation initiated in 2006 as a result of the appearance of the *Diario Militar*, they report that it is still at the initial stage, that it is deficient and negligent, that it involves inadequate procedures, and that it lacks a coherent strategy for investigation; this, they maintain, represents a violation of due process and the right to judicial protection of the victims and their next-of-kin. They also claim that the investigative measures announced by the State are not appropriate for determining the whereabouts of the disappeared or for establishing the corresponding responsibilities. In particular, they note that: (i) at the time of the facts, the agency responsible for criminal investigations was the judiciary and not the Public Prosecution Service, (ii) requests for information were sent to agencies – such as the Human Rights Ombudsman – that did not exist at the time of the facts, (iii) the Public Prosecution Service has confused the powers of the State’s security agencies, (iv) the pending actions in the investigation are characterized by a formalistic approach aimed at undermining the legitimacy of the *Diario Militar*, (v) the criminal investigation has been incorrectly directed at determining the existence and identity of the victims and their next-of-kin, instead of identifying their whereabouts and punishing the guilty, (vi) the main source of information used by the Public Prosecution Service has been the victims’ families, who have been summoned to appear on various occasions, thereby making them victims again, but it has not followed up on the information provided, (vii) a list of the victims was prepared without analyzing each individual case and the particular circumstances of each, and the same information was requested with regard to all the victims: for instance, the USAC and the Department of Traffic were asked to provide information on Juan Pablo Quirina López, who was aged 12 at the time, (viii) even though Wendy Santizo Méndez detailed and described the individuals responsible for the crimes committed against her, there has been no substantial progress in the investigation, (ix) no reference was made to investigations carried out prior to 1999, (x) the lack of judicial oversight of the investigation hindered investigative formalities intended to identify criminal responsibilities, (xi) the witnesses and members of the security forces were not questioned, no forensic testing was performed, and the clandestine detention centers were not visited, (xii) the officials in ranking positions in the Interior Ministry and the Ministry of Defense at the time of the incidents were not summoned to appear, (xiii) in taking the statement of one of the survivors of the *Diario Militar*, he was not asked about the identity of the persons responsible, or about other detainees, or about the facility where he was held, (xiv) by not having access to the internal investigation because of the confidentiality of the criminal investigation, they were denied their right to monitor the progress of the investigations, which constitutes a denial of justice, (xv) the Public Prosecution Service cannot make the results of an investigation conditional on the existence or otherwise of an ancillary complainant, and (xvi) the State has not established the whereabouts of the victims.

36. As a result, the petitioners claim that the second and third exceptions to the rule requiring the prior exhaustion of domestic remedies provided for in Article 46 of the American Convention are applicable.<sup>12</sup>

37. The petitioners therefore argue that the State is responsible for arresting, torturing, disappearing, or executing the 27 alleged victims. They indicate the way in which the illegal arrests constituted a violation of the right to freedom and they emphasize that the inhumane and degrading treatment suffered by the victims constituted a violation of the right to humane treatment. With reference to this last situation, they draw a distinction between the direct victims – who were tortured during their captivity, for intelligence-gathering purposes – and the members of their families. With the direct victims, they maintain that because of their illegal arrests, it can be assumed that they were subjected to an array of cruel, inhuman, and degrading treatments. In addition, they note specific cases in which direct evidence of that torture exists. With the members of their families, they stress the impact that the illegal abduction and subsequent disappearance of a person has on their next-of-kin, in addition to the later denial of justice they suffered.

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<sup>12</sup> Petitioners’ submission, received on July 13, 2006, pp. 7-8.

38. In particular, they hold that the violation of humane treatment arose from the brutality of the incidents themselves, from the impunity enjoyed by the perpetrators, and from the inability to bury the victims killed during the repression. In connection with the right to life, they state that the fact that a person has been missing for several years is adequate evidence that he has been killed. In addition, they describe how other members of the victims' families were persecuted and harassed in their attempts to locate their loved ones. In addition, they hold the State responsible for the torture and rape of the minor child Wendy Santizo Méndez.

39. The petitioners therefore hold that the State is responsible for violating the rights enshrined in Articles 4, 5, and 7 of the American Convention with respect to the alleged victims.

40. In addition, they claim the State of Guatemala violated the right to humane treatment, the right of due process, and the right to judicial protection, enshrined in Articles 5, 7.6, 8, and 25 of the American Convention, with respect to the disappeared victims and their families. They also believe the State failed to ensure an effective remedy to protect their freedom, and they underscore the absence of judicial independence. In this regard, they further claim that for eleven years, amnesty laws prevented the alleged crimes from being investigated.

41. The petitioners claim that the State violated the rights of the child, as enshrined in Article 19. Specifically, they hold that the State failed in its special obligation of care with respect to the rights of the child; that it violated the rights of Wendy Santizo Méndez, Juan Pablo Armira López, and María Quirina Armira López; and that it violated the rights of the children whose fathers and mothers were abducted by agents of the State.

42. They also contend that the alleged crimes constitute a violation of Articles 13 and 16 of the American Convention, in connection with Articles 1 and 2 thereof, on account of the ideological persecution that drove the repression against the victims in this case, who were categorized as enemies of the State on account of the ideas they allegedly held or the groups to which they purportedly belonged.

43. In addition, the petitioners hold that the State violated the right of truth of the victims' families – that is, the right of society in general to know the full, complete, and public truth about the facts. For that claim, they maintain that Article 13 of the American Convention, in line with Article 2 thereof, imposes a positive obligation of adopting measures to facilitate access to information, which is also a necessary element if an investigation is to proceed. They claim that under Óscar Mejía Víctores there was no law outlining a procedure or mechanism for seeking information from the State, and that later, the State did not remedy or correct its policies and practices that were incompatible with the full enjoyment and exercise of the right to truth.

44. They hold that the Law on Access to Public Information, which came into effect in April 2009, does not repair the past, real violations of the petitioners' rights, in that at the public hearing on the case held on October 22, 2008, the State admitted its responsibility in having violated the right to truth of the victims' families. They claim that there was no specific procedure available to the citizenry for requesting and securing access to information held by the State, and that situation heightened the State's discretionary powers and increased the users' lack of certainty and clarity regarding the exercise of their rights. The petitioners also hold that Agreement No. SG-003-2009 from the Human Rights Ombudsman, which regulates the Human Rights Violations Reference Service (SREVIDH), is restrictive as regards the Law on Access to Public Information, in that: (i) it hinders access by victims' relatives or independent investigators by creating additional requirements or "special procedures," (ii) the Human Rights Ombudsman has the power to authorize or decline requests for information, (iii) a "rationale for the request" is required, (iv) the information

provided may be censored, and (v) it establishes a disciplinary regime and sanctions that are not provided for in law.

45. Specifically, they state that the *Diario Militar* and the documents in the National Police Historical Archive are concrete examples of the kind of information that the State has kept hidden and out of the reach of the victims and their next-of-kin. For example, the petitioners say that an analysis of the documents found in the Historical Archive indicates that: (i) there are documents that confirm the authenticity of the *Diario Militar* and that contain the names of witnesses and/or people in charge of the operations in which the victims were disappeared, (ii) it contains copies of orders and other documents that show that the victims were being monitored by the security forces prior to their disappearance, and (iii) several state agencies were involved in carrying out the disappearances under the directions of D-2 or "the Archive." The petitioners also contend that the State did not establish a mechanism to guarantee the petitioners access to those documents.

46. The petitioners maintain that the State did not dispute or question the claims made by the petitioners, nor has it offered a statement regarding the facts; instead, "it merely offered information about a formal or desk-based criminal investigation." That situation, they claim, must be interpreted as a tacit admission of its international responsibility, in accordance with Article 39 of the Commission's Rules of Procedure, in that the presumed acceptance of the facts of a petition applies not only when a State fails to appear before an international venue, but also when it does appear but fails to provide the corresponding information or offers evasive or ambiguous answers.

## **B. State**

47. The State did not dispute the facts alleged by the petitioners and provided information regarding the domestic proceedings related to the allegations. In addition, on repeated occasions and in the final document of the working meeting on Case 12.590 held between the parties on October 20, 2006, during the IACHR's 126th regular session, the State said that it "believes that the relatives of the victims listed in the case known as the *Diario Militar*, along with the surviving victims, have the legitimate right to lodge a petition with the inter-American human rights system, to which end the State instructs the Inter-American Commission to accept the admissibility thereof. In accordance with the National Reconciliation Law and the Inter-American Convention on Forced Disappearance of Persons, the State of Guatemala accepts that forced disappearance is a crime of a permanent nature that does not conclude until the victims are located (...) This acceptance of admissibility must not be understood as a admission regarding the merits of the matter."

48. With respect to the investigations, Guatemala states that the Public Prosecution Service is responsible for investigating publicly actionable offenses and for taking criminal prosecutions before the courts. It adds that the Human Rights Prosecution Office's Unit for Special Cases and Human Rights Violations is conducting the investigation of what is known as the *Diario Militar* case, under file No. MP001/2006/12836, and that it is at the investigation stage and subject to the judicial oversight of the Seventh First-Instance Court for Criminal, Drug-trafficking, and Environmental Matters. It reports on steps taken by the Public Prosecution Service in the investigation, such as writing to various state agencies and private organizations asking for information and summoning family members to give statements.

49. The State presented a report from the Public Prosecution Service referring to the investigation formalities pursued in connection with each of the victims and stating that the investigation was to continue using another approach in accordance with the following guidelines: (i) take expanded statements from the complainants, so they can explain or provide details to identify the individuals who assisted in making the *Diario Militar* public, (ii) take statements from the

people who received the *Diario Militar* to determine its source, (iii) pursue steps to secure the original of the document, (iv) order expert analyses of the document to determine the date it was produced and the instrument used to produce it, and to identify fingerprints or DNA for determining the person who wrote it, (v) request information from the different ministries to determine who was in command of the State's intelligence and security apparatus, along with the agencies that carried out the orders, (vi) report to the Defense Ministry and Interior Ministry to conduct inspections, (vii) identify potential masterminds and perpetrators, (viii) coordinate with domestic and foreign forensic anthropology agencies on activities for identifying the victims' resting places, (ix) conduct exhumations and order the expert analyses necessary for identifying remains and determining the cause of death, (x) take testimony from the victims' relatives or other persons in order to formulate a hypothesis regarding each and every one of the 177 disappearances recorded in the *Diario Militar*, (xi) establish who sent the document to the human rights organization in Washington, D.C., what position he or she held, and under what circumstances the document was obtained, (xii) determine the security agency or intelligence section to which the *Diario Militar* belonged, who ordered it to be drawn up, and under whose orders those involved in producing it were acting.

50. On November 22, 2007, the State recognized the authenticity of the *Diario Militar* and again stated that it had no objections to the admissibility of the petition before the inter-American system. Subsequently, the State reported that the Human Rights Prosecution Office was conducting a complete, impartial, and effective investigation in the *Diario Militar* inquiry, in which "reports have been collected and statements have been taken from the victims' relatives and from individuals who, despite appearing in the *Diario Militar*, are alive; and a series of formalities [are being] pursued to obtain information from the Ministry of Defense and from the security agencies active during those years, along with another series of formalities to determine the criminal and administrative liabilities of the persons involved, and so be able to take the steps necessary to establish the whereabouts of the victims." Specifically, with respect to access to the case file, Guatemala said it could not enclose copies of the internal proceedings because they were subject to confidentiality and noted that "ancillary complainants or any party to the domestic criminal trial may request a copy of the aforesaid case file and convey it to the IACHR." Later, in 2008, the State sent the IACHR a complete and legible copy of the criminal case files from the investigation and asked that note be taken of its efforts made to ensure the right to the truth of the victims and their next-of-kin.

51. It also reported that on September 23, 2008, Congress approved Decree 57-2008, the Access to Information Law, which was published in the Official Register of Guatemala on October 23, 2008, and came into force on April 21, 2009. It said that this law, in addition to recognizing and guaranteeing full enjoyment of the right to truth, regulates the administrative and judicial procedures for its exercise and establishes a classification of information and of the bodies required to provide it or afford access to it. In particular, it emphasized that Article 24 of the law stipulates that "in no case may information related to the investigation of violations of basic human rights or crimes against humanity be considered confidential or reserved."

52. The Guatemalan State also reported the following progress made regarding the right to truth: (i) the decision of the President of the Republic to make the Army's files public, announced on February 25, 2008, on the occasion of the commemoration of the Day of the Victims of the Internal Armed Conflict, (ii) publication of the report *The Right to Know*, prepared by the Human Rights Ombudsman, (iii) creation of the Peace Archive Directorate within the Secretariat for Peace of the Office of the President of the Republic, a project that seeks to reveal and reclaim the historical memory of the events of 1954 to 1996 and that also aims to process, preserve, and analyze the documents held in all Army and related archives to further national reconciliation, (iv) presentation to the IACHR of certified documents by the clerk of the National Civilian Police's Historical Archive, and (v) inauguration of the Human Rights Violations Reference Center, which will

provide computers so that the victims of the armed conflict and the relatives of the disappeared can consult the more than 12 million pages that have been recovered and scanned.

53. In its submission of May 29, 2007, the State asked for the pursuit of “contacts toward opening negotiations with the petitioners, in order to reach a friendly settlement” in this case.

54. On April 16, 2009, it noted that it did not dispute the petitioners’ contentions regarding the importance, within the rule of law, of the full enjoyment of the right to truth for the victims of serious human rights violations, and of the State’s duty to uphold that right by observing its obligations of conducting investigations and providing access to information. Nevertheless, it stated that it had remedied the shortcoming reported by the petitioners, with respect to both the lack of a specific law and the absence of a mechanism to ensure enjoyment of the right enshrined in Article 13 of the American Convention, in that it had brought its domestic law into line with the international standards governing access to information, in compliance with Article 2 thereof.

#### IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

55. The Commission resolved, on December 14, 2006, to apply the exception provided for in Article 37.3<sup>13</sup> of the IACHR’s Rules of Procedure then in force, in light of the time that had passed since the facts described in the petition were allegedly committed. Consequently, this report will proceed to rule on the admissibility and the merits of the case together.

##### A. Competence

56. The petitioners are entitled, under Article 44 of the American Convention, to lodge complaints with the IACHR. The petition names, as its alleged victims, individual persons with respect to whom the Guatemalan State had assumed the commitment of respecting and ensuring the rights enshrined in the American Convention. With reference to the State, the Commission notes that Guatemala has been a state party to the American Convention since May 25, 1978, when it deposited its instrument of ratification. The Commission therefore has competence *ratione personae* to examine the complaint.

57. The Commission has competence *ratione loci* to deal with the petition since it alleges violations of rights protected by the American Convention occurring within the territory of a state party thereto. The Commission has competence *ratione temporis* since the obligation of respecting and ensuring the rights protected by the American Convention was already in force for the State on the date on which the incidents described in the petition allegedly occurred. The Commission also notes that Guatemala has been a state party of the Inter-American Convention on Forced Disappearance of Persons since February 25, 2000, of the Inter-American Convention to Prevent and Punish Torture since January 29, 1987, and of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women since April 4, 1995, with which the IACHR has competence *ratione temporis* to rule on the obligations pending since the ratification of those instruments, such as the alleged omissions arising from the failure to investigate.<sup>14</sup> The Commission has competence *ratione materiae*, in that the petition alleges violations of human rights protected by the American Convention.

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<sup>13</sup> Article 37.3 of the IACHR’s Rules of Procedure as in force at the time: “In exceptional circumstances, and after having requested information from the parties in keeping with the provisions of Article 30 of these Rules of Procedure, the Commission may open a case but defer its treatment of admissibility until the debate and decision on the merits. The case shall be opened by means of a written communication to both parties.”

<sup>14</sup> See: I/A Court H. R., *Case of the Dos Erres Massacre v. Guatemala*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 24, 2009, Series C No. 211, para. 54.

## **B. Exhaustion of domestic remedies**

58. Article 46.1.a of the American Convention states that, for a complaint lodged with the Inter-American Commission to be admissible under Article 44 of the Convention, the remedies available under domestic law must have first been pursued and exhausted in accordance with generally recognized principles of international law. This requirement is intended to facilitate the domestic authorities' examination of the alleged violation of a protected right and, if appropriate, to resolve it before it is placed before an international venue. The prior exhaustion requirement applies when the national system does in fact offer available resources that are adequate and effective for remedying the alleged violation. Thus, Article 46.2 stipulates that the requirement need not be observed when domestic legislation does not afford due process of law for the protection of the right in question, if the alleged victim was denied access to the remedies offered by domestic law, or if there was an unwarranted delay in issuing judgment on those remedies.

59. The exhaustion of domestic remedies rule may be waived by the State, either expressly or tacitly, and, to be timely, it must be invoked at an early stage of the proceedings lest the State's implicit waiver of the requirement be presumed.<sup>15</sup>

60. The petitioners invoked the exceptions provided in Article 46.2, sections (b) and (c), of the American Convention because at the time of these incidents, the judiciary was unable to protect people following violations of their basic rights and freedoms and because, in spite of the years that have gone by since the filing of various habeas corpus remedies and complaints with the Public Prosecution Service, including the one brought in connection with the *Diario Militar*, to date the courts have not conducted a proper investigation and have not prosecuted or punished the individuals responsible for the human rights violations described in the petition. In turn, the State of Guatemala explicitly accepted the admissibility of the petition in various notes and in a document signed on October 20, 2006, at a working meeting held during the Inter-American Commission's 126th session.<sup>16</sup>

61. The IACHR concludes that at the time of the reported incidents, there was no access to an appropriate and effective remedy for clarifying the whereabouts of the alleged victims or reporting the abductions, torture, rapes, and executions;<sup>17</sup> and that later, there was an unwarranted delay on the part of the agencies responsible for the administration of justice. Consequently, it concludes that the exceptions to the prior exhaustion of domestic remedies rule contained in Article 46.2, sections (b) and (c), of the American Convention are applicable in the case at hand.

## **C. Filing period**

62. Article 46.1.b of the Convention states that for a petition to be admissible, it must be lodged within a period of six months following the date on which the complainant was notified of the final judgment at the national level. This rule is not enforceable when the Commission finds that

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<sup>15</sup> I/A Court H. R., *Case of Godínez Cruz v. Honduras*, Preliminary Objections, Judgment of June 26, 1987, Series C No. 3, paras. 90 and 91.

<sup>16</sup> Minutes of the working meeting held on October 20, 2006, at IACHR Headquarters, signed by Commissioner Víctor Abramovich on behalf of the IACHR, Frank La Rue (President of COPREDEH) and Mario Estuardo Gordillo Galindo (Attorney General of the Nation) on behalf of the State of Guatemala, and Helen Mack Chang (President of the Myrna Mack Foundation) and Leslie Figueroa (Myrna Mack Foundation) on behalf of the petitioners.

<sup>17</sup> See: IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, OEA/Ser.L/V/II.66, adopted on October 3, 1985, Ch. II, para. 63. Available at: <http://www.cidh.oas.org/countryrep/Guatemala85sp/indice.htm>. See also: IACHR, *Annual Report 1984-85*, OEA/Ser.L/V/II.66, Ch. IV, Guatemala, "Absence of Legal Measures for Protection."

any of the exceptions to the exhaustion of domestic remedies rule provided for in Article 46.2 of the Convention are admissible. In such cases, the Commission must determine whether the petition was lodged within a reasonable time, in compliance with Article 32 of its Rules of Procedure.

63. As already noted, the Commission has concluded that in the case at hand, the exceptions provided in Article 46.2, sections (b) and (c), of the American Convention are applicable. In light of the date on which the alleged human rights violations occurred and the alleged failure to investigate and punish the individuals responsible for the alleged violations, and in that the petition was lodged with the Commission on December 9, 2005, the Commission believes that the petition was lodged within a reasonable period of time.

#### **D. Duplication of proceedings and *res judicata***

64. The case file does not indicate that the substance of the petition is pending in any other international settlement proceeding or that it is substantially the same as another petition already examined by this Commission or any other international body. Hence, the requirements set forth in Articles 46.1.c and 47.d of the Convention have been met.

#### **E. Characterization of the alleged facts**

65. The Commission believes that the petitioners' contentions regarding alleged abductions, torture, forced disappearances, and extrajudicial killings, and regarding the denial of justice and other effects suffered by the alleged victims' families, could tend to establish violations of the rights protected by Articles 4, 5, 7, 8, 13, 16, 19, and 25 of the American Convention, in conjunction with Articles 1.1 and 2 thereof.

66. In addition, under the principle of *iura novit curia*,<sup>18</sup> the Commission decides to rule the petition admissible with respect to the alleged violation of the rights enshrined in Articles 3, 11, 17, 22 and 23 of the American Convention. Under that same principle, it also finds the petition admissible with respect to Article 1 of the IACFDP, Articles 1, 6, and 8 of the IACPPT, and Article 7 of the Convention of Belém do Pará.

#### **F. Conclusions regarding admissibility**

67. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case, the Inter-American Commission concludes that the case at hand satisfies the admissibility requirements set out in Articles 46 and 47 of the American Convention and, consequently, it resolves to rule Case 12.590 admissible with respect to: Articles 4, 5, 7, 8, 13, 16, 19, and 25 of the American Convention, in conjunction with Articles 1.1 and 2 thereof. In addition, under the principle of *iura novit curia*, it decides to rule the case admissible with respect to Articles 3, 11, 17, 22 and 23 of the American Convention, Article 1 of the IACFDP, Articles 1, 6, and 8 of the IACPPT, and Article 7 of the Convention of Belém do Pará.

### **V. ANALYSIS OF MERITS**

#### **A. Appraisal of the evidence**

68. The Inter-American Commission on Human Rights, in accordance with Article 43.1 of its Rules of Procedure (hereinafter "the IACHR's Rules of Procedure"), will examine the

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<sup>18</sup> See: IACHR, Report No. 35/08, Case 12.019, Admissibility and Merits, Antonio Ferreira Braga, Brazil, July 18, 2008, para. 48.



arguments and evidence furnished by the parties<sup>19</sup> and the information obtained at the IACHR's working meetings and hearings on this case. It will also take information that is a matter of public knowledge into account.<sup>20</sup>

## **B. Established facts**

### **1. The Armed Conflict in Guatemala**

69. In Guatemala, between the years 1962 and 1996, there was a domestic armed conflict that took a high human, material, institutional, and moral toll, taking with it democracy and the rule of law. It has been estimated that during this time, more than two hundred thousand people were victims of arbitrary executions and forced disappearances as a consequence of the political violence.<sup>21</sup>

70. The *Third Report on the Situation of Human Rights in the Republic of Guatemala*, adopted by the Commission in the year 1985,<sup>22</sup> records the magnitude and severity of the internal unrest in the country and the way in which a dramatically ascending spiral of violence emerged, remaining always latent during those years, with periods of greater or lesser intensity.

71. Previously, in its first *Report on the Situation of Human Rights in the Republic of Guatemala*, from 1981, the IACHR had found that:

With the development of this spiral of pro-government and anti-government violence, which worsened beginning with 1966, the severity of the struggle was leading the country to a true "state of terror," that is, to the most extreme level of violence. In this state of affairs, terror came to be, moreover, a weapon of social repression against unions, opposition groups, universities, political parties, cooperatives, rural organizations, church members, journalists, and, in short, against all entities critical of the government. Every kind of aggression and assault has been carried out against them, for which the official military and police authorities have always denied responsibility, while these acts have been indiscriminately, and sometimes even simultaneously, attributed to the aforementioned paramilitary groups.<sup>23</sup>

72. The Commission for Historical Clarification<sup>24</sup> (hereinafter "the CEH"), in its report *Guatemala: Memory of Silence* (hereinafter "the CEH Report" or "Memory of Silence"), concluded that the armed conflict in Guatemala was a phenomenon with many causes<sup>25</sup> that arose from the

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<sup>19</sup> In the case at hand, the parties have furnished an abundance of information and evidence, including testimony from a surviving victim and from relatives of the victims, in written form and on a DVD, certified copies from the archives of the National Police, judicial case files, and the *Diario Militar* itself.

<sup>20</sup> Article 43.1 of the IACHR's Rules of Procedure states: "The Commission shall deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, the evidence presented by the parties, and the information obtained during hearings and on-site observations."

<sup>21</sup> I/A Court H. R., *Case of Tiu Tojin v. Guatemala*, Merits, Reparations, and Costs, Judgment of November 26, 2008, Series C No. 190, para. 48.

<sup>22</sup> IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*, Ch. II, para. 2.

<sup>23</sup> IACHR, *Report on the Situation of Human Rights in the Republic of Guatemala*, OEA/Ser.L/V/II.53, adopted on October 13, 1981, Ch. II B, para. 3. Available at: <http://www.cidh.oas.org/countryrep/Guatemala81sp/indice.htm>.

<sup>24</sup> The Commission for Historical Clarification was established on June 23, 1994, under the Oslo Accords, with the purpose of casting light on the human rights violations associated with the armed conflict in Guatemala. CEH Report, available at: <http://shr.aaas.org/guatemala/ceh/mds/spanish/>.

<sup>25</sup> CEH, *Guatemala: Memory of Silence*, Vol. I, Ch. 1, Causes and Origins of the Internal Armed Conflict, p. 80.

convergence of a series of factors, including structural injustice, the closing of political spaces, racism, the increasing exclusionary and anti-democratic nature of the institutions, as well as the reluctance to promote substantive reforms that could have reduced structural conflicts. In addition, alongside the intrinsic causes inherent to Guatemalan history, a key role was played by the Cold War, the resultant prevailing anticommunist policy in the Hemisphere, and the National Security Doctrine as the ideological manifestation of the struggle against the “internal enemy” in the genesis, development, and continuation of the conflict.<sup>26</sup>

73. The idea of the internal enemy was set down in internal documents of the Guatemalan armed forces. For example, the “Summary of the Counter-subversive War Manual of the Guatemalan Army – March 1978” describes “counter-subversive war” as “that which seeks to hinder the comprehensive transformation of the existing social, political, and economic system sought by international communism.”<sup>27</sup> The same document says that the “destruction of the insurgency’s local political/administrative organization [...] is achieved through the capture and physical elimination of its active agents” and further notes that “the aim is not the pursuit of common criminals, but rather of individuals who are ideologically compromised but who are not participating in terrorist acts or combat operations.”<sup>28</sup> Other armed forces documents, such as the Victory 82, Resolve 83, Institutional Re-encounter 84, and National Stability 85 campaign plans, operationalized the execution of the counterinsurgency’s strategies.<sup>29</sup>

74. Under this ideology, the notion of the internal enemy embraced not only the armed insurrectionist groups, but was progressively expanded to cover any opinion or movement that disagreed with the official line, including intellectuals, artists, students, teachers, union leaders, and many others who suffered the consequences of systematic violence during the internal armed conflict.<sup>30</sup>

75. The CEH stressed the role of military intelligence in the conflict, noting that “intelligence, based on the National Security Doctrine, applied an unconventional and distorted view of the internal enemy that allowed it to operate with methods and techniques that respected neither the Constitution, the law, nor human rights.”<sup>31</sup> Although the intelligence services “carried out activities of their own in connection with the armed conflict,” in reality it “was the unifying thread of a state policy that took advantage of the situation of armed conflict to control the population, society, the State, and the Army itself.”<sup>32</sup> According to the CEH, the intelligence apparatus in Guatemala was essentially designed and directed in its operations by two agencies: the Army Intelligence Section or Intelligence Directorate of the National Defense General Staff, known as the G-2, and a unit of the Presidential General Staff commonly known as “the Regional” or “the Archive,” which directly advised the Office of the President of the Republic. According to the CEH,

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<sup>26</sup> CEH, *Guatemala: Memory of Silence*, Vol. V, Ch. 4, Conclusions, p. 24.

<sup>27</sup> Summary of the Counter-subversive War Manual of the Guatemalan Army – March 1978: The document defines the “internal enemy” as: “Individuals, groups, or organizations that seek to rupture the established order, following the mandates of international communism, through so-called ‘revolutionary war.’ Non-communists who similarly seek to rupture the domestic order are also enemies.”

<sup>28</sup> Summary of the Counter-subversive War Manual of the Guatemalan Army – March 1978. The Summary specifies that in this undertaking, the armed forces must “use all the means available within our moral constraints” and also says that “here, as in the rest of the document, no reference is made to upholding human rights” (pp. 7 and 9).

<sup>29</sup> See: Secretariat of Peace of the Office of the President of the Republic of Guatemala, *The Authenticity of the Diario Militar*, Guatemala, May 2009, p. 12.

<sup>30</sup> CEH, *Guatemala: Memory of Silence*, Vol. II, Ch. 2, Title XI: Forced Disappearances, p. 426.

<sup>31</sup> CEH, *Guatemala: Memory of Silence*, Vol. II, Ch. 2, Title III: Intelligence, p. 76.

<sup>32</sup> CEH, *Guatemala: Memory of Silence*, Vol. II, Ch. 2, Title III: Intelligence, p. 75.

“both structures have always overstepped their authority and acted without constraints, in an illegal and dangerous fashion,” with the National Police and Treasury Guard serving as operations forces of Army Intelligence.<sup>33</sup>

76. This counterinsurgency policy, involving terror, violence, and massive and systematic human rights violations, had a particularly dramatic impact on those individuals who, in the view of the repressive apparatus, could be characterized as subversives under the definition of the internal enemy described above: the Mayan people, peasants, students, members of religious groups, and community, trade-union, or cooperative leaders.<sup>34</sup>

77. According to the CEH’s investigations, under the National Security Doctrine, the State’s security forces and associated paramilitary groups were responsible for 93% of the violations it documented, including 92% of the arbitrary executions and 91% of the forced disappearances.<sup>35</sup> In contrast, the actions of the insurgent groups produced 3% of such violations.<sup>36</sup>

## **2. The forced disappearance of persons and the counterinsurgency policy of the State of Guatemala**

78. The Inter-American Commission addressed the extreme gravity of the forced disappearance phenomenon in Guatemala in several reports published during the 1980s and 1990s. In its 1984-85 Annual Report, the Commission said that “during the period covered by this report, the main problem confronting Guatemala in the human rights area continues to be the forced disappearance of persons, who were previously victims of illegal seizure and detention attributable in almost all cases to the government security forces.”<sup>37</sup>

79. In its *Third Report on the Situation of Human Rights in the Republic of Guatemala* (1985), the IACHR analyzed the human rights situation in the country following the coup d’état of August 8, 1983,<sup>38</sup> in which Gen. Óscar Humberto Mejía Víctores assumed power; it also noted that “the practice of disappearances increased notably” over the period 1983-1984.<sup>39</sup> In the report, the Commission referred to the *modus operandi* of forced disappearances in Guatemala. Through the analysis of the information then available to it (names, dates, details, ages, genders, professions, or activities of the victims, common features of the operations, and different studies of the problem), the Commission identified the mechanisms and characteristics of forced disappearance in Guatemala during the armed conflict, along with the particular features that characterized those incidents depending on whether they took place in rural or urban areas. Using testimony given by individuals who had succeeded in escaping from detention and by eye-witnesses of abductions and seizures carried out at homes, workplaces, and public places, the IACHR identified characteristic, standard elements that identified different phases in forced disappearance operations. The pertinent details can be summarized as follows:

### a. The moment of arrest

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<sup>33</sup> CEH, *Guatemala: Memory of Silence*, Vol. II, Ch. 2, Title III: Intelligence, p. 93.

<sup>34</sup> CEH, *Guatemala: Memory of Silence*, Vol. II, Ch. 2, Title XI: Forced Disappearances, p. 426.

<sup>35</sup> CEH, *Guatemala: Memory of Silence*, Vol. V, Ch. 4, Conclusions, pp. 24-25.

<sup>36</sup> CEH, *Guatemala: Memory of Silence*, Vol. V, Ch. 4, Conclusions, p. 26.

<sup>37</sup> IACHR, *Annual Report 1984-85*, OEA/Ser.L/V/II.66, Ch. IV, Guatemala, Conclusions (b).

<sup>38</sup> IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*, Introduction, para. 46.

<sup>39</sup> IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*, Ch. II, para. 6.

[...] Seizures carried out on the street are even more spectacular and involve a greater deployment of personnel, in either civil garb or uniforms, but invariably heavily armed. The abductors proceed with maximum aggressiveness, using their weapons to threaten all witnesses, passersby, shopkeepers, people accompanying the victim, local residents, etc., and they use full force to detain their victims, men and women alike, and to get them into their awaiting vehicles, dragging and beating them if necessary. Neither the victim's shouts and struggles, nor the protestations of eye-witnesses, nor the shots that are sometimes fired, nor the natural curbside commotion caused by an event of this nature and magnitude has the slightest effect on the local police, who do not even register the event as a police matter in their incident books.

[...] When the victim is taken from the street, his or her identity is almost always known to the abductors. Once inside the van or car, the abductee is pushed against the floor, on occasions blindfolded, and then taken to an unknown location amidst violence and threats.

#### b. Detention centers

The abductee is taken to one of a number of different unofficial detention facilities, generally located at military installations, according to the allegations, without being informed of the reason for his arrest or the place where he is being held. He is kept totally incommunicado and generally in total isolation from any contact with other people. Atrocious treatment is meted out: he is constantly beaten and intimidated, with the apparent aim of breaking his physical and emotional resolve. He becomes aware that following his arrest he has been totally stripped of protection and rights. His most minimal physical needs are barely satisfied. Because of the appalling conditions of the detention facilities, being held there is almost unbearable. This is compounded by the hostile, abusive, and demeaning treatment he receives at all times [...]

#### c. Interrogation

[...] Groups of individuals, sometimes different ones, proceed to interrogate the abductee. Mistreatment, threats, shovings, and frequent beatings provide the framework for the start of interrogation. Apparently, in almost all cases, the aim is to obtain more information than the abductee actually possesses [...]

#### d. Torture

[...] Mistreatment and torture form part of almost all interrogations and seem to be used, primarily, to intimidate the victim, break him, and persuade him to offer confessions. A part of the practice involves keeping the detainees in areas close to where other people are being tortured, so they can hear the screams and blows and become familiar with the nature of the torment that awaits them.

[...] People about to face interrogations through torture generally have their feet tied together and are hung head-down, after which indiscriminate, violent blows are meted out with objects that produce injuries across their entire bodies. The next step is the use of electrical shocks, applied to the most sensitive parts, often until the intensity of the pain causes the victim to lose consciousness, and when he comes round he is feeling intense fever and thirst.

#### e. Disappearances

[...] Except in very exceptional cases, a person kidnapped or abducted in Guatemala is, from the onset, condemned to death in order to protect the strict confidentiality of the system, the

identity of the persons responsible, the location of the detention facilities, the interrogation and torture methods used, and the official status of the agency involved.<sup>40</sup>

80. The Commission also spoke of the absence of legal measures to protect against forced disappearances. In a letter addressed to Gen. Mejía Víctores on September 28, 1984, the IACHR noted its concern regarding the “continued violation of human rights that your country is facing, most particularly as regards the frequent disappearance of people and the ineffectiveness of habeas corpus remedies.”<sup>41</sup> Similarly, in Chapter IV of its *1984-1985 Annual Report*, the IACHR noted that in Guatemala, “for a number of years, the remedy of habeas corpus, the only legal guarantee provided for in the Basic Government Statute to defend the freedom, security and life of human beings, has become ineffective and inoperative.”<sup>42</sup>

81. The Commission found that the Mejía Víctores administration was directly responsible for the forced disappearances that took place during the period covered by the facts of this case, and it noted that:

The Commission is unable to establish an exact figure for the number of people who have been disappeared in Guatemala during the government of Gen. Óscar Humberto Mejía Víctores, but whatever the number may be, given the short time he has been in office, the impressive figure underscores the gravity of the problem and, in spite of his government’s refusal to acknowledge the involvement of its armed forces in those operations – the methodology of which is identical to that used by the previous military regimes in which he served as Minister of Defense – there is abundant evidence pointing to their involvement and responsibility.<sup>43</sup>

82. The Inter-American Commission’s conclusions were ratified several years later by the Commission for Historical Clarification. According to the CEH, “in Guatemala, forced disappearances were one of the most serious and common human rights violations committed during the internal armed conflict,”<sup>44</sup> and they were “used systematically in various regions and affected a large part of the population, making for a crime against humanity.”<sup>45</sup> In the CEH’s view:

Forced disappearance, as a method of extermination within the counterinsurgency strategy, pursued a series of objectives. Its essential purpose was to break up or annihilate political organizations, labor unions, and grassroots associations by abducting and disappearing their leaders, or presumed leaders, either individually or en masse, in accordance with selective criteria.<sup>46</sup>

[...] The final goal of the forced disappearances was to destroy those trade unions and student and political organizations that were seen as opposing the established regime. Thus, the counterinsurgency strategy that guided the actions of Guatemalan State struck out,

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21. <sup>40</sup> IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*, Ch. II, para.

63. <sup>41</sup> IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*, Ch. II, para.

<sup>42</sup> IACHR, *Annual Report 1984-85*, OEA/Ser.L/V/II.66, Ch. IV, Guatemala, “Absence of Legal Measures for Protection.”

99. <sup>43</sup> IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*, Ch. II, para.

<sup>44</sup> CEH, *Guatemala: Memory of Silence*, Vol. II, Ch. 2, Title XI: Forced Disappearances, p. 406.

<sup>45</sup> CEH, *Guatemala: Memory of Silence*, Vol. II, Ch. 2, Title XI: Forced Disappearances, p. 412; see also p. 458.

<sup>46</sup> CEH, *Guatemala: Memory of Silence*, Vol. II, Ch. 2, Title XI: Forced Disappearances, p. 412.

through forced disappearances, at the leaders and complete senior cadres of trade unions, student associations, and political and grassroots organizations.<sup>47</sup>

83. In turn, the Inter-American Court of Human Rights (hereinafter “the Inter-American Court”), in the *Case of Molina Theissen v. Guatemala*, made the following observations regarding forced disappearances in Guatemala:

When the facts took place [1981], the forced disappearance of persons was a State practice carried out principally by members of the security forces. The purpose of this practice was to dismantle movements or organizations that the State identified as having “insurgency” tendencies and to instill fear into the population;

The State based itself on the “National Security Doctrine” to characterize a person as “subversive” or as an “internal enemy,” and this could be anyone, who genuinely or allegedly supported the fight to change the established order. The victims hailed from all sectors of Guatemalan society: leaders of grassroots or opposition organizations, workers, peasants, teachers, student leaders, members of religious orders or their lay helpers.<sup>48</sup>

84. The CEH directly blamed the Guatemalan State for the systematic practice of forced disappearances and concluded that “forced disappearance was the result of the implementation of the counterinsurgency strategy adopted by the State in Guatemala.”<sup>49</sup> It also concluded that the “forced disappearances involved military intelligence, the Army, the Presidential General Staff, the National Police, the Treasury Guard, and the paramilitary groups, which acted either independently or in concert.”<sup>50</sup> The CEH concluded that “forced disappearance was a part of the intelligence operations and, consequently, an intelligence goal was also sought through its implementation.”<sup>51</sup>

85. However, “in analyzing the forced disappearances [...] the CEH was unable to determine exactly the decision center from which the orders to commit the bloodiest acts and operations were given.”<sup>52</sup> In this regard, the CEH noted the fact that “it has not received a single document informing it about the activities of the intelligence services,” even though the State’s authorities “were legally obliged to support the Commission, in accordance with Article 10 of the National Reconciliation Law.”<sup>53</sup> In a letter sent to Álvaro Arzú Irigoyen, then serving as President of Guatemala, on October 28, 1997, the CEH asked him “emphatically [...] to issue orders to give the Commission [...] unrestricted access to all the government’s archives, including the case files of the

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<sup>47</sup> CEH, *Guatemala: Memory of Silence*, Vol. II, Ch. 2, Title XI: Forced Disappearances, p. 430.

<sup>48</sup> I/A Court H. R., *Case of Molina Theissen v. Guatemala*, Merits, Judgment of May 4, 2004, Series C No. 106, paras. 40.1 and 40.2. See also: I/A Court H. R., *Case of Tiu Tojin v. Guatemala*, Merits, Reparations, and Costs, Judgment of November 26, 2008, Series C No. 190, para. 49.

<sup>49</sup> CEH, *Guatemala: Memory of Silence*, Vol. II, Ch. 2, Title XI: Forced Disappearances, p. 411.

<sup>50</sup> CEH, *Guatemala: Memory of Silence*, Vol. II, Ch. 2, Title XI: Forced Disappearances, pp. 458-59.

<sup>51</sup> CEH, *Guatemala: Memory of Silence*, Vol. II, Ch. 2, Title XI: Forced Disappearances, p. 424.

<sup>52</sup> CEH, *Guatemala: Memory of Silence*, Vol. II, Ch. 2, Title I: Introduction, p. 14; see also: Ch. XI: Forced Disappearances, p. 459.

<sup>53</sup> CEH, *Guatemala: Memory of Silence*, Vol. II, Ch. 2, Title I: Introduction, p. 15. Article 10 of the National Reconciliation Law, Decree No. 145-96, provides:

The Commission for Historical Clarification of the human rights violations and acts of violence that have caused the Guatemalan population to suffer, created by the Oslo Accords of June 23, 1994, is instructed to design methods intended to make it possible to know and acknowledge the historical truth about the period of the internal armed conflict in order to avoid the future repetition of such incidents. To that end, the agencies and entities of the State are to provide the Commission with the support that it requests.

'Archive' and of the military intelligence agencies."<sup>54</sup> However, in its final report, the CEH described as "precarious and unsatisfactory the assistance provided by the National Army," and noted that "nor was the CEH able to review any official documents related to the Presidential General Staff."<sup>55</sup> Among the "emblematic cases" that the CEH attempted to clarify were those of Sergio Saúl Linares Morales and Rubén Amílcar Farfán,<sup>56</sup> both victims in the case at hand.

### 3. The *Diario Militar*

86. On May 20, 1999, the nongovernmental organization National Security Archive<sup>57</sup> published a document, later known as the "Death Squad Dossier" or "Military Diary," which contained a register of operations in Guatemala – abductions, secret arrests, and, in many cases, killings – along with information on the victims of those operations. According to the organization's analysis, it is an "authentic document, produced by state agents, specifically by the Guatemalan presidential intelligence office, also known as 'the Archive,' drawn up between August 1983 and March 1985."<sup>58</sup>

87. The *Diario Militar* comprises six sections. Of these, the sixth section is the part of greatest relevance to the case at hand. Over 53 pages, it contains a record of actions taken against some 183 people,<sup>59</sup> most of them with photographs, personal details (age, sex, occupation), alleged

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<sup>54</sup> CEH, *Guatemala: Memory of Silence*, Vol. XII, Annex III, Title 2: Selected Correspondence between the CEH and the Institutions of the Republic of Guatemala, p. 70.

<sup>55</sup> CEH, *Guatemala: Memory of Silence*, Vol. I, Working Mandate and Procedure, Ch. III: Collaboration of the Parties, pp. 49, 50.

<sup>56</sup> CEH, *Guatemala: Memory of Silence*, Vol. VI, Annex I, Typical Case No. 48, pp. 145-153.

<sup>57</sup> The National Security Archive is an independent nongovernmental research institute and library located at The George Washington University in Washington, D.C.

<sup>58</sup> Original petition, received on December 9, 2005: Annex V, Analysis of the *Diario Militar* prepared by Katharine Doyle, dated May 26, 2005.

<sup>59</sup> See: *Diario Militar*, Annex I of the original petition, received from the petitioners on December 9, 2005. Those people are: Teresa Graciela Samayoa Morales, Juan Ramiro Estuardo Orozco López, Gustavo Adolfo Meza Soberanis, Rosa María Castillo Samayoa, Mynor Elvidio Giron Cabrera, Rodrigo Morales Lemus, César Augusto Ovalle Villatoro, Miriam Elizabeth Domínguez Herrera, José Miguel Gudiel Álvarez, Carlos Humberto Quinteros García, Juan Matías Palacios, Héctor Rolando Valdez Guzmán, Andrés Pastor González, José Luis Monterroso Marroquín, Édgar Eugenio Fuentes Orozco, Carlos Alfredo Fuentes González, Orencio Sosa Calderón, Óscar Leonel Velásquez Bautista, Amílcar Blandemiro Orozco y Orozco, Víctor René López Pérez, José Venancio Aguish Asbal, Santiago Rodríguez Melgar, Benjamin Rolando Orantes Zelada, Héctor Felipe Villegas Ramos, Carlos Eugenio de León Gudiel, Jorge Alfonso Gregorio Velásquez Soto, Jorge Alberto Chávez Vásquez, Héctor Manuel de León Escobar, Carlos Rolando Penagos Arrecis, Óscar Eduardo Barillas Barrientos, Claudina Betzabe Salazar Barrera, Víctor Manuel Herrera Montenegro, Carlos Guadalupe Herrera Montenegro, Alma Lucrecia Osorio Bobadilla, Evelia Girón Ruano, Arnoldo Hernández García, Pedro Reanda Toc, Víctor Manuel Sánchez Saj, Isabel Roche Reyes, César Augusto Dávila Estrada, José Porfirio Hernández Bonilla, Octavio René Guzmán Castañeda, José Guillermo Pelaez Gramajo, Walter Omar Sánchez Cancinos, Juan Alberto Sánchez Manuel, Rebeca Leticia Bautista Rosas, Álvaro Zacarías Calvo Pérez, David Rauda Solares, Víctor Manuel Calderón Díaz, Mark Rolando Colindres Estrada, Héctor Manuel Méndez Carballo, Prudencio de Jesús Carrera Camey, Jorge Mauricio Gatica Paz, Miguel Ángel Reyes González, Amancio Samuel Villatoro, Carlos Eduardo Galindo Espinoza, Tomar Vargas Boror, Alfonso Alvarado Palencia, Milquicidet Miranda Contreras, Sergio Vinicio Samayoa Morales, Allan Gatica Paz, Victoriano Balam Yool, Sergio Manfredo Belteton de León, Leonso García Ramos, José Luis Villagrán Díaz, Eladio Culajay Castañeda, Gregorio Aguilar López, Manuel Ismael Salanic Chiguil, Carlos Guillermo Ramírez Gálvez, Luis Alberto Ortiz Quintanilla, César Augusto Suruy Cano, Jorge David Calvo Drago, Marcial Xil Chocoj, Jorge Roberto Calvo Barajas, Santiago López Aguilar, Julio César Pereira Vásquez, Sergio Saul Linares Morales, Zoilo Canales Salazar, Eleuterio Leopoldo Cabrera García, Moisés Canales Godoy, Juan de Dios Samayoa Velásquez, Hugo Salazar Aspiac, Gustavo Interiano Gómez, Hugo Adail Navarro Mérida, Fernando Arturo Gálvez Martínez, Luz Haydeé Méndez Calderón, Luz Haydeé Méndez Calderón, Ambrosio Pacheco García, Faustina Castro Hernández de Pacheco, Juan Pablo Armira López, Álvaro René Sosa Ramos, Moisés Saravia López, Ruddy Alberto Villeda Padilla, Rosalía López Gómez, Mario Enrique Chávez Ovalle, Silvio Matricardi Salan, Edwin Rogelio Rivas Rivas, María Quirina Armira López, Patricio Yool Osorio, Fabián Estrada Satuy, Visitación Baxcaj Pineda, Adriana Chocoj Culajay, Narcisca Cusanero Xian, María Zoe Oreno Armira, Brigido Antonio Xajil Hernández, Joaquín Simon Miza, María Quirina Armira López, Juan Pablo Armira López, Valentín de la Roca Solórzano, José Luis Rivas, Julio René Estévez Rodríguez, Antonio Ovando Sánchez, Anadino Julián de León Salguero, Continues....

ties with opposition and/or insurgent groups, links to other people suspected of subversive activities, and details on the circumstances of their detention, such as place, date, and ultimate fate. This section is in chronological order by date of capture, starting in November 1983 and concluding in March 1985.<sup>60</sup>

88. The document contains coded references to the ultimate fate of some of the victims. The codes "300," "left with Pancho," "taken by Pancho," and "left (+)" were used to indicate that the person had been killed; 93 individuals are flagged with those codes. In 26 cases, the abductors released the victims in order to obtain information on other persons, and that situation was described as "free for contacts" or "regained freedom." No information on the person's fate is provided in 16 cases.<sup>61</sup>

89. According to the affidavit and expert testimony of Ms. Katharine Doyle of the National Security Archive, the authenticity of the *Diario Militar* was shown by corroborating the incidents it describes with contemporary documents describing the same events. The documents used for that purpose included declassified documents from the U.S. government, reports by human rights organizations such as Amnesty International and Human Rights Watch, and reports by the Inter-American Commission on Human Rights.<sup>62</sup> Indeed, several of the individuals named in the *Diario Militar* and identified as victims in the case at hand were also named in the *Third Report on the Situation of Human Rights in the Republic of Guatemala*, published in October 1985.<sup>63</sup>

90. Ms. Doyle also used declassified documents from the United States government and, later, documents from the Historical Archive of the National Police of Guatemala to reach the conclusion that the military intelligence service of the Presidential General Staff, known as "the

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...continuation

Gabriel Humberto Pérez Car, Tranquilino Morales Xajil, Nicolás Castellanos Alvarado, Édgar Gerardo Rivera Arévalo, José Zenon Hernández Cusanero, Mario Oreno Armira, Max Byron López Pérez, Omar Darío Vásquez Abadilla, Fidel Antonio Ávila Revolorio, Jorge Rolando Hass Meléndez, Adolfo Joel Hermosilla Noriega, Nandres Gutiérrez García, Eduardo Villatoro Toledo, Mateo Lindo Macario, Édgar Saturnino Gutiérrez Cabrera, Pablo Francisco Ramírez Rodas, Sandra Isabel Natareno Vásquez, Alejandro Hernández González, Manuel Alfredo Baiza Molina, Otto Leonel Juárez Ramírez, Julio René Casasola Reyes, [illegible] Lima, Maura Hortensia Tobar Lima, Félix Estrada Mejía, Carlos Ernesto Cuevas Molina, Otto René Estrada Illescas, Rubén Amílcar Farfán, José Luis de León Díaz, Godofredo Bravo Velásquez, Tyrone Hamilton Neal Estrada, Sergio Leonel Alvarado Arévalo, Pedro Caal Xol, Candelaria Pop Coy, Pablo Cuz Moo, Loreto Ico Toc, [illegible] Choc, Gerardo Ico Chub, Osvaldo López Hernández, Pablo Gilberto Hernández, Mario Hernández [illegible], Osbar Darío Lobos Osorio, David Rivera Chacon, Nicolás Upun Xinico, Flavio Sinico [illegible], [illegible] Rafael Ramírez Cananui, Marta Lidia [illegible], Pablo Ejcalon Batz, José Rodolfo Reyna López, Julio Alberto Estrada Illescas, Luis Arturo Arroyo Hernández, Crescencio Gómez López, Dina Patricia Cardoza Rodríguez, Yolanda Consuelo Rodríguez Arteaga, Eswín Raúl Jiménez Murcia, Édgar Rolando Bonilla Santiago, Gustavo Adolfo Pérez de León, Édgar Estuardo Cetino Garnica, Alfredo Estuardo Cifuentes Navarro, Luis Rolando Peñate Lima, Rudy Gustavo Figueroa Muñoz, José Leonel Vásquez Hernández, Daniel Vásquez García, Édgar Orlando Ramazzini Herrera, Cruz Coco Mijangos, Eusebio Coc Rompich, Carlos Humberto Carballo Cabrera, Arnoldo Rolando Guerra Castellanos, Joaquín Rodas Andrade, and Ricardo Gramajo Cifuentes.

<sup>60</sup> See: *Diario Militar*. See also: Secretariat for Peace of the Office of the President of the Republic of Guatemala, *The Authenticity of the Diario Militar*, Guatemala, May 2009, pp. 23-24. In addition, see: Original petition, received on December 9, 2005: Annex V, Analysis of the *Diario Militar* prepared by Katharine Doyle, dated May 26, 2005.

<sup>61</sup> See: *Diario Militar*. See also: Secretariat for Peace of the Office of the President of the Republic of Guatemala, *The Authenticity of the Diario Militar*, Guatemala, May 2009, pp. 23-24.

<sup>62</sup> Original petition, received on December 9, 2005: Annex V, Analysis of the *Diario Militar* prepared by Katharine Doyle, dated May 26, 2005; and IACHR, Public Hearing of October 12, 2007, on Case 12.590, José Miguel Gudiel Álvarez and others (*Diario Militar*), Guatemala, (Witness Statement), 130th regular session, expert testimony from Katharine Doyle. See hearing at <http://www.cidh.org>.

<sup>63</sup> Those people were: Óscar Eduardo Barillas Barrientos, Octavio René Guzmán Castañeda, Amancio Samuel Villatoro, Manuel Ismael Salanic Chiguil, Carlos Guillermo Ramírez Gálvez, Sergio Saúl Linares Morales, Luz Haydeé Méndez Calderón, Otto René Estrada Illescas, Lesbia Lucrecia García Escobar, Rubén Amílcar Farfán, Orencio Sosa Calderón, Víctor Manuel Calderón Díaz, Sergio Leonel Alvarado Arévalo, and Rudy Gustavo Figueroa Muñoz. *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*, Ch. II.



Archive," was responsible for the actions recorded in the *Diario Militar*.<sup>64</sup> According to Ms. Doyle, the nature of these actions, carried out on a selective basis between 1983 and 1985 by an operations unit that was capable of coordinating with almost all the country's intelligence and police agencies, also points to the responsibility of the Archive.<sup>65</sup>

91. During the processing of the instant case, the Guatemalan State acknowledged the authenticity of the *Diario Militar*. At a hearing held on October 12, 2007, the State's representative said: "We reiterate the position of the Guatemalan State: not to challenge the authenticity of the document, but to find the persons responsible."<sup>66</sup> In addition, in a communication of April 16, 2009, the State referred to a report being prepared by the Secretariat for Peace of the Office of the President of the Republic of Guatemala that "will strengthen the evidence pointing to the authenticity of the document known as the *Diario Militar*."<sup>67</sup> In effect, in May 2009, the Secretariat for Peace published its report titled *The Authenticity of the Diario Militar, in Light of the Historical Documents of the National Police*. According to this report, produced by the State of Guatemala itself, the *Diario Militar* "represents irrefutable proof of the actions and the abhorrent counterinsurgency logic followed by the State's security forces against the so-called 'internal enemy'."<sup>68</sup>

92. The Commission takes it as proven that the document known as the *Diario Militar* is authentic, that it was drawn up by the Guatemalan military intelligence service, and that its sixth section records repressive actions carried out by the Guatemalan State's security forces between August 1983 and March 1985.

#### 4. The victims in the case at hand

93. In this section, the Commission will set out the facts it believes to have been proven with respect to the victims in this case. The IACHR notes that while the *Diario Militar* refers to 183 people, in the case at hand the petitioners named only 27 of the people listed in that document as victims, along with some of their family members. From the *Diario Militar* itself and other available information, the Commission has reached the conclusion that a larger number of people – including other individuals named in the *Diario Militar*<sup>69</sup> and other relatives of the victims named in the case at hand – must have undergone similar situations to the ones documented in this case. The Commission will therefore analyze the established facts with respect to the alleged victims whose cases are a part of the present case, without prejudice to the State's obligation of ensuring, without discrimination, the rights to truth, justice, and reparation of all the possible victims of the incidents recorded in the *Diario Militar* as well as of their next-of-kin.

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<sup>64</sup> Original petition, received on December 9, 2005: Annex V, Analysis of the *Diario Militar* prepared by Katharine Doyle, dated May 26, 2005; IACHR, Public Hearing of October 12, 2007, on Case 12.590, José Miguel Gudiel Álvarez and others (*Diario Militar*), Guatemala, (Witness Statement), 130th regular session, Statement of Katharine Doyle; and IACHR, Public Hearing of October 22, 2008, on Case 12.590, José Miguel Gudiel Álvarez and others (*Diario Militar*), Guatemala, 133rd regular session, Statement of Katharine Doyle. See hearings at <http://www.cidh.org>.

<sup>65</sup> IACHR, Public Hearing of October 22, 2008, on Case 12.590, José Miguel Gudiel Álvarez and others (*Diario Militar*), Guatemala, 133rd regular session, Statement of Katharine Doyle. See hearing at <http://www.cidh.org>.

<sup>66</sup> IACHR, Public Hearing of October 12, 2007, on Case 12.590, José Miguel Gudiel Álvarez and others (*Diario Militar*), Guatemala, (Witness Statement), 130th regular session, Address by Frank La Rue, President of the Presidential Human Rights Commission of Guatemala.

<sup>67</sup> Submission from the State of Guatemala, received on March 17, 2009, p. 11.

<sup>68</sup> Secretariat for Peace of the Office of the President of the Republic of Guatemala, *The Authenticity of the Diario Militar*, Guatemala, May 2009, p. xiii.

<sup>69</sup> See footnote 60, *supra*.

**a. José Miguel Gudiel Álvarez**

94. José Miguel Gudiel Álvarez was aged 23 at the time of his forced disappearance.<sup>70</sup> In 1976, when his father was being targeted by the security forces on account of his work as a catechist, Gudiel Álvarez was forced to take charge of his entire family's subsistence by working at the La Unión mill as a bricklayer's assistant.<sup>71</sup>

95. The victim was the third of seven children. His sister Makrina Gudiel Álvarez noted that their father, under the influence of liberation theology, had brought his children up in line with principles of equality, and this led them to play an active part in grassroots church communities and in cooperative movements. According to Makrina, this social activism made her brother a target for the agencies of the State's repression: "Any person involved in a trade union, [...] in a corporativist movement, [...] or who was a Christian who called for decency in life was singled out as a communist, or as a guerrilla, or as an insurgent [...]. Our family did not escape that. My father and my brother were the first people identified in the community as having ties to a guerrilla movement."<sup>72</sup>

96. José Miguel Gudiel Álvarez and his father believed they were being watched by clandestine and paramilitary groups. Makrina Gudiel Álvarez recalled that those organizations "used to distribute leaflets, and in one of them the names of my father and brother appeared, identifying them as people who would soon be abducted on account of their activities in the community."<sup>73</sup>

97. In 1980, because of the worsening violence in rural areas, the victim moved to Guatemala City,<sup>74</sup> where he enrolled in the Organization of the People in Arms (hereinafter "the ORPA").<sup>75</sup> Until 1983, the year when he disappeared, he worked as a carpenter.<sup>76</sup>

98. On September 22, 1983, José Miguel Gudiel Álvarez<sup>77</sup> was abducted by agents of the state security forces in Isabel La Católica Park, in Guatemala City's Zone 2. The owner of the house he was renting described to his father how the incident unfolded. On September 22, the house where Gudiel Álvarez lived with his girlfriend was illegally raided by agents of the State's

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<sup>70</sup> Original petition, received on December 9, 2005: Annex XXV-I, Statement of Yolanda Gudiel Alvarez, dated October 13, 2004.

<sup>71</sup> Original petition, received on December 9, 2005: Annex XXV-H, Statement of Beatriz Gudiel Alvarez, dated October 13, 2004; and Annex XXV-C, Statement of Florentín Gudiel Ramos, dated October 11, 2004.

<sup>72</sup> Petitioners' submission, received on March 23, 2009. Statement of Makrina Gudiel Álvarez, dated March 24, 2008.

<sup>73</sup> Petitioners' submission, received on March 23, 2009: Statement of Makrina Gudiel Álvarez, dated March 24, 2008.

<sup>74</sup> Original petition, received on December 9, 2005: Annex XXV-E, Statement of Makrina Gudiel Álvarez, dated October 13, 2004.

<sup>75</sup> Original petition, received on December 9, 2005: Annex XXV-C, Statement of Florentín Gudiel Ramos, dated October 11, 2004.

<sup>76</sup> Original petition, received on December 9, 2005: Annex XXV-C, Statement of Florentín Gudiel Ramos, dated October 11, 2004.

<sup>77</sup> In the CEH's report, the case of José Miguel Gudiel Álvarez is described in the following terms: "FORCED DISAPPEARANCE. Identified victims: José Miguel Gudiel Álvarez. On September 21, 1983, at 1st Street 2-55, Zone 1, in Guatemala City, presumed members of the security forces abducted José Miguel Gudiel Álvarez, a member of the ORPA, along with a female companion from the militia whose personal details are unknown. Since then, the whereabouts of the victims has remained unknown. During the abduction, they beat Francisco, surname unknown, the owner of the house where they lived, so severely that he was left unrecognizable." CEH, *Guatemala: Memory of Silence*, Vol. VIII, Submitted Cases, Annex II, p. 381. According to José Miguel Gudiel Álvarez's family, his forced disappearance took place on September 22, 1983.

security forces traveling in four large Jeeps. The agents beat and detained Gudiel Álvarez girlfriend, who was at home, along with the house's owner. José Miguel Gudiel Álvarez managed to make an escape across the rooftops, but he was captured shortly afterwards. The agents reportedly seized all the house's contents and, according to contemporary newspaper reports, they were later sold at auction.<sup>78</sup>

99. The *Diario Militar* identifies José Miguel Gudiel Álvarez's case as No. 9: "(aka) ERNESTO or MANUEL. False name: RIGOBERTO ÁLVAREZ TOBAR. Student and reporter. Was in Guerrilla Front No. 6, from which he deserted. 22-09-83: Captured at Isabel La Católica Park. Sent to Coatepeque."

100. The forced disappearance of José Miguel Gudiel Álvarez had a profound effect on his family, as did their forced exile in Mexico as a result of the disappearance. His father<sup>79</sup> explained that José Miguel's arrest had a particular impact on his mother, who was never able to overcome the pain of not knowing what had happened to her son. The Gudiel family's younger children were forced to abandon their studies to assist the family with its precarious economic situation. His sister Makrina Gudiel Álvarez said that she suffered greatly when she thought about her brother and remembered the terror felt by family when they thought about the "torture the soldiers would be inflicted on him, what they made him say (...), who would be the next family member" to be detained. She also explained that not knowing what had happened to her brother caused her great sorrow: "We often remember the torture he went through; no doubt while he was being held my brother cried, asked for mercy, asked for help, thought about each one of us, his family." His sister Beatriz Gudiel Álvarez, in contrast, said that her greatest hope was to find her brother: "It's sad not to know where his remains are; I would just like to know where his bones are, to pay them the respect they deserve."<sup>80</sup>

101. The victim's family, in exile in Mexico until 1997, pursued no domestic remedies because they feared they would be killed or disappeared,<sup>81</sup> but they did make presentations to humanitarian organizations in the United States and to the United Nations General Assembly in Geneva.<sup>82</sup>

102. In 1999, after the publication of the *Diario Militar*, the family filed a complaint with the Association of Families of the Arrested and Disappeared in Guatemala (hereinafter "FAMDEGUA").<sup>83</sup>

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<sup>78</sup> Original petition, received on December 9, 2005: Annex XXV-C, Statement of Florentín Gudiel Ramos, dated October 11, 2004. The victim's case appears among the people abducted and disappeared in 1983 in the document "History of Our Community", Committee for Peasant Unity, Guatemala, first edition, July 2001. See: Original petition, received on December 9, 2005: Annex XXV-M. See also: State's submission, received on October 17, 2008, Annex II, Victim's information record at FAMDEGUA, p. 1.

<sup>79</sup> Florentín Gudiel Ramos was killed in Guatemala on December 20, 2004. IACHR, Petition 1420-04 (Florentín Gudiel Ramos, Makrina Gudiel Alvarez).

<sup>80</sup> Original petition, received on December 9, 2005: Annex XXV-C, Statement of Florentín Gudiel Ramos, dated October 11, 2004; Annex XXV-E, Statement of Makrina Gudiel Álvarez, dated October 13, 2004; Annex XXV-H, Statement of Beatriz Gudiel Alvarez, dated October 13, 2004.

<sup>81</sup> Original petition, received on December 9, 2005: Annex XXV-E, Statement of Makrina Gudiel Álvarez, dated October 13, 2004.

<sup>82</sup> Original petition, received on December 9, 2005: Annex XXV-C, Statement of Florentín Gudiel Ramos, dated October 11, 2004.

<sup>83</sup> Original petition, received on December 9, 2005: Annex XXV-P, Victim's general information record at FAMDEGUA. FAMDEGUA was one of the first organizations of victims and their families to pursue investigations into the actions of the state forces during the internal conflict. See also: State's submission received on October 17, 2008: Annex II, Victim's information record at FAMDEGUA, p. 2. See also: State's submission, received on October 17, 2008: Annex II, Statement of Makrina Gudiel Alvarez to the Public Prosecution Service, dated April 8, 2008, p. 44.

103. In connection with the domestic investigations, the State reported that in 1999 a statement was taken, and the Presidential General Staff, the Guatemala City government, and the General Migration Directorate were asked to furnish information. In 2002, reports were requested from the Supreme Electoral Tribunal (hereinafter “the TSE”) and from the Superintendency of the Tax Administration (hereinafter “the SAT”). In 2006, the USAC, the Association of Journalists of Guatemala, the Department of Traffic, the SAT, and the General Migration Directorate were asked to provide information; the certification of the victim’s birth certificate and ID card was requested, along with those of his next-of-kin; and his relatives were summoned to give statements. In 2008, the victim’s mother and sister (twice) were interviewed, and information was requested from the USAC, the Land Registry and Real-estate Evaluation Directorate, the office of the Ombudsman for Human Rights, the National Redress Program, and the Guatemalan Forensic Anthropology Foundation.<sup>84</sup>

104. Makrina Gudiel Álvarez offered some thoughts on the meaning of justice in the context of the repression in Guatemala. “It hurts to speak about those events, but at the same time it is a form of healing [...]. Justice, for me, means the State recognizing that its policy reached the cruel and inhumane extreme of making a person disappear. [...] We want information... What happened to my brother? What did they do to my brother? [...] We have the right to know.”<sup>85</sup> Regarding possible reparations, Makrina thought the main form of redress for them is memory. “Is redress building a school with my brother’s name? Ultimately, [building schools] is the State’s responsibility... For me, [redress] is for the nation to know, to be able, through the testimony of what they did to my brother, [to know] that they did it to thousands who don’t have the same opportunity as those of us who are in the *Diario Militar* [who] have a connection through which we can seek justice.”<sup>86</sup>

105. According to the information provided by the petitioners and not disputed by the State, the following people have been identified as members of José Miguel Gudiel Álvarez’s family affected by his forced disappearance: Florentín Gudiel Ramos (victim’s father), María Agripina Álvarez de Gudiel (victim’s mother), Makrina Gudiel Álvarez (victim’s sister and petitioner), Yolanda Gudiel Álvarez (victim’s sister), Beatriz Gudiel (victim’s sister), José Francisco Gudiel Álvarez (victim’s brother), Florentín Gudiel Álvarez (victim’s brother), and Ana Patricia Gudiel Álvarez (victim’s sister).<sup>87</sup>

**b. Orencio Sosa Calderón<sup>88</sup>**

106. Orencio Sosa Calderón was 39 years old on October 25, 1983, at the time of his forced disappearance. He was the sixth of seven siblings, and was married with four children. A

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<sup>84</sup> State’s submission, received on October 17, 2008: Annex II, Request for information sent by the Public Prosecution Service to the USAC on July 12, 2006, p. 20; Request for information sent by the Public Prosecution Service to the Land Registry and Real-estate Evaluation Directorate on April 15, 2008, p. 46; Request for information sent by the Public Prosecution Service to the office of the Ombudsman for Human Rights on April 15, 2008, p. 48; and Request for information sent by the Public Prosecution Service to the Forensic Anthropology Foundation on July 3, 2008, p. 52.

<sup>85</sup> Petitioners’ submission, received on March 23, 2009: Statement of Makrina Gudiel Álvarez, dated March 24, 2008.

<sup>86</sup> Petitioners’ submission, received on March 23, 2009: Statement of Makrina Gudiel Álvarez, dated March 24, 2008.

<sup>87</sup> Petitioners’ submission, received on June 22, 2010.

<sup>88</sup> During the IACHR’s on-site visit to Guatemala in May 1985, it received information on the forced disappearance of Orencio Sosa Calderón. See: IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*, Ch. II, Forced Disappearance of Persons.

surgeon by profession, he served as the President of the Association of Medical Residents at San Juan de Dios Hospital in Guatemala City. He also worked at the Carroll Behrhorst Development Foundation in Guatemala, was a professor at USAC's School of Medical Sciences, and was involved in a research project at that same university.<sup>89</sup>

107. In 1970, he was detained by Army troops for the first time. At the time, Sosa Calderón worked at the General Hospital, where he was the chief resident. His colleagues organized a three-day national strike, affecting the country's entire health system, which ended when Sosa Calderón turned up on the San Lucas highway, alive but showing signs of having been tortured. Sosa Calderón's family did not report the incident because his abductors said they would kill them if he said anything.<sup>90</sup>

108. On October 24, 1983, two men with gunshot wounds entered the hospital where we worked, and he operated on them. While the injured men were still under the effect of anesthesia, four men tried to take them away. Sosa Calderón stood in their way because the men had just been operated on and because the state agents had no warrant for their arrest. Before leaving, the agents made threats against his life.<sup>91</sup>

109. On October 25, 1983, four men with machine-guns removed Sosa Calderón<sup>92</sup> from his car and pushed him into a white pickup truck with no license plates. They also took his vehicle, which was never located. Witnesses of the operation reported hearing gunshots during the abduction.<sup>93</sup> That same day, his wife and children traveled from Antigua Guatemala to the capital, to the home of an aunt. On the way, they were followed by vehicle carrying heavily armed men. After a week, the victim's family went into exile in Mexico because of their fear of becoming victims of state repression.<sup>94</sup>

110. The *Diario Militar* refers to Orencio Sosa Calderón's case as No. 17: "(aka) VICENTE. Was a member of the D.N. of the PGT.<sup>95</sup> P.C., founder of the Party's Medical Commission. Responsible for getting foreign correspondents in to film various guerrilla fronts. 25-10-83: Captured in Chimaltenango, while on the way to Antigua Guatemala, Sacatepéquez. Offered resistance, firing at his captors. 07-02-84: 300."

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<sup>89</sup> Original petition, received on December 9, 2005: Annex XXVI-G, Statement of Laurenta Marina Sosa Calderón, dated October 18, 2004.

<sup>90</sup> Original petition, received on December 9, 2005: Annex XXVI-H, Statement of Iris Carolina Sosa Pérez, dated October 21, 2004.

<sup>91</sup> Original petition, received on December 9, 2005: Annex XXVI-G, Statement of Laurenta Marina Sosa Calderón, dated October 18, 2004.

<sup>92</sup> In the CEH's report, the case of Orencio Sosa Calderón is described in the following terms: "Chimaltenango. Army. Arbitrary Execution. Year: 1982. Case: 295. Certainty: 3. Between 1980 and 1984, in the department of Chimaltenango, 30 or 40 people, mostly health promoters trained by the Behrhorst Foundation, suffered forced disappearances, extrajudicial killings, or displacements. Identified victims: [...] Orencio Sosa Calderón [...]". "Chimaltenango. Other Security Forces. Year: 1982. Certainty: 3. Case: 8221. On October 28, 1982, in the municipal seat of Chimaltenango, department of Chimaltenango, presumed Army security forces wounded and abducted Dr. Orencio Sosa Calderón, who the previous day had prevented members of the security forces from taking three of his patients from the hospital. Since then, nothing is known about the victim. Identified victims: Orencio Sosa Calderón." CEH, *Guatemala: Memory of Silence*, Vol. VIII, Submitted Cases, Annex II, pp. 190 and 253. Available at: [http://shr.aaas.org/guatemala/ceh/gmds/pdf/anexo2\\_1.pdf](http://shr.aaas.org/guatemala/ceh/gmds/pdf/anexo2_1.pdf).

<sup>93</sup> Original petition, received on December 9, 2005: Annex XXVI-G, Statement of Laurenta Marina Sosa Calderón, dated October 18, 2004.

<sup>94</sup> Original petition, received on December 9, 2005: Annex XXVI-H, Statement of Iris Carolina Sosa Pérez, dated October 21, 2004.

<sup>95</sup> Guatemalan Labor Party.

111. The forced disappearance of Sosa Calderón had a profound effect on his family. His sister, Laurenta Marina Sosa Calderón, who had practically raised him following their mother's untimely death, said that after his abduction, she was unable to enter his room because of the sorrow she felt. Laurenta said that her niece – one of Orencio's daughters – always maintained that the family had not done enough to find out where her father's body was so she could take him flowers.<sup>96</sup> She also believed that Orencio's forced disappearance had a particular impact on his children, in both economic and psychological terms, and she reported that her brother's wife had to seek exile in Mexico following the disappearance of her husband.<sup>97</sup>

112. Iris Carolina Sosa Pérez, Sosa Calderón's daughter, said that the appearance of the *Diario Militar* was very painful: "It hurts me enormously to know that my father managed to stay alive so long, three months and 12 days of torture, [and] to think about what kind of torture they did to him," she said.<sup>98</sup> Sosa Calderón's daughter Merlín told her sister Iris that what hurt her the most was being unable to be with her father to console him. "It made her very sad to think that the last thing my father heard was the voice of his torturers."<sup>99</sup> Iris Carolina stated that following her father's disappearance, she experienced progressive depression, which got worse over time and involved two suicide attempts, in October 2003 and February 2004. She blames that illness on not having been able to do more for her father, the sorrow of not knowing where he was, and the powerlessness caused by the lack of justice.<sup>100</sup>

113. The victim's family reported the disappearance to the media and pursued formalities at morgues across the country and at municipal cemeteries in Chimaltenango.<sup>101</sup> In addition, the former Rector of the USAC issued a press release in connection with the victim's disappearance, demanding that he be returned alive.<sup>102</sup>

114. His family reported the case to the Guatemalan Commission for Human Rights, a nongovernmental organization,<sup>103</sup> and in November 1983, they met with the dictator Gen. Mejía Víctores, but obtained no concrete results.<sup>104</sup> On August 6, 1984, the family lodged a criminal complaint with the National Police; this was processed by the First-Instance Court of Chimaltenango Department but revealed no information about the whereabouts of the victim.<sup>105</sup> That same year, a

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<sup>96</sup> Original petition, received on December 9, 2005: Annex XXVI-G, Statement of Laurenta Marina Sosa Calderón, dated October 18, 2004.

<sup>97</sup> Petitioners' submission, received on March 23, 2009: Statement of Laurenta Marina Sosa Calderón, dated March 24, 2008.

<sup>98</sup> Original petition, received on December 9, 2005: Annex XXVI-H, Statement of Iris Carolina Sosa Pérez, dated October 21, 2004.

<sup>99</sup> Original petition, received on December 9, 2005: Annex XXVI-H, Statement of Iris Carolina Sosa Pérez, dated October 21, 2004.

<sup>100</sup> Original petition, received on December 9, 2005: Annex XXVI-H, Statement of Iris Carolina Sosa Pérez, dated October 21, 2004.

<sup>101</sup> Original petition, received on December 9, 2005: Annex XXVI-G, Statement of Laurenta Marina Sosa Calderón, dated October 18, 2004.

<sup>102</sup> Original petition, received on December 9, 2005: Annex XXVI-K. USAC communiqué No. 324/83, "Rector expresses concern at the abduction of two doctors and the disappearance of a pharmacy student," dated November 2, 1983.

<sup>103</sup> Original petition, received on December 9, 2005: Annex XXVI-L, Note sent to the Guatemalan Commission for Human Rights, February 1984.

<sup>104</sup> Original petition, received on December 9, 2005: Annex XXVI-G, Statement of Laurenta Marina Sosa Calderón, dated October 18, 2004.

<sup>105</sup> Original petition, received on December 9, 2005: Annex XXVI-LL, Certificate issued by the First-Instance Court of Chimaltenango Department, dated June 25, 1985.

*habeas corpus* remedy was filed with the Supreme Court of Justice.<sup>106</sup> On November 4, 1986, he was declared presumed dead.<sup>107</sup>

115. In 1999, the family lodged a new complaint with the Public Prosecution Service and with FAMDEGUA<sup>108</sup> and, in 2002, one of the victim's sisters gave a statement to the Public Prosecution Service.<sup>109</sup>

116. In its domestic investigations, the State reported that in 1999 his next-of-kin were called to appear; the victim's police record was requested; information was sought from the USAC, the Association of University Students (hereinafter "the AEU"), the National Police, the Ministry of National Defense; and a request was made for the certification of the victim's birth certificate. In 2000, requests for information were filed with the office of the Ombudsman for Human Rights, the Guatemalan Stomatology College, the Carroll Behrhorst Foundation for Development in Guatemala, and the National Police; and the request already sent to the AEU was repeated. In 2002, information was requested from the TSE and the SAT. In December 2002, March 2003, and July 2006, statements were taken from the victim's sister. In addition, in 2006, requests for information were served on the Traffic Department, the General Migration Directorate, the USAC, the AEU, and the Unified Tax Register (hereinafter "the RTU"), and requests were made for the certification of the birth certificates and ID records of the victim and his next-of-kin. In 2008, requests for information were served on the SAT, the Vehicle Register, the USAC, the office of the Ombudsman for Human Rights, and the Forensic Anthropology Foundation.<sup>110</sup>

117. The records of the National Police Archives indicate that in March 1984, his case was being investigated. They also contain information about the first occasion on which he was detained.<sup>111</sup>

118. According to the information provided by the petitioners and not disputed by the State, the following individuals have been identified as family members affected by the forced disappearance of Orencio Sosa Calderón: María Consuelo Pérez Arenales (victim's wife), Iván Orencio Sosa Pérez (victim's son), Iris Carolina Sosa Pérez (victim's daughter), Merlín Consuelo Sosa Pérez (victim's daughter), Linda Gardenia Sosa Pérez (victim's daughter), Laurenta Marina Sosa Calderón (victim's sister and petitioner), María Concepción Sosa Calderón (victim's sister), Raúl Augusto Sosa Calderón (victim's brother), and Estrelia Etelvina Sosa Calderón (victim's sister).<sup>112</sup>

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<sup>106</sup> See: IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*, Forced Disappearance of Persons, I: Absence of legal measures for protection from the problem of illegal arrests and disappearances; personal exhibition remedies lodged with the Supreme Court of Justice of Guatemala during 1984.

<sup>107</sup> Petitioners' submission of October 17, 2007: Annex XXVI-O, Copy of the Certificate of Presumed Death of Orencio Sosa Calderón, issued by the Civil Registrar of the city of Chimaltenango, dated November 4, 1986.

<sup>108</sup> Original petition, received on December 9, 2005: Annex XXVI-N, Victim's general information record at FAMDEGUA, dated May 25, 1999.

<sup>109</sup> Original petition, received on December 9, 2005: Annex XXVI-M, Statement of Laurenta Marina Sosa Calderón given to the Special Prosecutor's Office of the Public Prosecution Service, dated December 10, 2002.

<sup>110</sup> State's submission, received on October 17, 2008: Annex III, Request for information sent by the Public Prosecution Service to the SAT on March 11, 2008, p. 161; Request for information sent by the Public Prosecution Service to the USAC on March 5, 2008, p. 144; Request for information sent by the Public Prosecution Service to the office of the Ombudsman for Human Rights on April 15, 2008, p. 164; and Request for information sent by the Public Prosecution Service to the Forensic Anthropology Foundation on July 3, 2008, p. 168.

<sup>111</sup> State's submission, received on March 20, 2009: Annex A, Copy of the National Police Historical Archive, pp. 7 and 8.

<sup>112</sup> Petitioners' submission, received on June 22, 2010.

c. **Óscar Eduardo Barillas Barrientos**<sup>113</sup>

119. Óscar Eduardo Barillas Barrientos was 35 years of age at the time of his forced disappearance. He had two brothers and was originally from the department of Escuintla. In 1969, he moved to Guatemala City, where he worked in photography and film and enrolled in the USAC to study architecture. In 1976, he began working for the Department of Public Building Studies and Projects of the Ministry of Communications' General Directorate of Public Works<sup>114</sup> and, in 1979, for the Department of Conservation of Monuments and Sites. He was involved in the "Tábano" student political group and in the newspaper of the same name. He was also purportedly a member of the Military Commission of the Guatemalan Labor Party, which had been operating clandestinely since it was banned following the military coup d'état that overthrew Jacobo Arbenz in 1954. The victim was responsible for the newspaper *Claridad*, the PGT's official mouthpiece.<sup>115</sup>

120. In the afternoon of December 21, 1983, Barillas Barrientos left his home to go to the Mountaineering Federation, of which he was the president. He was to swear in a group of mountain climbers, but he never reached his destination.<sup>116</sup>

121. The *Diario Militar* refers to the case of Óscar Eduardo Barillas Barrientos as No. 30: "(aka) TOÑO. Member of the PGT. PC. 21-12-83: Captured in Zone 2 at 14:00 hrs (handwritten). Responsible for publication of the newspaper *CLARIDAD*. 21-01-84: 300. Provided the house where the printing materials and microfilm were located, at 15th Street 15-20, Zone 1" (handwritten).

122. The disappearance of Barillas Barrientos was a severe blow for his family. His mother and two brothers described how, only six weeks after Óscar Eduardo's disappearance, his father fell into a coma and died a few days later. "Our son's disappearance had a great impact on [my husband]. He didn't want to get out of bed, he didn't want to eat... that was what killed him," said his wife, Berta Fely Barrientos de Barillas. "I feel guilty because I cried; I cried day and night [...] because we didn't know what had happened to him, and that affected my husband."<sup>117</sup>

123. "As a family, the anxiety, pain, suffering, and fear we felt over all those years have caused [us] psychological problems or traumas that are hard to overcome [...]. The powerlessness at not being able to do anything, at not knowing where his body is, and the pain it caused us to see how our parents suffered made it worse," his brothers said.<sup>118</sup> Juan Francisco, the victim's older brother, claimed that "within a month, the family had fallen apart. We had to shoulder that burden [...] The pain and powerlessness of not being able to do anything because of the suffering and the fear [...] That powerlessness [...] was the work of the State [...]. I didn't dare file a complaint with

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<sup>113</sup> During its on-site visit to Guatemala in May 1985, the IACHR received information on the forced disappearance of Óscar Eduardo Barillas Barrientos. See: IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*, Ch. II, Forced Disappearance of Persons.

<sup>114</sup> Original petition, received on December 9, 2005: Annex XXVII-J, Letter to Óscar Barillas from the Department of Public Building Studies and Projects, dated January 29, 1976.

<sup>115</sup> Original petition, received on December 9, 2005: Annex XXVII-E, Statements of Berta Fely Barrientos de Barillas, Juan Francisco Barillas Barrientos, and Édgar Leonel Barillas Barrientos, dated November 22, 2004.

<sup>116</sup> Original petition, received on December 9, 2005: Annex XXVII -E. Statements of Berta Fely Barrientos de Barillas, Juan Francisco Barillas Barrientos, and Édgar Leonel Barillas Barrientos, dated November 22, 2004.

<sup>117</sup> Petitioners' submission, received on March 23, 2009. Statement of Juan Francisco Barillas Barrientos, dated March 25, 2008.

<sup>118</sup> Original petition, received on December 9, 2005: Annex XXVII-E, Statements of Berta Fely Barrientos de Barillas, Juan Francisco Barillas Barrientos, and Édgar Leonel Barillas Barrientos, dated November 22, 2004.



the Ombudsman for Human Rights until 2004 because I was still afraid... The Army still has power in Guatemala; the killers are at large; parts of the military apparatus still operate," he said.<sup>119</sup>

124. Nevertheless, in spite of their fear of reprisals, the victim's family searched for him at hospitals and police stations. They also lodged complaints with the GAM, FAMDEGUA,<sup>120</sup> the law courts,<sup>121</sup> and the National Police<sup>122</sup> and, on May 27, 2004, they filed a complaint with the office of the Ombudsman for Human Rights.<sup>123</sup> His brother Juan Francisco Barillas Barrientos recalled how difficult it was to make accusations regarding such incidents at the time; in particular, belonging to family support groups led to State harassment, and the stigma associated with belonging to such groups led to the loss of friends and family contacts.<sup>124</sup>

125. The State reported that in 1999 it received the victim's personal record and the statements of his mother and María Emilia García, who lodged the complaint with the Public Prosecution Service following the publication of the *Diario Militar*. In addition, the TSE and the SAT were asked to provide information in 2002. In 2006, requests for information were sent to the Traffic Department, the General Migration Directorate, the USAC, the AEU, and the RTU, and a request was made for the certification of the birth certificate and ID records of the victim and his next-of-kin. In 2007, requests for information were served on the National Civilian Police, the USAC, the Association of Architecture Students, the AEU, the Ministry of Defense, the Ministry of Communications, Transport, and Public Works, and the Mountaineering Federation, and the head of the National Criminal Investigation Directorate (hereinafter "the DNIC") was asked to assign an investigator to the case.<sup>125</sup> On February 26, 2007, during the proceedings for the *Diario Militar* case, Héctor Rafael Bol de la Cruz, Director of the National Police up until May 31, 1985, stated that the people who disappeared were not taken to any National Police facilities, that at the time he received no complaints of forced disappearances, and that, in particular, he had no knowledge of the disappearance of Óscar Eduardo Barillas Barrientos. In 2008, requests for information were sent

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<sup>119</sup> Petitioners' submission, received on March 23, 2009: Statement of Juan Francisco Barillas Barrientos, dated March 25, 2008.

<sup>120</sup> Original petition, received on December 9, 2005: Annex XXVII-E, Statements of Berta Fely Barrientos de Barillas, Juan Francisco Barillas Barrientos, and Édgar Leonel Barillas Barrientos, dated November 22, 2004; and Annex XXVII-E, Victim's general information record at FAMDEGUA, dated May 21, 1999.

<sup>121</sup> Original petition, received on December 9, 2005: Annex XXVII-Ñ, Document 03679, addressed to the First Vice Minister of the Interior, on the situation of the proceedings without significant progress.

<sup>122</sup> Original petition, received on December 9, 2005: Annex XXVII-E, Statements of Berta Fely Barrientos de Barillas, Juan Francisco Barillas Barrientos, and Édgar Leonel Barillas Barrientos, dated November 22, 2004.

<sup>123</sup> On that same date, the prosecution service resolved to open a case file and pursue the necessary formalities. See: Original petition, received on December 9, 2005: Annex XXVII-O, Deed REF-EXP-ORG-GUA-453-2004/DI, dated May 27, 2004.

<sup>124</sup> Petitioners' submission, received on March 23, 2009: Statement of Juan Francisco Barillas Barrientos, dated March 25, 2008.

<sup>125</sup> State's submission, received on October 17, 2008: Annex IV, Request for information sent by the Public Prosecution Service to the National Civilian Police on July 14, 2006, p. 66; Request for information sent by the Public Prosecution Service to the USAC on July 14, 2006, p. 65, and on February 21, 2007, p. 50; Request for information sent by the Public Prosecution Service to the Association of Architecture Students on February 21, 2007, p. 52; Request for information sent by the Public Prosecution Service to the AEU on February 21, 2007, p. 53; Request for information sent by the Public Prosecution Service to the Ministry of Defense on February 21, 2007, p. 54; Request for information sent by the Public Prosecution Service to the Ministry of Communications, Transport, and Public Works on May 30, 2006, p. 44; Request for information sent by the Public Prosecution Service to Mountaineering Federation on June 7, 2006, p. 49; Request for appointment of an investigator sent by the Public Prosecution Service to the head of the DNIC on February 22, 2007, p. 38.

to the office of the Ombudsman for Human Rights, the National Redress Program, and the Forensic Anthropology Foundation.<sup>126</sup>

126. According to the information provided by the petitioners and not disputed by the State, the following individuals have been identified as family members affected by the forced disappearance of Óscar Eduardo Barillas Barrientos: Berta Fely Barrientos Morales (victim's mother), Juan Francisco Barillas Barrientos (victim's brother and petitioner), and Édgar Leonel Barillas Barrientos (victim's brother).<sup>127</sup>

**d. José Porfirio Hernández Bonilla**

127. José Porfirio Hernández Bonilla was aged 36 and had three children. He was a farmer and a member of the Guatemalan Labor Party (PGT).<sup>128</sup>

128. According to testimony given by his wife, Reyna de Jesús Escobar Rodríguez, in June 1983 Hernández Bonilla was in a motorcycle accident that left him with severe aftereffects, including mental blackouts. In January 1984, he went to Guatemala City for a medical checkup, accompanied by fellow party members. The victim and his companions took a diversion to the city of Jalapa to escape the security forces that were following them, and he was captured there. Later, the victim's home and family were searched and monitored by troops from the Santa Ana Berlín detachment in Coatepeque; these soldiers asked the victim's brother for the keys and papers of the victim's motorcycle, which they took away and which never reappeared.<sup>129</sup>

129. The *Diario Militar* refers to José Porfirio Hernández Bonilla's case as No. 41: "(aka) CHUS and LUCIO. Member of the PGT. PC. 07-01-84: Captured in Jalapa. 21-01-84: 300."

130. Marlyn Carolina Hernández Escobar, the victim's daughter, described how her father's disappearance had a profound impact on the family: "Life became difficult, since my mother was left alone [and] she had to work to feed us and to send us to school. (...) I started to work at the age of 15; I'd work during the day and study at night, but I think his death left me traumatized because I have not yet accepted it, I still suffer from that loss. Although mother tried to give us what we needed, she could never fill the gap that he left."<sup>130</sup>

131. Reyna de Jesús Escobar Rodríguez said that her husband's disappearance affected her deeply: "The uncertainty of not knowing about him, the despair of seeing his children, of not being able to give them what they needed, the poverty, everything we went through... it was terrible," explained Reyna, who also stated that she had to abandon her home and move to Guatemala City to escape the surveillance to which the house was subjected. "I couldn't work anywhere [...] I couldn't go out in public for fear of being detained [...] I hadn't the money to enroll [my children] in school, I hadn't the money to buy them pencils and notebooks. So, the school

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<sup>126</sup> State's submission, received on October 17, 2008: Annex IV, Request for information sent by the Public Prosecution Service to the office of the Ombudsman for Human Rights on April 15, 2008, p. 78; Request for information sent by the Public Prosecution Service to the National Redress Program on June 11, 2008, p. 80; and Request for information sent by the Public Prosecution Service to the Forensic Anthropology Foundation on July 3, 2008, p. 82.

<sup>127</sup> Petitioners' submission, received on June 22, 2010.

<sup>128</sup> Original petition, received on December 9, 2005: Annex XXVIII-D, Statements of Reyna de Jesús Escobar Rodríguez and Marlyn Carolina Hernández Escobar, dated March 2, 2005.

<sup>129</sup> Original petition, received on December 9, 2005: Annex XXVIII-D, Statements of Reyna de Jesús Escobar Rodríguez and Marlyn Carolina Hernández Escobar, dated March 2, 2005.

<sup>130</sup> Original petition, received on December 9, 2005: Annex XXVIII-D, Statements of Reyna de Jesús Escobar Rodríguez and Marlyn Carolina Hernández Escobar, dated March 2, 2005.

teachers, because they knew me [...] gave my children books so they could study. My children even ate the tortillas that people give away as animal feed, moldy tortillas... I felt powerless as a mother, I didn't know what to do, I didn't have a steady job, I had no income. My children used to call me and say, 'Mother, we want to see you,' and I couldn't see them. [...]. That led to resentment in my children, because since they were only small they thought I didn't love them, and that their father didn't love them either, because he had abandoned them." Over time, Reyna de Jesús managed to get her children back, but only one at a time, which meant that the siblings were separated. Her children had to attend night school, because the money Reyna de Jesús made as a dressmaker was not enough for them to study without working.<sup>131</sup>

132. Following the publication of the *Diario Militar*, Reyna de Jesús, the victim's wife, went to Guatemala City to investigate. She hoped that her husband was alive, since the last she heard from him was that he was fleeing from the state security forces when he took refuge in the city of Jalapa. The GAM, however, told her that her husband's entry included the code '300,' which meant that he had been killed. "That was when I discovered he was no longer among the living. [...] At first I couldn't believe it, because I'd always thought he was alive and that one day he would come back," she said.<sup>132</sup>

133. Reyna de Jesús explained that her children were unable to fulfill their dreams of becoming professionals. "Their dreams were frustrated, because we were never able to get past it. It marked us for life," she concluded. She said that if her husband had not been abducted, she could have become a lawyer, as she had always dreamed, and her children could have gone to university. Instead, the two eldest children of Reyna de Jesús and José Porfirio Hernández Bonilla had to start work when they were still young. Their youngest, Juan Carlos Hernández Bonilla, was able to finish secondary school.<sup>133</sup>

134. Reyna de Jesús believes "there is something not right in [her children's] hearts" as result of the trauma they suffered. She recalled how her eldest son was afraid to leave the house, and that he didn't want her to report her husband's disappearance to FAMDEGUA.<sup>134</sup> However, their mother went ahead anyway. "As human beings and as a family, we deserve to know what happened to him, where he is," she said.

135. Because of the prevailing repression of the time, and out of fear of reprisals, the family pursued no legal action before the courts. His wife also said she thought he was safe, in a house belonging to his organization, which kept her from taking action.<sup>135</sup> Following the publication of the *Diario Militar*, the family lodged a complaint with FAMDEGUA.<sup>136</sup>

136. The State reported that in 1999 it sent requests for information to the GAM, the office of the Ombudsman for Human Rights, the National Police, the Criminal Investigation System

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<sup>131</sup> Petitioners' submission, received on March 23, 2009: Statement of Reyna de Jesús Escobar Rodríguez, dated March 28, 2008.

<sup>132</sup> Petitioners' submission, received on March 23, 2009: Statement of Reyna de Jesús Escobar Rodríguez, dated March 28, 2008.

<sup>133</sup> Petitioners' submission, received on March 23, 2009: Statement of Reyna de Jesús Escobar Rodríguez, dated March 28, 2008.

<sup>134</sup> Petitioners' submission, received on March 23, 2009: Statement of Reyna de Jesús Escobar Rodríguez, dated March 28, 2008.

<sup>135</sup> Petitioners' submission, received on March 23, 2009: Statement of Reyna de Jesús Escobar Rodríguez, dated March 28, 2008.

<sup>136</sup> Original petition, received on December 9, 2005: Annex XXVIII-E, Victim's information record at FAMDEGUA, dated September 8, 2001.

(SIC), the Ministry of National Defense, the head of Police IDs, and the judiciary's Statistics Department. In 2002, information was requested from the TSE and the SAT. In 2006, it requested information from the Traffic Department, the General Migration Directorate, the USAC's Department of Records and Statistics, and the AEU, and a request was made for the certification of the birth certificate and ID records of the victim and his next-of-kin. In 2008, requests for information were sent to the office of the Ombudsman for Human Rights, the National Redress Program, and the Forensic Anthropology Foundation.<sup>137</sup>

137. According to the information provided by the petitioners and not disputed by the State, the following individuals have been identified as family members affected by the forced disappearance of José Porfirio Hernández Bonilla: Reyna de Jesús Escobar Rodríguez (victim's wife and petitioner), Marlyn Carolina Hernández Escobar (victim's daughter), José Geovany Hernández Escobar (victim's son), and Juan Carlos Hernández Escobar (victim's son).<sup>138</sup>

**e. Octavio René Guzmán Castañeda<sup>139</sup>**

138. Octavio René Guzmán Castañeda was 21 years old. He was a primary school teacher and a student at the USAC's School of Economic Sciences. He was detained by the security forces on January 17, 1984, and his whereabouts remains unknown to date.

139. The *Diario Militar* refers to the case of Octavio René Guzmán Castañeda as No. 42: "(aka) FRANCISCO. Member of a military squad of the FERG. Of the EGP. 17-01-84. Captured in Col. Primera de Julio, Zone 19. 07-02-84: 300."

140. During the IACHR's on-site visit to Guatemala in May 1985, it was told that a *habeas corpus* remedy has been lodged with the Supreme Court of Justice on behalf of Octavio René Guzmán Castañeda in 1984.<sup>140</sup>

141. After the publication of the *Diario Militar* in 1999, his family lodged a complaint with FAMDEGUA.<sup>141</sup>

142. The State reported that in 1999 it requested information from the office of the Ombudsman for Human Rights, the SIC, and the Ministry of National Defense. In 2002, it requested information from the TSE and the SAT; and in 2006, it requested information from the Traffic Department, the General Migration Directorate, the USAC, and the AEU, and requested the certification of the birth certificate and ID records of the victim and his father. In 2008, requests for information were sent to the office of the Ombudsman for Human Rights, the National Redress Program, and the Forensic Anthropology Foundation.<sup>142</sup> The records of the National Police Archives

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<sup>137</sup> State's submission, received on October 17, 2008: Annex V, Request for information sent by the Public Prosecution Service to the office of the Ombudsman for Human Rights on April 15, 2008, p. 37; Request for information sent by the Public Prosecution Service to the National Redress Program on June 11, 2008, p. 39; and Request for information sent by the Public Prosecution Service to the Forensic Anthropology Foundation on July 3, 2008, p. 41.

<sup>138</sup> Petitioners' submission, received on June 22, 2010.

<sup>139</sup> During the IACHR's on-site visit to Guatemala in May 1985, it received information on the forced disappearance of Octavio René Guzmán Castañeda. See: IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*, Ch. II, Forced Disappearance of Persons.

<sup>140</sup> See: IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*, Ch. II, Forced Disappearance of Persons, I: Absence of legal measures for protection from the problem of illegal arrests and disappearances; Personal exhibition remedies lodged with the Supreme Court of Justice of Guatemala during 1984.

<sup>141</sup> Original petition, received on December 9, 2005: Annex XXIX-E, Victim's information record at FAMDEGUA.

<sup>142</sup> State's submission, received on October 17, 2008: Annex VI, Request for information sent by the Public Prosecution Service to the office of the Ombudsman for Human Rights on April 15, 2008, p. 31; Request for information

contain documents sent to various police agencies, asking them to report if they were holding the victim.<sup>143</sup>

143. In the records of the National Police Archives, Octavio René Guzmán is named on a list of disappeared persons. He is also named on a list send to the chiefs of the First, Second, Third, Fourth, and Fifth Corps of the National Police by the assistant chief of the National Police's Technical Investigations Department on September 25, 1984, asking whether the listed individuals were under arrest or were interned in "assistance" centers. The victim is also named on a list of disappeared persons alongside Israel Lima Recinos. For both these individuals, it is reported that the date of disappearance was January 18, 1984, and that the First Criminal Peace Court of Mixco became involved as a result of the complaint lodged by Emilio Eduardo Guzmán Castañeda.

144. According to the information provided by the petitioners and not disputed by the State, the following individuals have been identified as family members affected by the forced disappearance of Octavio René Guzmán Castañeda: Gilda Angélica Castañeda (victim's mother), Benigno Emilio Guzmán (victim's father), and Renato Guzmán Castañeda (victim's brother and petitioner).<sup>144</sup>

**f. Álvaro Zacarías Calvo Pérez**

145. Álvaro Zacarías Calvo Pérez was 27 years old and was married with a son. He had trained to be a primary school teacher and was working in that profession. Between 1979 and 1981, he studied law at the USAC and participated in the Law Students' Association. He also worked at the Guatemalan Social Security Institute.<sup>145</sup>

146. In December 1983, the family home was ransacked, and so the victim and his wife decided that she and their son would move to her mother's home, while Álvaro Zacarías Calvo Pérez would sleep at his sister-in-law's house.<sup>146</sup> The victim had expressed his fear of reprisals for his participation in the student movement and his speeches opposing the *de facto* government.<sup>147</sup>

147. The circumstances of his abduction were described by his son, who was with him on January 20, 1984, in the following terms: "I was walking on his right-hand side, holding his hand [...] suddenly a white pickup truck braked hard on Calzada San Juan, in front of what is now the Guatemalan Social Security Institute. Heavily armed men hurried out of the vehicle and approached us at speed, blocking our path; one of them shot my father in the knee, immobilizing him, while others bound his hands and blindfolded him. They pushed him into the pickup, while one of them took me into his arms and, shortly after, they decided to sedate me. Two hours later, they took me to the home of my maternal grandmother, María Leonor Peralta Barrientos, where my aunt Miriam del Carmen Monroy Peralta received me in her arms and checked for any kind of injury... [My

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...continuation

sent by the Public Prosecution Service to the National Redress Program on June 11, 2008, p. 33; and Request for information sent by the Public Prosecution Service to the Forensic Anthropology Foundation on July 3, 2008, p. 35.

<sup>143</sup> State's submission, received on March 20, 2009: Annex A, Copy from the National Police Historical Archive, pp. 90 to 102.

<sup>144</sup> Petitioners' submission, received on June 22, 2010.

<sup>145</sup> Original petition, received on December 9, 2005: Annex XXX-G, Statement of Ana Dolores Monroy Peralta de Calvo, dated November 2, 2004.

<sup>146</sup> Original petition, received on December 9, 2005: Annex XXX-G, Statement of Ana Dolores Monroy Peralta de Calvo, dated November 2, 2004.

<sup>147</sup> Petitioners' submission, received on March 23, 2009: Statement of Ana Dolores Monroy Peralta de Calvo, dated March 29, 2008.

aunt] asked the person who had brought me what had happened. He was a man, slightly built, with a military demeanor; haltingly, he told Miriam that my father had been in a motorcycle accident and that he was at the hospital of the Guatemalan Social Security Institute (hereinafter “the IGSS”).<sup>148</sup>

148. The *Diario Militar* refers to Álvaro Zacarías Calvo Pérez’s case as No. 47: “(aka) FÉLIX. Began in the FERG, now in the EGP, knows people in the PGT. And ORPA. 20-01-84: Captured at the IGSS General Hospital. 07-02-84: 300.”

149. His son made the following comments about the publication of the *Diario Militar*: “My feelings upon seeing the document were indescribable; suddenly, all the hope of seeing my father I had in my heart vanished, disappeared, upon learning that he had been extrajudicially killed; it was as if they had killed him at that very moment.”<sup>149</sup> His wife said: “We have a right to mourn, and we cannot do that unless we have some remains to cry over.” Both the victim’s wife and his son suffered enormously as a result of his disappearance: both underwent therapy, and the victim’s son suffered from depression, anxiety attacks, and adolescent alcoholism.<sup>150</sup>

150. The family searched at hospitals, prisons, morgues, and police stations. They also filed complaints with the National Police, where they were allegedly threatened,<sup>151</sup> and with the courts.<sup>152</sup>

151. In addition, in 1997, the victim’s next-of-kin gave a statement to the Human Rights Office of the Archbishopric of Guatemala City<sup>153</sup> and, in 1999, they lodged a complaint with FAMDEGUA.<sup>154</sup>

152. The State reported that in 1999, it called the victim’s next-of-kin to give statements and that in 2002, it requested information from the TSE and the SAT. In 2006, information was requested from the Traffic Department, the General Migration Directorate, the USAC, the AEU, the Law Students’ Association, and the RTU-SAT; a request was made for the certification of the birth and marriage certificates and ID records of the victim and his next-of-kin; his next-of-kin were called on to give statements; and the Metropolitan District Prosecutor’s Office received the case. In 2008, requests for information were sent to the office of the Ombudsman for Human Rights, the National Redress Program, and the Forensic Anthropology Foundation.<sup>155</sup> The records of the National Police

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<sup>148</sup> Original petition, received on December 9, 2005: Annex XXX-H, Statement of Ernesto Calvo Monroy, dated June 7, 2005.

<sup>149</sup> Original petition, received on December 9, 2005: Annex XXX-H, Statement of Ernesto Calvo Monroy, dated June 7, 2005.

<sup>150</sup> Original petition, received on December 9, 2005: Annex XXX-G, Statement of Ana Dolores Monroy Peralta de Calvo, dated November 2, 2004; and Annex XXX-H, Statement of Ernesto Calvo Monroy, dated June 7, 2005.

<sup>151</sup> Original petition, received on December 9, 2005: Annex XXX-G, Statement of Ana Dolores Monroy Peralta de Calvo, dated November 2, 2004.

<sup>152</sup> In 2004, the certification of the proceedings was requested. See: Original petition, received on December 9, 2005: Annex XXX-I, Case file 291 of the 1st First-instance Criminal Court.

<sup>153</sup> Original petition, received on December 9, 2005: Annex XXX-G, Statement of Ana Dolores Monroy Peralta de Calvo, dated November 2, 2004; and Annex XXX-I, Human Rights Office of the Archbishopric of Guatemala City, Report of the Interdiocesan Historical Memory Recovery Project, *Guatemala, Never Again! IV*, Victims of the Conflict, Ch. 4, Torture Victims, p. 418.

<sup>154</sup> Original petition, received on December 9, 2005: Annex XXX-K, Victim’s information record at FAMDEGUA.

<sup>155</sup> State’s submission, received on October 17, 2008: Annex VII, Request for information sent by the Public Prosecution Service to the office of the Ombudsman for Human Rights on April 15, 2008, p. 58; Request for information sent by the Public Prosecution Service to the National Redress Program on June 11, 2008, p. 60; and Request for information sent by the Public Prosecution Service to the Forensic Anthropology Foundation on July 3, 2008, p. 67.

Archives indicate that on January 21, 1984, Ana Dolores Monroy Peralta de Calvo, the victim's wife, filed a complaint in connection with his disappearance.<sup>156</sup>

153. The National Police Archives contain a March 1981 report of a lost driving license made by the victim and a record of the complaint lodged by Ana Dolores Monroy Peralta (the victim's wife) on January 21, 1984, in connection with her husband's disappearance.

154. According to the information provided by the petitioners and not disputed by the State, the following individuals have been identified as family members affected by the forced disappearance of Álvaro Zacarías Calvo Pérez: Ana Dolores Monroy Peralta (victim's wife and petitioner) and José Ernesto Calvo Monroy (victim's son).<sup>157</sup>

**g. Víctor Manuel Calderón Díaz<sup>158</sup>**

155. Víctor Manuel Calderón Díaz was 26 years old and the father of three children. He was a tailor and worked for the ALINSA company, where he was a union leader.

156. On January 23, 1984, he went out to buy a birthday cake and piñata for one of his children, whereupon he was abducted from Avenida La Castellana and 8th Street in Zone 8.<sup>159</sup>

157. The *Diario Militar* refers to Víctor Manuel Calderón Díaz's case as No. 49: "(aka) PEDRO. Member of the U.M.S., traveled to El Salvador, where he was a combatant. 23-01-84: Captured on Avenida La Castellana and 8th Street, Zone 8. False name: HÉCTOR MANUEL MÉNDEZ." The *Diario Militar* identifies Héctor Manuel Méndez Carballo as its case No. 51, with a photo that is similar to that of Víctor Manuel Calderón Díaz: "(aka) PEDRO. Member of the U.M.S., traveled to El Salvador, where he was a combatant. 23-01-84: Captured on Avenida La Castellana and 8th Street, Zone 8. 03-02-84: Traveled to El Salvador. This one not taken, name agrees with photo" (handwritten).

158. The victim's daughter, Sonia Guisela Calderón Revolorio, remembers him as an affectionate man, always aware of his children's needs: "He always taught us what was right, he was a very hard worker [...] he always gave us what we needed, we never suffered or wanted for anything." The disappearance of her father had a profound effect on the family: "Following my father's disappearance when I was six years, the tightly knit family that we were [...] came apart." Her mother sought exile in the United States and the children were left with their grandmother, who, on account of her advanced years, was unable to work to maintain them. "They separated us; I never knew what it was like to have a mother alongside me, to give me advice, or a father for that matter. They took my father away during the best years of my life. To date, it has been difficult for me to accept having a family [...]. I have been married for twelve years, but the first years were quite difficult, because I couldn't accept having someone alongside me, a man. Perhaps I was looking for that paternal love that I missed. I suffered enormously, but – thank God – I have managed to overcome it. But there is still something missing inside me, perhaps a thirst for justice,

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<sup>156</sup> State's submission, received on March 20, 2009: Annex A, Copy from the National Police Historical Archive, p. 118.

<sup>157</sup> Petitioners' submission, received on June 22, 2010.

<sup>158</sup> The victim is named in the *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.* Ch. II, Forced Disappearance of Persons.

<sup>159</sup> Original petition, received on December 9, 2005: Annex XXXI-D, Statement of Sonia Guisela Calderón, dated November 30, 2004. The statement says that the disappearance took place on January 25, 1984.

which is what we want the most.”<sup>160</sup> In 1995 Sonia Guisela’s mother visited Guatemala and, upon returning to the United States, took her two children with her.<sup>161</sup>

159. Because of the fear in which their relatives lived, they pursued no actions at the domestic level. During the IACHR’s on-site visit to Guatemala in May 1985, it was informed that a *habeas corpus* remedy on behalf of Víctor Manuel Calderón Díaz had been lodged with the Supreme Court of Justice in 1984.<sup>162</sup> In addition, following the publication of the *Diario Militar* in 1999, a complaint was filed with FAMDEGUA.<sup>163</sup> On July 10, 2007, María Teresa Calderón Marín opened a case with the National Redress Program.<sup>164</sup>

160. The State reported that in 1999, it requested information from the USAC, took a statement from the victim’s daughter, and requested information from the Special Prosecutor of the Public Prosecution Service. In 2000, information was requested from Prosecution Agency 34, and authorization was requested for a journey to San Salvador, El Salvador, to pursue the investigation. In 2002, requests for information were sent to the TSE and the SAT and the certification of the victim’s birth certificate and ID records were requested. In 2006, the victim’s daughter was again called on to make a statement and information was requested from the Traffic Department, the General Migration Directorate, the USAC, the AEU, the RTU-SAT, along with the certification of the birth certificate. In 2008, requests for information were sent to the office of the Ombudsman for Human Rights, the National Redress Program, and the Forensic Anthropology Foundation.<sup>165</sup>

161. The records of the National Police Archives contain information on the officials responsible for operations between January 20 and January 23, 1984.<sup>166</sup>

162. According to the information provided by the petitioners and not disputed by the State, the following individuals have been identified as family members affected by the forced disappearance of Víctor Manuel Calderón Díaz: Gumercinda Díaz Conté (victim’s mother), Víctor Calderón Gil (victim’s father), Zonia Odilia Ortega Revolorio (victim’s wife), Sonia Guisela Calderón Revolorio (victim’s daughter and petitioner), Víctor Manuel Calderón Revolorio (victim’s son), Lourdes Melissa Calderón Revolorio (victim’s daughter), Fabián Calderón Díaz (victim’s brother), Katherine Andrea Hernández Calderón (victim’s granddaughter), and Diana Guisela Hernández Calderón (victim’s granddaughter).<sup>167</sup>

<sup>160</sup> Original petition, received on December 9, 2005: Annex XXXI-D, Statement of Sonia Guisela Calderón, dated November 30, 2004.

<sup>161</sup> Original petition, received on December 9, 2005: Annex XXXI-D, Statement of Sonia Guisela Calderón, dated November 30, 2004.

<sup>162</sup> See: IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*, Ch. II, Forced Disappearance of Persons, I: Absence of legal measures for protection from the problem of illegal arrests and disappearances; Personal exhibition remedies lodged with the Supreme Court of Justice of Guatemala during 1984.

<sup>163</sup> Original petition, received on December 9, 2005: Annex XXXI-E, Victim’s general information record at FAMDEGUA, dated May 25, 1999.

<sup>164</sup> State’s submission, received on October 17, 2008: Annex I.2, Document of the National Redress Program, dated July 3, 2008.

<sup>165</sup> In 2006, the authorities replied that using the victim’s personal information, passport No. 111801000136145 was issued on August 26, 2005, and that it had been used for journeys. See: State’s submission, received on October 17, 2008: Annex VIII, Request for information sent by the Public Prosecution Service to the office of the Ombudsman for Human Rights on April 15, 2008, p. 63; Request for information sent by the Public Prosecution Service to the National Redress Program on June 11, 2008, p. 65; and Request for information sent by the Public Prosecution Service to the Forensic Anthropology Foundation on July 3, 2008, p. 67.

<sup>166</sup> State’s submission, received on March 20, 2009: Annex A, Copy from the National Police Historical Archive, pp. 157 to 161.

<sup>167</sup> Petitioners’ submission, received on June 22, 2010.



**h. Amancio Samuel Villatoro<sup>168</sup>**

163. Amancio Samuel Villatoro was 47 years old and had five children. He had received his certification as an industrial mechanical lathe operator and began working at the Chiclets Adams factory, where he rose to be the General Secretary of the company's trade union. He later studied industrial engineering at the USAC, but was forced to drop out one year before completing the course on account of the prevailing insecurity and violence of the 1980s.<sup>169</sup> He was also a member of the National Workers' Central and the National Trade-union Unity Central<sup>170</sup> and, according to his son's testimony, he was a member of the Rebel Armed Forces (hereinafter "the FAR"), working as a grassroots organizer in the urban area. He also used to make trips abroad, seeking help for his cause.<sup>171</sup>

164. On January 30, 1984, he left home to meet with a workmate, telling his wife that he was headed for 4th Street and 5th Avenue in Zone 1 at around 9:00 a.m., and that he intended to return for lunch at 1:00 p.m.; however, he never arrived.<sup>172</sup> Months earlier, he had felt at risk, because 27 of his fellow trade unionists were detained and disappeared in Escuintla and the victim had appeared on a list published the following day with the names of those taken into custody.<sup>173</sup> For that reason, Amancio Samuel had told his older children that he feared being captured by state agents.<sup>174</sup> Strangers watched his house for hours and vehicles with tinted windows and no number plates drove around it; for that reason, he took such precautions as using different routes or leaving or arriving home at different times.<sup>175</sup>

165. On the day of his disappearance, January 30, 1984, eight heavily armed men in civilian clothing, wearing white guayabera shirts and kerchiefs over their faces, illegally entered the victim's home. His wife described the situation that she, her mother-in-law, and her children experienced: "Once inside the house the men showed us their weapons: four had machine-guns and the others had handguns. They shouted for us to remain calm and asked me where I slept; I showed them where and two of them went into my bedroom, searched everything, and left with a bag with papers and money belonging to my husband... They knew what they were looking for and where to find it (a secret compartment in the ceiling), and the only way to have known that was for my husband to have told them where his things were."<sup>176</sup> Néstor Amílcar Villatoro Bran, one of the

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<sup>168</sup> The victim is named in the *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*

<sup>169</sup> Original petition, received on December 9, 2005: Annex XXXII-E, Statement of María del Rosario Bran de Villatoro, dated December 2, 2004.

<sup>170</sup> Original petition, received on December 9, 2005: Annex XXXII-F, Statement of Sergio Raúl Villatoro Bran, dated December 21, 2004.

<sup>171</sup> Original petition, received on December 9, 2005: Annex XXXII-F, Statement of Sergio Raúl Villatoro Bran, dated December 21, 2004.

<sup>172</sup> Original petition, received on December 9, 2005: Annex XXXII-E, Statement of María del Rosario Bran del Villatoro, dated December 2, 2004.

<sup>173</sup> Original petition, received on December 9, 2005: Annex XXXII-E, Statement of María del Rosario Bran del Villatoro, dated December 2, 2004.

<sup>174</sup> Original petition, received on December 9, 2005: Annex XXXII-F, Statement of Sergio Raúl Villatoro Bran, dated December 21, 2004.

<sup>175</sup> Original petition, received on December 9, 2005: Annex XXXII-F, Statement of Sergio Raúl Villatoro Bran, dated December 21, 2004.

<sup>176</sup> Original petition, received on December 9, 2005: Annex XXXII-E, Statement of María del Rosario Bran de Villatoro, dated December 2, 2004.

victim's sons, recalls that day with anguish: "My 17-year old brother [...] tried to defend my mother, but they put a machine-gun to his chest, and when I left my room to see what was going on, they put a pistol to my head and pushed me to the floor. My grandmother, my dad's mother, tried to run away but another man struck her in the forehead with his pistol; she began to bleed. They pushed us all to the floor together, and threatened that they were going to kill us. [...] As they were preparing to leave, they again made death threats and told us that if we reported the incident to the authorities or to the media they would come back and kill us, and that it was better for us to leave the country."<sup>177</sup>

166. The *Diario Militar* refers to Amancio Samuel Villatoro's case as No. 55: "(aka) GUILLERMO and RENÉ. Member of the FAR. Coordinator of the CNT, nationally and internationally, professionalized with a salary of Q. 1000.00; also has contacts with GARCÍA MÁRQUEZ in Mexico. 30-01-84: Captured on 15th Street and 2nd Avenue, Zone 1. 29-03-84: 300" (handwritten).

167. Sergio Raúl Villatoro recalled his mother's state in the days following the abduction: "They [were] days of anguish for her, of intense suffering; she couldn't sleep, she was always nervous, any noise [would make her think] they were coming for us or they were going to kill us."<sup>178</sup>

168. In the days after the abduction, a person claiming to be a soldier came to the family with information on the place where Amancio Samuel was being held. According to his son Sergio Raúl, this person asked them for a sum of money of between Q15,000 and Q20,000 for his release, but shortly after handing the money over they lost contact with him.<sup>179</sup>

169. The victim's children recalled how their father's disappearance and the violence the family suffered affected them. Sergio Raúl said he still remembers the firearm that was poked against his chest and the blow they gave his mother. "Those are memories I can't forget," he explained. "We lost our father's love and protection; we were left defenseless by his absence." Both he and Néstor Amílcar had to start working at a young age to support the family. "We both had to face economic hardship, along with my mother, and suffer the disintegration of the family: as the eldest, we had to go first to Mexico, and then to the United States, to work and study."<sup>180</sup> The victim's other children, Norma Carolina and Samuel, spoke about the pain, rage, and sorrow caused by their father's disappearance. His son Néstor Amílcar said: "Since that day, for more than 15 years, it has been a constant torture for the entire family; personally, I always thought it would have been better for them to have killed us all, so that no one would have had to suffer what we have been through since then."<sup>181</sup> The victim's son Sergio Raúl noted that the family still hoped that his father would turn up alive until the *Diario Militar* was published.<sup>182</sup>

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<sup>177</sup> Original petition, received on December 9, 2005: Annex XXXII-G, Statement given by Néstor Amílcar Villatoro Bran on August 18, 1999, to Prosecution Agency No. 10 of the Guatemala District Prosecutor's Office of the Public Prosecution Service.

<sup>178</sup> Petitioners' submission, received on March 23, 2009: Statement of Sergio Raúl Villatoro Bran, dated March 28, 2008.

<sup>179</sup> Petitioners' submission, received on March 23, 2009: Statement of Sergio Raúl Villatoro Bran, dated March 28, 2008.

<sup>180</sup> Original petition, received on December 9, 2005: Annex XXXII-F, Statement of Sergio Raúl Villatoro Bran, dated December 21, 2004.

<sup>181</sup> Original petition, received on December 9, 2005: Annex XXXII-G, Statement given by Néstor Amílcar Villatoro Bran on August 18, 1999, to Prosecution Agency No. 10 of the Guatemala District Prosecutor's Office of the Public Prosecution Service.

<sup>182</sup> Petitioners' submission, received on March 23, 2009: Statement of Sergio Raúl Villatoro Bran, dated March 28, 2008.

170. The victim's case appears in the complaint lodged with the IACHR by Álvaro René Sosa Ramos.<sup>183</sup>

171. The victim's next-of-kin visited morgues and hospitals, and they reported the incident to the media. During the IACHR's on-site visit to Guatemala in May 1985, it was informed that a *habeas corpus* remedy on behalf of Amancio Samuel Villatoro had been lodged with the Supreme Court of Justice in 1984.<sup>184</sup> They also filed complaints with the National Police and the Public Prosecution Service<sup>185</sup> and, in 1999, they gave statements to the Public Prosecution Service<sup>186</sup> and to FAMDEGUA.<sup>187</sup>

172. The State reported that in 1999, it called the victim's wife and children and other witnesses to give statements; it requested information from the Presidential Coordinating Commission for Executive Human Rights Policy (hereinafter "the COPREDEH"); and it asked the Public Prosecution Service to conduct an investigation into the victim's abduction and disappearance. In 2000, it asked the TSE for information on all the people identified in the Public Prosecution Service's investigation report and, in 2002, it repeated its request for information from the TSE and the SAT. In 2006, requests for information were served on the Traffic Department, the General Migration Directorate, the USAC, the AEU, and the RTU-TAC, and a request was made for the certification of the birth certificates and ID records of the victim and his next-of-kin. In 2008, requests for information were sent to the office of the Ombudsman for Human Rights, the National Redress Program, and the Forensic Anthropology Foundation.<sup>188</sup>

173. The National Police Archives contain a newspaper clipping dated February 16, 1983, reporting the victim's disappearance. They also contain a document from the Technical Investigations Department stating that a remedy for *habeas corpus* was filed on behalf of Samuel Villatoro, in response to which it was stated that the victim was not being held at that department. There are also letters addressed to the National Police in which the General Secretary of the UK's Transport and General Workers Union (TGWU) and Amnesty International's Group 64 express their concern at the victim's disappearance. In addition, there is a telegram dated February 9, 1984, from the Second Captain of the Fourth Corps of the National Police, stating that they were not holding the victim. His personal file contains a report of a stolen vehicle and two *habeas corpus* remedies lodged on February 10, 1984, and April 13, 1984. There are also several internal communications indicating that nothing is known regarding his whereabouts.

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<sup>183</sup> Original petition, received on December 9, 2005: Annex XXIII, Copy of complaint No. 9303 of June 24, 1985. See also: IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*

<sup>184</sup> See: IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*, Ch. II, Forced Disappearance of Persons, I: Absence of legal measures for protection from the problem of illegal arrests and disappearances; Personal exhibition remedies lodged with the Supreme Court of Justice of Guatemala during 1984.

<sup>185</sup> Original petition, received on December 9, 2005: Annex XXXII-E, Statement of María del Rosario Bran de Villatoro, dated December 2, 2004.

<sup>186</sup> Original petition, received on December 9, 2005: Annex XXXII-F, Statement of Samuel Lisandro Villatoro Bran, dated December 21, 2004; Annex XXXII-E, Statement of María del Rosario Bran de Villatoro, dated December 2, 2004; and Annex XXXII-G, Statement given by Néstor Amílcar Villatoro Bran on August 18, 1999, to Prosecution Agency No. 10 of the Guatemala District Prosecutor's Office of the Public Prosecution Service.

<sup>187</sup> Original petition, received on December 9, 2005: Annex XXXII-H, Victim's information record at FAMDEGUA, dated June 10, 1999.

<sup>188</sup> State's submission, received on October 17, 2008: Annex IX, Request for information sent by the Public Prosecution Service to the office of the Ombudsman for Human Rights on April 15, 2008, p. 69-70; Request for information sent by the Public Prosecution Service to the National Redress Program on June 11, 2008, p. 72-73; and Request for information sent by the Public Prosecution Service to the Forensic Anthropology Foundation on July 3, 2008, p. 75-76.

174. According to the information provided by the petitioners and not disputed by the State, the following individuals have been identified as family members affected by the forced disappearance of Amancio Samuel Villatoro: María del Rosario Bran de Villatoro (victim's wife and petitioner), Sergio Raúl Villatoro Bran (victim's son), Néstor Amílcar Villatoro Bran (victim's son), Samuel Lisandro Villatoro Bran (victim's son), and Norma Carolina Villatoro Bran (victim's daughter).<sup>189</sup>

**i. Manuel Ismael Salanic Chiguil<sup>190</sup>**

175. Manuel Ismael Salanic Chiguil was 18 years old and was the oldest of three children. He was in the last year of teacher-training at the Rafael Aqueche Institute.<sup>191</sup>

176. In the early-morning hours of February 14, 1984,<sup>192</sup> heavily armed men – some in uniform, others in civilian clothes –<sup>193</sup> entered his home located at 1st Avenue No. 405, Ciudad Real II, in Guatemala City's Zone 12. Some of them climbed onto the roof while others broke doors down to gain entry, firing their weapons into the air and inside the house. Once inside they began interrogating Manuel Ismael Salanic Chiguil about weapons they said he was holding, applying electrical shocks to his naked body. They also tortured his brother Esteban Eliseo, aged 16, and beat the victim's father and uncle.<sup>194</sup> They then took him away, threatening the family that they would burn the house down with them inside if they reported the incident.<sup>195</sup>

177. The *Diario Militar* refers to Manuel Ismael Salanic Chiguil's case as No. 65: "(aka) MOISÉS, 19 years. Member of the structure of (aka) ROBERTO (Gatica Paz), in the FU-ORC, EGP. 14-02-84: At 1:00 a.m., captured in a house in Ciudad Real, Zone 12. 06-03-84. 300."

178. The victim's father and sister expressed their grief at not knowing where his remains were. "We still hope this matter will be cleared up, because it is unjust for it to remain in total impunity, and because I believe that as human beings we are entitled to justice," they said. His father asked to be told where his son is buried: "That is one of the most important things, because, as his family, we have to know where his remains are."<sup>196</sup>

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<sup>189</sup> Petitioners' submission, received on June 22, 2010.

<sup>190</sup> The victim is named in the *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*

<sup>191</sup> Original petition, received on December 9, 2005: Annex XXXIII-F, Statements of Manuel Ismael Salanic Tuc and María Ofelia Salanic Chiguil, dated February 9, 2005.

<sup>192</sup> In the CEH's report, the case of Manuel Ismael Salanic Chiguil is described in the following terms: "FORCED DISAPPEARANCE. Identified victims: Manuel Ismael Salanic Chiguil (child). On February 14, 1984, in Guatemala City, members of the BROE and the Army burst into the Salanic family home, apparently to search for weapons. They ransacked the house and tortured the brothers Manuel Ismael and Esteban Eliceo Salanic Chiguil in front of the other family members. They also attempted to rape a sister of the victims. Finally, they captured Manuel Ismael and took him away in a panel van. Some days later, the family received a call telling them that Manuel was being tortured in the basement of a museum in Zone 13, in the vicinity of the Men's Teacher-Training School. Following that communication, nothing more was heard about the victim." CEH, *Guatemala: Memory of Silence*, Vol. VIII, Submitted Cases, Annex II, p. 351. Available at: [http://shr.aaas.org/guatemala/ceh/gmds/pdf/anexo2\\_1.pdf](http://shr.aaas.org/guatemala/ceh/gmds/pdf/anexo2_1.pdf).

<sup>193</sup> Petitioners' submission, received on March 23, 2009: Statement of María Ofelia Salanic Chiguil, dated March 28, 2008.

<sup>194</sup> Petitioners' submission, received on March 23, 2009: Statement of María Ofelia Salanic Chiguil, dated March 28, 2008.

<sup>195</sup> Original petition, received on December 9, 2005: Annex XXXIII-F, Statements of Manuel Ismael Salanic Tuc and María Ofelia Salanic Chiguil, dated February 9, 2005.

<sup>196</sup> Original petition, received on December 9, 2005: Annex XXXIII-F, Statements of Manuel Ismael Salanic Tuc and María Ofelia Salanic Chiguil, dated February 9, 2005.

179. The same morning of the disappearance, Manuel Ismael's father went to report the incident to the National Civilian Police. His sister recalled that the police "took note of it, without giving it too much importance." They were told to look for him in the hospitals and morgues. Not satisfied with that, the family reported the incident to the media and, on February 17, 1984, lodged a *habeas corpus* remedy.<sup>197</sup>

180. The family also met with the Interior Minister,<sup>198</sup> following which several teams from the National Police's Technical Investigations Department visited the house, where they found a 9mm bullet embedded in the wall. During those investigations, on October 31, 1984, the authorities told the family that the victim had been taken into custody but that they did not know where he had been taken.<sup>199</sup> During the IACHR's on-site visit to Guatemala in May 1985, it was told that a *habeas corpus* remedy on behalf of Manuel Ismael Salanic Chiguil had been lodged with the Supreme Court of Justice in 1984.<sup>200</sup>

181. In 1988, a new complaint was filed with the Interior Ministry<sup>201</sup> and another complaint was also lodged with the office of the Ombudsman for Human Rights<sup>202</sup> describing all the formalities pursued to discover the victim's whereabouts. In light of the investigations ordered in the case file, on April 1, 1988, the office of the Ombudsman for Human Rights stated that "the disappearance of (the victim) represents a violation of human rights by the State of Guatemala by failing to uphold the right to security and to life that all the inhabitants of the Republic share."<sup>203</sup>

182. In addition, the family gave a statement to the Human Rights Office of the Archbishopric of Guatemala City<sup>204</sup> and they reported the case to the GAM and to FAMDEGUA.<sup>205</sup>

183. In its *Third Report on the Situation of Human Rights in the Republic of Guatemala* of 1985, the IACHR said in connection with this case that: "The family went to the National Police (DIT), where they were told that they knew he had been abducted but they did not know where he

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<sup>197</sup> Original petition, received on December 9, 2005: Annex XXXIII-F, Statements of Manuel Ismael Salanic Tuc and María Ofelia Salanic Chiguil, dated February 9, 2005; Annex XXXIII-G, Press reports on the victim's disappearance from March 1984; and Annex XXXIII-H, *habeas corpus* remedy, lodged by Manuel Ismael Salanic Tuc with the First Criminal Judge on February 17, 1984. See also: Petitioners' submission, received on March 23, 2009: Statement of María Ofelia Salanic Chiguil, dated March 28, 2008.

<sup>198</sup> Original petition, received on December 9, 2005: Annex XXXIII-I, Telegrams for an appointment with the Interior Minister dated August 6, 1984, and order to investigate the case of Manuel Ismael Salanic Chiguil issued by the Interior Minister on March 6, 1984.

<sup>199</sup> Original petition, received on December 9, 2005: Annex XXXIII-F, Statements of Manuel Ismael Salanic Tuc and María Ofelia Salanic Chiguil, dated February 9, 2005.

<sup>200</sup> See: IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*, Ch. II, Forced Disappearance of Persons, I: Absence of legal measures for protection from the problem of illegal arrests and disappearances; Personal exhibition remedies lodged with the Supreme Court of Justice of Guatemala during 1984.

<sup>201</sup> Original petition, received on December 9, 2005: Annex XXXIII-J, Communication from the victim's father to the Interior Minister, dated February 5, 1988.

<sup>202</sup> Original petition, received on December 9, 2005: Annex XXXIII-F, Statements of Manuel Ismael Salanic Tuc and María Ofelia Salanic Chiguil, dated February 9, 2005; and Annex XXXIII-K, Proceedings before the Ombudsman for Human Rights.

<sup>203</sup> Original petition, received on December 9, 2005: Annex XXXIII-K, Resolution of the office of the Ombudsman for Human Rights, dated April 1, 1988.

<sup>204</sup> Original petition, received on December 9, 2005: Annex XXXIII-F, Statements of Manuel Ismael Salanic Tuc and María Ofelia Salanic Chiguil, dated February 9, 2005.

<sup>205</sup> Original petition, received on December 9, 2005: Annex XXXIII-L, Victim's information record at FAMDEGUA, dated June 3, 1999.

was being held. They filed, fruitlessly, a habeas corpus remedy, and they notified the Interior Minister and the Director of the Regional Police, all without any positive results."<sup>206</sup>

184. The State reported that in 2000, it sent the disappearance case file to an agent of the Public Prosecution Service and that, in 2002, it requested information from the TSE and the SAT. In 2006, requests for information were sent to the Traffic Department, the General Migration Directorate, the USAC, and the AEU; a request was made for the certification of the birth certificates and ID records of the victim and his next-of-kin; and a statement was taken from the victim's father. In 2007, the Personnel Subdirectorate of the National Civilian Police was asked to submit a photocopy of the employment record of the victim, "who had worked for the Fifth Corps of the National Police during 1983, 1984, and 1985."<sup>207</sup> In 2008, requests for information were sent to the National Redress Program and the Forensic Anthropology Foundation.<sup>208</sup>

185. The records of the National Police Archives contain the documents sent to the different agencies of the police to determine whether the victim was in legal custody.<sup>209</sup> They also contain two telegrams sent by the victim's father to the Minister of the Interior asking to be informed of his son's whereabouts.

186. According to the information provided by the petitioners and not disputed by the State, the following individuals have been identified as family members affected by the forced disappearance of Manuel Ismael Salanic Chiguil: Esteban Eliseo Salanic Chiguil (victim's brother), Antonia Trinidad Chiguil Aguilar (victim's mother), Manuel Ismael Salanic Tuc (victim's father and petitioner), María Ofelia Salanic Chiguil (victim's sister), and María Lucrecia Salanic Chiguil (victim's sister).<sup>210</sup>

**j. Carlos Guillermo Ramírez Gálvez<sup>211</sup>**

187. Carlos Guillermo Ramírez Gálvez was 19 years old and one of six children. He was a student at the Technical Institute for Training and Productivity (INTECAP) and was on work placement at the Roosevelt Hospital.<sup>212</sup>

188. In the early-morning hours of February 14, 1984, eight heavily armed men, wearing black boots, blue uniform trousers, and identifying themselves as G-2 members,<sup>213</sup> entered the victim's father's home and asked for Carlos Guillermo who, at the time, was elsewhere, looking

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<sup>206</sup> IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*, Ch. II, Forced Disappearance of Persons.

<sup>207</sup> State's submission, received on October 17, 2008: Annex 1.2, Communication of the Human Rights Prosecution Office to the head of the National Civilian Police Personnel Subdirectorate, dated November 14, 2007.

<sup>208</sup> State's submission, received on October 17, 2008: Annex X, Request for information sent by the Public Prosecution Service to the National Redress Program on June 9, 2008, p. 35; and Request for information sent by the Public Prosecution Service to the Forensic Anthropology Foundation on July 3, 2008, p. 37.

<sup>209</sup> State's submission, received on March 20, 2009: Annex B, Copy from the National Police Historical Archive, pp. 18 to 46.

<sup>210</sup> Petitioners' submission, received on June 22, 2010.

<sup>211</sup> The victim is named in the *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*

<sup>212</sup> Original petition, received on December 9, 2005: Annex XXXIV-G, Letter sent to the *de facto* head of state, Óscar Humberto Mejía Víctores, by Carlos Alberto Ramírez Pereira, the victim's father, dated February 15, 1984.

<sup>213</sup> Original petition, received on December 9, 2005: Annex XXXIV-F, Statement of Jorge Alberto Ramírez Gálvez, dated February 4, 2005.

after his great-grandmother. As a result, the security forces took the victim's father into custody and instructed him to take them to his son. They beat him and said that if his son was not where he said, they would kill them both. Later, members of the security forces traveling in two vehicles – one red, the other white – detained the victim at his aunt's house at 17th Avenue 23-87 in Guatemala City's Zone 5.<sup>214</sup>

189. According to the testimony of the victim's brother, when he and a friend went to the aunt's house in search of the victim, the men who had been to the family home opened the sliding door of a white panel van, inside which there were two people, one of whom was the victim, who had been beaten and was bleeding. One of the men, who was drinking from a bottle, asked the detainees if they knew them and, even though the man broke a bottle of alcohol over his head, the victim replied that he did not.<sup>215</sup>

190. Later, Ramírez Gálvez was taken to his home, with his hands bound. Once there, they began to interrogate him about a weapon he allegedly had hidden. They mistreated his sister, then asked for a damp towel, placed it on the brother's stomach, and applied electrical shocks. The rest of the family had been confined to another room. They then tied a rope around the victim's neck and made him go down the ravine in search of the purported weapon. They tortured him again to obtain information about other people. They then took the victim away and threatened to kill his family if they reported the incident.<sup>216</sup> According to his father, the men placed two hand grenades in his son's clothing.<sup>217</sup>

191. The *Diario Militar* refers to Carlos Guillermo Ramírez Gálvez's case as No. 66: "(aka) DOUGLAS. 14-02-84: Captured in Zone 5, carrying grenades and fuses. Sold a 30-caliber carbine, possibly to a farmer. 06-03-84: 300." Section three of the *Diario Militar* refers to him as a "militant of the Organization of the People in Arms (ORPA)."

192. The victim's family was sorely affected by Carlos Guillermo's forced disappearance. "It hurt me to be unable to do anything for him [...]. Every minute, every second, it was painful to know how we lost him," said his sister María Leonor.<sup>218</sup> Similarly, his brother recalled with sadness how the victim's only dream was to become a physician to make his parents proud. "The harm I suffered is too great; I think it will never go away, it will always be there, as long as I am alive," he added.<sup>219</sup> His mother remembered the last time she saw her son: "I can still recall him, with his white shirt, black pants with white stripes, black shoes: that's what he was wearing, on the last day I ever saw him."<sup>220</sup> His mother also said she dreamed of having "the chance to fight to get back the remains of [her] son, whom [she] always wanted to kiss and embrace."

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<sup>214</sup> Original petition, received on December 9, 2005: Annex XXXIV-F, Statement of Jorge Alberto Ramírez Gálvez, dated February 4, 2005.

<sup>215</sup> Original petition, received on December 9, 2005: Annex XXXIV-F, Statement of Jorge Alberto Ramírez Gálvez, dated February 4, 2005.

<sup>216</sup> Petitioners' submission dated March 26, 2007: Annex XXXIV-N, Statement of Hugo Leonel Ramírez Gálvez, dated January 28, 2005.

<sup>217</sup> Original petition, received on December 9, 2005: Annex XXXIV-J, Statement of Jorge Alberto Ramírez Gálvez, dated February 4, 2005; Habeas corpus filing lodged by the victim's father on April 18, 1984.

<sup>218</sup> Original petition, received on December 9, 2005: Annex XXXIV-E, Statement of María Leonor Ramírez Gálvez, dated December 14, 2004.

<sup>219</sup> Original petition, received on December 9, 2005: Annex XXXIV-F, Statement of Jorge Alberto Ramírez Gálvez, dated February 4, 2005.

<sup>220</sup> Original petition, received on December 9, 2005: Annex XXXIV-M, Statement of Natalia Gálvez Soberanis, dated December 14, 2004.

193. On February 15, 1984, the family filed a complaint with the General Secretariat of the office of the Head of State<sup>221</sup> and, on April 18 of that year, they lodged the first habeas corpus remedy.<sup>222</sup> On May 30, 1986, they lodged another *habeas corpus* remedy.<sup>223</sup>

194. In addition, the family also spoke with the former rector of the USAC and lodged complaints with the GAM, FAMDEGUA,<sup>224</sup> and the Pro-Peace Commission.<sup>225</sup>

195. The State reported that in 1999, it called on the next-of-kin to give statements and requested information from the Embassy of Canada, FAMDEGUA, the office of the Archbishopric, the SIC, the Director of the Police, the office of the Ombudsman for Human Rights, and the Ministry of Defense. In 2002, it requested the certification of the birth certificate and ID records and requested information from the TSE and the SAT. In 2006, it requested information from the Traffic Department, the General Migration Directorate, the USAC, the AEU, and the RTU-SAT, and it requested the certification of the birth certificates and ID records of the victim's next-of-kin. In 2008, it requested information from the office of the Ombudsman for Human Rights and the National Redress Program.<sup>226</sup> In addition, statements were taken from the victim's mother and one of his brothers.

196. The records of the National Police Archives indicate that he was neither arrested nor arraigned by the police.<sup>227</sup>

197. According to the information provided by the petitioners and not disputed by the State, the following individuals have been identified as family members affected by the forced disappearance of Carlos Guillermo Ramírez Gálvez: Natalia Gálvez Soberanis (victim's mother and petitioner), Carlos Alberto Ramírez Gálvez (victim's brother), Jorge Alberto Ramírez Gálvez (victim's brother), Hugo Leonel Ramírez Gálvez (victim's brother), María Leonor Ramírez Gálvez (victim's sister), Miriam Nineth Ramírez Gálvez (victim's sister), and Nina Antonieta Ramírez Gálvez (victim's sister).<sup>228</sup>

**k. Sergio Saúl Linares Morales<sup>229</sup>**

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<sup>221</sup> Original petition, received on December 9, 2005: Annex XXXIV-G, Letter sent to the *de facto* head of state, Óscar Humberto Mejía Víctores, by Carlos Alberto Ramírez Pereira, the victim's father, dated February 15, 1984.

<sup>222</sup> Original petition, received on December 9, 2005: Annex XXXIV-J, *habeas corpus* remedy, filed by Carlos Alberto Ramírez Pereira with the 2nd First-instance Criminal Judge on February 17, 1984.

<sup>223</sup> Original petition, received on December 9, 2005: Annex XXXIV-K, *habeas corpus* remedy, filed by Carlos Alberto Ramírez Pereira with the 7th First-instance Criminal Judge on June 24, 1986.

<sup>224</sup> Original petition, received on December 9, 2005: Annex XXXIV-LL, Victim's information record at FAMDEGUA, dated May 20, 1999.

<sup>225</sup> Original petition, received on December 9, 2005: Annex XXXIV-L, Letter to the Pro-Peace Commission of Guatemala, dated April 11, 1984.

<sup>226</sup> State's submission, received on October 17, 2008: Annex XI, Request for information sent by the Public Prosecution Service to the office of the Ombudsman for Human Rights on April 14, 2008, p. 66; and Request for information sent by the Public Prosecution Service to the National Redress Program on June 9, 2008, p. 69.

<sup>227</sup> State's submission, received on March 20, 2009: Annex B, Copy from the National Police Historical Archive, pp. 324-328.

<sup>228</sup> Petitioners' submission, received on June 22, 2010.

<sup>229</sup> During the IACHR's on-site visit to Guatemala in May 1985, it received information on the forced disappearance of Sergio Saúl Linares Morales. See: IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala, 1985, op. cit.*, Ch. II, Forced Disappearance of Persons.



198. Sergio Saúl Linares Morales was 30 years old and had two children. He had graduated in civil engineering from the USAC, had specialized in computers and systems technology, and had studied for his master's degree in the United States. He worked for the Municipal Development Institute as the head of the Data Processing and Systems Department and had been a member of the Association of University Students and a student representative on the University Council.<sup>230</sup>

199. On February 23, 1984,<sup>231</sup> as he was leaving the Municipal Development Institute in Guatemala City's Zone 9, armed men accompanied by a woman abducted him and took his vehicle.<sup>232</sup>

200. That same day, at around 6.30 p.m., the victim's home was raided.<sup>233</sup> His mother reported that several persons entered, but that she was unable to identify them because they blindfolded her; however, she believes her son was among them because of the bloodstains they later found.<sup>234</sup> The home invasion was never reported, since the victim's next-of-kin knew that the political will to investigate incidents of that kind did not exist.<sup>235</sup>

201. Two weeks after the disappearance, individuals suspected of being state agents reportedly offered the victim's sister to hand her brother over in exchange for money. The same offer was made on two further occasions. On other occasions, people came to her door to tell her that her brother's body had appeared.<sup>236</sup>

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<sup>230</sup> Petitioners' submission, dated October 17, 2007: Annex XXXV-Ñ, Statement of Mirtala Elizabeth Linares, dated July 8, 2006. Original petition, received on December 9, 2005: Annex XXXV-F, Statement of Wilfrida Raquel Morales Cruz, dated December 13, 2004; Annex XXXV-I, Statement of Ruth Crisanta Linares Morales, dated November 30, 2004; Annex XXXV-L, Statement of Edna Beatriz Linares Morales, dated December 13, 2004; and Annex XXXV-LL, Statement of Mirtala Elizabeth Linares Morales, dated December 10, 2004.

<sup>231</sup> In the CEH's report, the case of Sergio Saúl Linares Morales is described as follows: "Sergio Saúl Linares Morales was 33 years of age, worked as a systems advisor for the Municipal Development Institute (INFOM), and was a professor at the USAC's School of Engineering. In 1977, he had been an Engineering School student representative on the University Council and a leader of that school's students' association. On February 23, 1984, at around 5 p.m., Sergio Saúl Linares Morales disappeared after taking his car (private registration plate No. P-165196) from the INFOM toward the University of San Carlos of Guatemala. Nothing more was heard of him. At 7 p.m. that evening, unidentified men raided his home, beat his 68-year-old mother, and seized a series of personal objects belonging to the victim." CEH, *Guatemala: Memory of Silence*, Vol. VI, Typical Case No. 48, p. 147. Available at: [http://shr.aaas.org/guatemala/ceh/gmds.pdf/anexo2\\_1.pdf](http://shr.aaas.org/guatemala/ceh/gmds.pdf/anexo2_1.pdf).

<sup>232</sup> Petitioners' submission of October 17, 2007: Annex XXXV-Ñ, Statement of Mirtala Elizabeth Linares, dated July 8, 2006. Original petition, received on December 9, 2005: Annex XXXV-F, Statement of Wilfrida Raquel Morales Cruz, dated December 13, 2004; and Annex XXXV-I, Statement of Ruth Crisanta Linares Morales, dated November 30, 2004.

<sup>233</sup> Original petition, received on December 9, 2005: Annex XXXV-F, Statement of Wilfrida Raquel Morales Cruz, dated December 13, 2004.

<sup>234</sup> Petitioners' submission of October 17, 2007: Annex XXXV-N, Notarized deed of March 7, 2006, in which Wilfrida Raquel Morales de Linares reports the housebreaking and physical aggression of February 23, 1984. See also: Petitioners' submission of October 17, 2007: Annex XXXV-Ñ, Statement of Mirtala Elizabeth Linares, dated July 8, 2006; Original petition, received on December 9, 2005: Annex XXXV-I, Statement of Ruth Crisanta Linares Morales, dated November 30, 2004; and Annex XXXV-LL, Statement of Mirtala Elizabeth Linares Morales, dated December 10, 2004.

<sup>235</sup> Original petition, received on December 9, 2005: Annex XXXV-LL, Statement of Mirtala Elizabeth Linares Morales, dated December 10, 2004.

<sup>236</sup> Original petition, received on December 9, 2005: Annex XXXV-LL, Statement of Mirtala Elizabeth Linares Morales, dated December 10, 2004. Petitioners' submission of October 17, 2007: Annex XXXV-Ñ, Statement of Mirtala Elizabeth Linares, dated July 8, 2006; and Statement of Mirtala Elizabeth Linares of October 9, 2007, received by the IACHR on October 17, 2007.

202. The *Diario Militar* refers to the case of Sergio Saúl Linares Morales as No. 74: "(aka) OTTO. Member of the PGT-CC, responsible for the Central Region. Member of the Manuel Andrade Roca Sectional Body (OSMAR). 23-02-84: Captured in Zone 9. 29-03-84: 300" (handwritten).

203. Julio César Pereira Vásquez, a surviving victim of the *Diario Militar*, told the media that he was forced under torture to participate in the victim's abduction.<sup>237</sup>

204. The home invasion, abduction, and subsequent disappearance of Sergio Saúl Linares Morales had a profound effect on his family. His sister, Mirtala Elizabeth Linares Morales, said that "the impact was particularly strong for my mother and for Sandra," the victim's wife. She states that her mother was very sad and aggrieved by her son's disappearance: "I think it was the feeling of powerlessness at being unable to protect her family and her home that hurt my mother the most." Mirtala Elizabeth explains that shortly afterward, her mother began to develop glaucoma, and that the illness left her almost blind. Both their mother and Sandra abandoned the house and were afraid to return. While Sergio's mother went to live with one of her daughters, Sandra spent a time hiding in the homes of various friends and acquaintances until she was able to cross the border illegally into Mexico. Mirtala Elizabeth said that "uncertainty kept us in a constant state of anxiety."<sup>238</sup> She also said that her reaction to her brother's disappearance was "great sorrow, confusion, and powerless at not having any answers." She explained that her brother was an element in the family's cohesion and that his disappearance affected them all deeply: following the incident, the family disintegrated. "His disappearance still affects us, because it is clear that everyone in the family needs him."<sup>239</sup>

205. Wilfrida Raquel Morales Cruz, Linares Morales's mother, stated that it was very painful to remember her son. "You can't imagine how difficult it is to remember," she said. "What I would like, and it's impossible, is for all this to be a lie and for my son to appear, for them to tell me where my son is."<sup>240</sup>

206. The victim's next-of-kin reported the forced disappearance to the press and presented complaints with the National Police, the Judicial Police, and the Ministry of Defense, including a *habeas corpus* remedy.<sup>241</sup> Six months after filing the complaint with the National Police, they asked for it to be certified, but they were told that no complaint had been registered.<sup>242</sup> The family was also received by the *de facto* head of state, Gen. Óscar Mejía Víctores.<sup>243</sup> On February

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<sup>237</sup> Petitioners' submission of October 17, 2007: Annex XXXV-Ñ, Statement of Mirtala Elizabeth Linares, dated July 8, 2006. Original petition, received on December 9, 2005: Annex XXXV-H, Press report titled "Former guerrilla confesses: I handed over PGT comrades," dated August 13, 1999; and Press report titled "Julio César Pereira talks about his abduction." See also: Statement of Mirtala Elizabeth Linares of October 9, 2007, received by the IACHR on October 17, 2007.

<sup>238</sup> Statement of Mirtala Elizabeth Linares of October 9, 2007, received by the IACHR on October 17, 2007.

<sup>239</sup> Statement of Mirtala Elizabeth Linares of October 9, 2007, received by the IACHR on October 17, 2007.

<sup>240</sup> Original petition, received on December 9, 2005: Annex XXXV-F, Statement of Wilfrida Raquel Morales Cruz, dated December 13, 2004.

<sup>241</sup> Original petition, received on December 9, 2005: Annex XXXV-I, Statement of Ruth Crisanta Linares Morales, dated November 30, 2004; Annex XXXV-J, Note sent to the Interior Ministry; and Annex XXXV-K, Victim's information record at FAMDEGUA, dated October 6, 1987. See also: Petitioners' submission of October 17, 2007: Annex XXXV-Ñ, Statement of Mirtala Elizabeth Linares, dated July 8, 2006; and State's submission, received on March 20, 2009: Annex B, Copy of document No. 343-JAG, sent by the Captain of the Fourth Corps of the National Police to the Director General of the Police on February 25, 1984, p. 87.

<sup>242</sup> Petitioners' submission of October 17, 2007: Annex XXXV-Ñ, Statement of Mirtala Elizabeth Linares, dated July 8, 2006.

<sup>243</sup> Original petition, received on December 9, 2005: Annex XXXV-F, Statement of Wilfrida Raquel Morales Cruz, dated December 13, 2004.

24, 1984, the family lodged an amparo relief remedy with the Supreme Court<sup>244</sup> and the victim's workmates sent a note to the Ambassador of the Republic of Austria<sup>245</sup> and to the Commissioner for Human Rights.<sup>246</sup> Given the absence of any response, in 1987 a request was made for the case to be reopened.<sup>247</sup>

207. In November 1988, the office of the Ombudsman for Human Rights declared: "I. That the forced disappearance of SERGIO SAÚL LINARES MORALES represents a violation of human rights by the State of Guatemala by failing to uphold the right to security and to life that all the inhabitants of the Republic share."<sup>248</sup>

208. The victim's mother and siblings were among the founders of the GAM<sup>249</sup> and they also lodged a complaint with FAMDEGUA.<sup>250</sup> In February 2006, they filed a fresh *habeas corpus* remedy with the Supreme Court of Justice<sup>251</sup> and, in April of that year, they opened a case file with the National Redress Program.<sup>252</sup>

209. The appearance of the *Diario Militar* had two specific effects on the family of Sergio Saúl Linares Morales: it proved that the victim had been detained by the State's security forces, and it gave them the hope that this evidence would lead to progress in the disappearance investigation. "However, those investigations have not taken place, because no government has had the political will to do so. In Guatemala, impunity continues," explained Mirtala Elizabeth, in whose view the lack of progress leaves the victims "in a state of total defenselessness." Speaking about the statements taken from them by the Public Prosecution Service, she said she thought it was only so the State could say that "it did something."<sup>253</sup>

210. The Linares Morales family suffered persecution because of its search efforts and because of its involvement in the GAM. "My family lives in a state of constant insecurity. [I am] a member of the family that was harassed, blackmailed, followed, and intimidated the most by the State's security forces. [...] Whenever we came home after a meeting of the GAM, they knew we had been there, where it had been held, and how long we spent there. [...] In addition, we heard of

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<sup>244</sup> Original petition, received on December 9, 2005: Annex XXXV-J, Amparo remedy filed on behalf of Sergio Saúl Linares Morales with the Supreme Court of Justice on February 24, 1984. See also: IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.* Ch. II, Forced Disappearance of Persons, I: Absence of legal measures for protection from the problem of illegal arrests and disappearances; Personal exhibition remedies lodged with the Supreme Court of Justice of Guatemala during 1984.

<sup>245</sup> Original petition, received on December 9, 2005: Annex XXXV-J, Letter to the Ambassador of the Republic of Austria, dated March 16, 1984.

<sup>246</sup> Amnesty International also spoke out in connection with the victim's case. The victim's case was included in the report of the Human Rights Group of the UK Parliament's House of Commons, document 01-828-0460, following their visit to Guatemala in October 1984. See: Original petition, received on December 9, 2005: Annex XXXV-J.

<sup>247</sup> State's submission of October 17, 2008: Annex XII, Request for the reopening of the case, dated October 6, 1987, p. 14.

<sup>248</sup> State's submission of October 17, 2008: Annex XII, Document of the office of the Ombudsman for Human Rights, dated June 19, 2008, p. 116.

<sup>249</sup> Original petition, received on December 9, 2005: Annex XXXV-I, Statement of Ruth Crisanta Linares Morales, dated November 30, 2004.

<sup>250</sup> Original petition, received on December 9, 2005: Annex XXXV-K, Victim's information record at FAMDEGUA.

<sup>251</sup> State's submission of October 17, 2008: Annex XII, *habeas corpus* remedy filed by Mario Alcides Polanco Pérez on April 3, 2006, pp. 6 and 7.

<sup>252</sup> State's submission of October 17, 2008: Annex I.2, Document of the National Redress Program, dated July 3, 2008.

<sup>253</sup> Statement of Mirtala Elizabeth Linares of October 9, 2007, received by the IACHR on October 17, 2007.

several GAM members who were killed [...] The State wanted to brutally repress all the GAM's work."<sup>254</sup>

211. The State reported that in 2002 it requested information from the SAT and the ID Registrar of the department of Guatemala and, in 2003, it requested the certification of the victim's birth certificate. In 2006, information was requested from the GAM, FAMDEGUA, the National Police, the Criminal Investigations Directorate of the Public Prosecution Service, the RTU, the USAC, the General Migration Directorate, the SAT, and the Ministry of Defense, and a request was made for the certification of the birth certificate and ID records of the victim and his next-of-kin. In addition, statements were taken from the victim's siblings. In 2007, requests for information were sent to the Registrar of Vehicles, Transfers, and Amendments and to the Traffic Department. In 2008, requests for information were sent to the office of the Ombudsman for Human Rights, the National Redress Program, and the Forensic Anthropology Foundation.<sup>255</sup>

212. The records in the Police Archives contain the complaints that were filed, but no formalities that were pursued in connection with them.<sup>256</sup> In addition, there are records of several documents sent by National Police officers indicating that the victim was not being held in the facilities for which they were responsible. They also contain complaints lodged by family members with the Pro-Peace Committee, the dean of the USAC, and the president of the Association of Journalists of Guatemala, together with a letter from that committee to the Minister of the Interior asking him to report on the whereabouts of several victims, including Sergio Linares Morales.

213. According to the information provided by the petitioners and not disputed by the State, the following individuals have been identified as family members affected by the forced disappearance of Sergio Saúl Linares Morales: Wilfrida Raquel Morales (victim's mother), Mirtala Elizabeth Linares Morales (victim's sister and petitioner), Ruth Crisanta Linares Morales (victim's sister), Edna Beatriz Linares Morales (victim's sister), José Aquiles Linares Morales (victim's brother), Mónica Alejandra Linares Mendoza (victim's daughter), Sergio Alfonso Linares Figueroa (victim's son), and Sandra Regina Figueroa Carrillo (victim's wife).<sup>257</sup>

#### **I. Luz Haydeé Méndez Calderón<sup>258</sup> and 4.13 Wendy Santizo Méndez**

214. Luz Haydeé Méndez Calderón was 35 years old and a mother of two. She had studied at the USAC's School of Humanities and was involved in political activities.<sup>259</sup>

215. On March 8, 1984, her children arrived at their home, located on 3rd Avenue 22-16, Zone 19, Col. San Francisco, in Guatemala City, where they saw two vehicles – a white panel van and a blue Volvo – with people inside. Upon entering the house, the children saw that a group of

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<sup>254</sup> Statement of Mirtala Elizabeth Linares of October 9, 2007, received by the IACHR on October 17, 2007.

<sup>255</sup> State's submission of October 17, 2008: Annex XII, Request for information sent by the Public Prosecution Service to the office of the Ombudsman for Human Rights on April 14, 2008, p. 114; Request for information sent by the Public Prosecution Service to the National Redress Program on June 4, 2008, p. 118; and Request for information sent by the Public Prosecution Service to the Forensic Anthropology Foundation on July 3, 2008, p. 125.

<sup>256</sup> State's submission, received on March 20, 2009: Annex B, Copy from the National Police Historical Archive, pp. 84-103.

<sup>257</sup> Petitioners' submission, received on June 22, 2010.

<sup>258</sup> During the IACHR's on-site visit to Guatemala in May 1985, it received information on the forced disappearance of Luz Haydeé Méndez Calderón. See: IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala, 1985, op. cit.*, Ch. II, Forced Disappearance of Persons.

<sup>259</sup> Original petition, received on December 9, 2005: Annex XXXVI-A, Statement of Wendy Santizo Méndez, dated November 3, 2004.

strangers were inside: ten uniformed soldiers and an officer with insignia that distinguished him from the others. The children were interrogated and locked in one of the rooms, while their mother was locked in another. Later, one of the soldiers came into the room where Luz Haydeé's children were and took the boy away.<sup>260</sup>

216. Wendy Santizo Méndez – the daughter of Luz Haydeé Méndez Calderón, who at the time was nine years old – described how she was tortured and raped the day her mother was abducted: “The soldier who stayed in the room with me closed the door and, when he turned round, he threw me onto my parents’ bed. Then he threw himself on top of me; I don’t know how long it lasted, all I remember is an enormous pain between my legs, and I could see him on top of me, I could smell his pervasive odor. I turned away to avoid looking at him and tried not to think about it while the pain I was feeling subsided; I focused on the coins that were on the bed. I remember how he was moving and it was as if I had gone to another world; it was like a sea.”<sup>261</sup>

217. The security forces then stood the children against the wall and pointed at them with their machine-guns. They told the brother that “he had to talk” because otherwise they would kill his sister, and they counted to three in a mock executing by firing squad. This situation was played out more than once.<sup>262</sup>

218. When the soldiers struck her son with his rifle butt, Luz Haydeé ran out into the yard, shouting at them to leave her children alone. Wendy said she was unrecognizable because of the beating she had taken to the face.<sup>263</sup> They all went back into the house, where the children were forced to watch how the soldiers pulled their mother’s fingernails out with pliers. They then placed a hood over her head and put her into one of the cars. The soldiers forced them to eat a banana and they began to feel sleepy, with a headache. They were put into another car.<sup>264</sup>

219. Wendy Santizo recalled that “two men connected some sort of electrical devices to me that made me jump; they opened my eye and when I didn’t react any more, another man would examine me, he was like a doctor, he said that they should stop because I couldn’t take any more [...] Another thing I remember is that when they connected the electricity, my body moved to one side. They said that when I moved to that side, it activated a machine that sent electricity through my mother, and vice-versa. I also remember that there was someone taking photographs, and people came in and out just to listen, and they kept quiet or participated a little...”<sup>265</sup>

220. According to Wendy Santizo’s narrative, the only thing she remembered later was waking up in bed alongside her brother. A neighbor told them to run to their aunt’s house; a van followed them, but despite that they were able to reach their destination. Relatives took them to

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<sup>260</sup> Original petition, received on December 9, 2005: Annex XXXVI-A, Statement of Wendy Santizo Méndez, dated November 3, 2004.

<sup>261</sup> Original petition, received on December 9, 2005: Annex XXXVI-A, Statement of Wendy Santizo Méndez, dated November 3, 2004.

<sup>262</sup> Original petition, received on December 9, 2005: Annex XXXVI-A, Statement of Wendy Santizo Méndez, dated November 3, 2004.

<sup>263</sup> Original petition, received on December 9, 2005: Annex XXXVI-A, Statement of Wendy Santizo Méndez, dated November 3, 2004.

<sup>264</sup> Original petition, received on December 9, 2005: Annex XXXVI-A, Statement of Wendy Santizo Méndez, dated November 3, 2004.

<sup>265</sup> Original petition, received on December 9, 2005: Annex XXXVI-A, Statement of Wendy Santizo Méndez, dated November 3, 2004.

Jutiapa, to their grandmother's house, where they stayed for two years until their father, who had taken refuge in Canada ten days after the incident, took them to that country.<sup>266</sup>

221. The *Diario Militar* refers to Luz Haydeé Méndez Calderón's case as No. 83: "(aka) CHAVE. False name: SOFÍA ESTRADA. Member of the PGT-CC Secretariat. Responsible for international affairs and party propaganda. Whenever (aka) JULIÁN came back from Mexico, he turned up at the house of (aka) Chave. Her husband MARCO ANTONIO SANTIZO VELÁSQUEZ (aka) TITO or CABALLÓN is responsible for the office where the DN meets. In Zone 10, 4th floor of the Rodríguez building. 1968, was in Russia. 08-03-84: Captured at 3rd Avenue 22-16, Zone 19, Col. San Francisco. 02-05-84 Moved to U-4" (handwritten).

222. Méndez Calderón's disappearance had a profound effect on the family. Her daughter Wendy recalled how it affected her father: "It's very difficult for my father to talk about her; even today, he avoids any conversation about my mother. I think he feels guilty that it wasn't him who was abducted and killed." In particular, the publication of the *Diario Militar* was a source of relief for Wendy. "It was another piece of evidence proving what had happened; it was like having a document that confirmed what they did with my mother. The Army could no longer claim that nothing had happened and that the disappeared were probably in Acapulco."<sup>267</sup>

223. On March 10, 1984, a *habeas corpus* remedy was lodged,<sup>268</sup> and on August 13, 1991, the case was reported to the Ombudsman for Human Rights.<sup>269</sup>

224. On June 11, 1999, Wendy Santizo and Marcia Méndez Calderón gave a statement to the 6th Prosecutor's Office of the Public Prosecution Service<sup>270</sup> and filed complaints with the GAM and FAMDEGUA.<sup>271</sup> On February 23, 2008, a new *habeas corpus* remedy was lodged;<sup>272</sup> on February 28, 2008, a request was made for the commencement of a special investigation procedure;<sup>273</sup> and on April 9 of that year, the Public Prosecution Service presented its report on the investigations carried out.

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<sup>266</sup> Original petition, received on December 9, 2005: Annex XXXVI-A, Statement of Wendy Santizo Méndez, dated November 3, 2004.

<sup>267</sup> Original petition, received on December 9, 2005: Annex XXXVI-A, Statement of Wendy Santizo Méndez, dated November 3, 2004.

<sup>268</sup> Original petition, received on December 9, 2005: Annex XXXVI-B, Remedy for *habeas corpus*, filed on March 10, 1984. Also: State's submission, presented on October 17, 2008: Annex XIII, Remedy for *habeas corpus*, dated March 9, 1984, filed by Marcia Méndez, p. 50. In addition, on March 11, 1984, the Interior Minister wrote to the Director General of the National Police, Héctor Rafael Bol de la Cruz, instructing him to investigate the victim's case. See: State's submission, presented on October 17, 2008: Annex XIII, Document from the Interior Minister, dated March 23, 1984, p. 31. See also: IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.* Ch. II, Forced Disappearance of Persons, I: Absence of legal measures for protection from the problem of illegal arrests and disappearances; Personal exhibition remedies lodged with the Supreme Court of Justice of Guatemala during 1984.

<sup>269</sup> Original petition, received on December 9, 2005: Annex XXXVI-C, Complaint lodged with the office of the Ombudsman for Human Rights on August 13, 1991.

<sup>270</sup> Original petition, received on December 9, 2005: Annex XXXVI-E, Statement given to the Public Prosecution Service by Wendy Santizo Méndez and Marcia Méndez Calderón, dated June 11, 1999.

<sup>271</sup> Original petition, received on December 9, 2005: Annex XXXVI-F, Victim's information record at FAMDEGUA, dated May 20, 1999.

<sup>272</sup> State's submission, presented on October 17, 2008: Annex XIII, Remedy for *habeas corpus*, filed by Marcia Méndez on February 23, 2006, pp. 4 and 5; Document sent on October 13, 1999, from the Public Prosecution Service to the Ombudsman for Human Rights regarding Marco Antonio Santizo Velásquez, the victim's husband, p. 46.

<sup>273</sup> State's submission, presented on October 17, 2008: Annex XIII, Request for the commencement of a special investigation procedure presented by Mario Alcides Polanco Pérez on February 26, 2008, pp. 138 and 139.

225. The State reported that in 1999, it received the victim's record, it requested information from the office of the Ombudsman for Human Rights, the National Police, the SIC, the Ministry of Defense, the USAC, and the SAT, and statements were taken from the victim's sister and from Wendy Santizo. In 2001, a request was made for the certification of the birth certificate and ID papers of the victim, her police record, and her personal details. In 2006, requests for information were sent to the General Migration Directorate, the USAC, the AEU, the SAT and the RTU, and a request was made for the certification of the ID records of Luz Haydeé Méndez and Wendy Santizo. In 2007, the victim's sister gave a statement to the Public Prosecution Service. In 2008, the police hierarchical staff listing was received, and information was requested from the prison system, the office of the Ombudsman for Human Rights, FAMDEGUA, the GAM, the Migration Directorate, the Traffic Department, the National Redress Program, the TSE, the Criminal Investigations Department, the SAT, and the Forensic Anthropology Foundation.<sup>274</sup> The case file sent by the State contains no indication of investigations begun into the abduction and rape of Wendy Santizo Méndez.

226. The records of the Police Archives contain communications sent to various police agencies to determine whether the victim was in custody.<sup>275</sup>

227. According to the information provided by the petitioners and not disputed by the State, the following individuals have been identified as family members affected by the forced disappearance of Luz Haydeé Méndez Calderón: Wendy Santizo Méndez (Luz Haydeé Méndez Calderón's daughter), Marcia Méndez Calderón (Luz Haydeé Méndez Calderón's sister), Igor Santizo Méndez (Luz Haydeé Méndez Calderón's son), and Rubén Ilich Mendoza (Luz Haydeé Méndez Calderón's grandson).<sup>276</sup> In addition, the following individuals have been identified as family members affected by the torture and rape of Wendy Santizo Méndez: Rubén Ilich Mendoza (Wendy Santizo Méndez's son), Igor Santizo Méndez (Wendy Santizo Méndez's brother) and Marcia Méndez Calderón (Wendy Santizo Méndez's aunt).

**m. Juan Pablo and 4.15 María Quirina Armira López**

228. Juan Pablo Armira López was 12 years old and a pupil at primary school. His sister María Quirina was 15 and was studying the basic cycle of her secondary education. The father of the two had been forced to leave his family because the Army was after him. His wife stated that the Army used to come to their home, asking after her husband and making threats against them.<sup>277</sup>

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<sup>274</sup> State's submission, presented on October 17, 2008: Annex XIII, Request for information sent by the Public Prosecution Service to the prison system on April 4, 2008, p. 96; Request for information sent by the Public Prosecution Service to the office of the Ombudsman for Human Rights on April 3, 2008, p. 100; Request for information sent by the Public Prosecution Service to FAMDEGUA on April 3, 2008, p. 104; Request for information sent by the Public Prosecution Service to the GAM on April 3, 2008, p. 106; Request for information sent by the Public Prosecution Service to the General Migration Directorate on April 7, 2008, p. 107; Request for information sent by the Public Prosecution Service to the Traffic Department on April 8, 2008, p. 136; Request for information sent by the Public Prosecution Service to the National Redress Program on April 16, 2008, p. 159; Request for information sent by the Public Prosecution Service to the TSE on April 14, 2008, p. 150; Request for information sent by the Public Prosecution Service to the Criminal Investigations Department on April 14, 2008, p. 151; Request for information sent by the Public Prosecution Service to the SAT on May 7, 2008, p. 163; and Request for information sent by the Public Prosecution Service to the Forensic Anthropology Foundation on July 3, 2008, p. 168.

<sup>275</sup> State's submission, received on March 20, 2009: Annex B, Copy from the National Police Historical Archive, pp. 114 to 126.

<sup>276</sup> Petitioners' submission, received on June 22, 2010.

<sup>277</sup> Original petition, received on December 9, 2005: Annex XXXVII-E, Statement of Eduarda López Pinol, María Froilana Armira López, and María Lidia Marina Armira López, dated July 28, 2005.

229. On March 10, 1984, Juan Pablo Armira López, accompanied by a person called Lorenza who was with her 11-month-old son, had agreed to meet a contact who was to give him money for household expenses. When they reached the meeting place, they were bundled into a vehicle by a group of men. On March 14, 1984, agents of the Judicial Police and Army troops arrived at the victims' family home asking for a person called "Verónica." Although María Quirina Armira denied being "Verónica," they told her to gather up a change of clothes and took her away with them, promising to return her the next day.<sup>278</sup>

230. The *Diario Militar* refers to Juan Pablo Armira López's case as No. 86: "(aka) SERGIO. 12 years of age, responsible for connections and paying for FAR houses. 10-03-84: Captured. Was sent to Chimaltenango" (handwritten). María Quirina Armira López's case is No. 94: "(aka) VERÓNICA. Lover of (aka) Lt. Joel.<sup>279</sup> 14-03-84: At 12:00 hours, she was fingered by her brother (aka) SERGIO and captured in Col. Atlántica, Zone 18. Time went by and when (aka) SERGIO saw his sister, he broke down and immediately indicated the house where the abductee was, since on several occasions he had gone there to leave money for the upkeep of the house and its inhabitants. The necessary reconnaissance was carried out and, at 5:30 p.m., the operation began, with support from the blues and an M-8 from the Mariscal Zavala Brigade, which was not necessary to use because of the speed and force of the operation. A person came out with his hands up: this was the person responsible for the house (aka) YURO. Then two more men came out, followed by two women with two children, and inside the house was a people's prison, where Mr. JOSÉ CLEMENTE BARRIOS BARAHONA was being held; he was alive, after three months' confinement. The operation lasted barely 10 minutes. Address: 3rd Street, Plot 13, Section H, Zone 4 of Mixco, Col. Monte Verde. The individuals captured were:" Page 30 contains the following note: "Along with all of these, who were sent to Chimaltenango, went MARÍA QUIRINA ARMINA LÓPEZ (aka) VERÓNICA, the lover of (aka) JOEL. JUAN PABLO ARMIRA LÓPEZ (aka) SERGIO, aged 12 years."

231. Eduarda López Pinol, the mother of the victims, described how the disappearance of her two children and her husband's flight (the Army was searching for him) changed her life for ever. She stated that after her husband had to flee, her children dropped out of school and began working with her. After the abduction and disappearance of the children, Eduarda's family had to leave town, selling the plot of land that belonged to her. Although they bought a plot in Chimaltenango, they had problems with the deeds and lost it and, since then, they had to rent a place to live. María Froilana Armira López, the sister of the victims, stated that when their father returned, he was very sick and unable to work. "We couldn't continue our studies; the women among us had to get married and that was the end of our dreams of having our own professions." According to María Froilana, all these developments gave rise to intense fear among the family. "Anything to do with the Army terrifies us. We even had to change our names; we also had to stop wearing our typical regional clothes,<sup>280</sup> because we felt they would recognize us just by what we were wearing."<sup>281</sup>

232. The children's mother lodged a report with a human rights organization involved with looking for and locating children who had disappeared during the armed conflict, the *¿Dónde Están?*

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<sup>278</sup> Original petition, received on December 9, 2005: Annex XXXVII-F, Complaint lodged with the *¿Dónde Están?* Association.

<sup>279</sup> In the *Diario Militar* "Lt. Joel" is number 87, Alvaro Rene Sosa Ramos, "responsible for the military structure of the urban front of the FAR", captured on March 11, 1984.

<sup>280</sup> The victims belonged to the indigenous Maya population.

<sup>281</sup> Original petition, received on December 9, 2005: Annex XXXVII-E, Statement of Eduarda López Pinol, María Froilana Armira López, and María Lidia Marina Armira López, dated July 28, 2005.



[Where Are They?] Association,<sup>282</sup> but she lodged no complaints with the domestic authorities out of fear of reprisals.<sup>283</sup>

233. The State reported that in 2002, it requested information from the TSE and the SAT and, in 2006, it requested information from the Traffic Department, the General Migration Directorate, the USAC, the AEU, and the RTU, and requested the certification of the ID record of the victims and their next-of-kin. On January 31, 2006, the children's mother opened a case file with the National Redress Program through which, on April 21, 2008, she received the amount of Q.44,000 as compensation for the forced disappearance of her children. In addition, in 2008, requests for information were sent to the office of the Ombudsman for Human Rights, the National Redress Program, and the Forensic Anthropology Foundation.<sup>284</sup>

234. According to the information provided by the petitioners and not disputed by the State, the following individuals have been identified as family members affected by the forced disappearance of Juan Pablo Armira López and María Quirina Armira López: Eduarda López Pinol (victims' mother), María Froilana Armira López (victims' sister and petitioner), María Lidia Armira López (victims' sister), and Luis Odilio Armira López (victims' brother).<sup>285</sup>

**n. Lesbia Lucrecia García Escobar<sup>286</sup>**

235. Lesbia Lucrecia García Escobar was 26 years old and was the youngest of three children. She was a leader in the workers' trade union at the restaurant where she worked. She was a member of the Guatemalan Labor Party (PGT).<sup>287</sup>

236. According to the narrative given by her father, on April 17, 1984, García Escobar was detained in the vicinity of her workplace, located at 6th Avenue "A," between 17th and 18th Streets, in Guatemala City's Zone 1, by members of the Judicial Guard, who later handed her over to military intelligence. A workmate told the victim's father and brother that she was alongside García Escobar when four heavily armed men in a white panel van stopped her and made her get into the vehicle. According to the victim's father, that same information was subsequently corroborated by a G-2 informant, who was later killed.<sup>288</sup>

237. The *Diario Militar* refers to Lesbia Lucrecia García Escobar's case as No. 116-1: "Handed over her room, where she had, as a screen, D.S. LESBIA LUCRECIA GARCÍA ESCOBAR (aka) MANUELA, 22nd Avenue "A" 12-42, Zone 6, where they had one M-16, five grenades, fuses, pistols, and propaganda. 29-04-84: Was captured while carrying an H.K. 9 mm. Plus a Russian-

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<sup>282</sup> Original petition, received on December 9, 2005: Annex XXXVII-F, Complaint lodged with the *¿Dónde Están?* Association.

<sup>283</sup> Original petition, received on December 9, 2005: Annex XXXVII-E, Statement of Eduarda López Pinol, María Froilana Armira López, and María Lidia Marina Armira López, dated July 28, 2005.

<sup>284</sup> State's submission of October 17, 2008: Annex I.2 and Annex XIV, Request for information sent by the Public Prosecution Service to the office of the Ombudsman for Human Rights on April 14, 2008, p. 27; Request for information sent by the Public Prosecution Service to the National Redress Program on June 9, 2008, p. 29; and Request for information sent by the Public Prosecution Service to the Forensic Anthropology Foundation on July 3, 2008, p. 36.

<sup>285</sup> Petitioners' submission, received on June 22, 2010.

<sup>286</sup> The victim is named in the *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*

<sup>287</sup> Original petition, received on December 9, 2005: Annex XXXVIII-G, Statement of Efraín García and Helver Vinicio García Escobar, dated November 29, 2004.

<sup>288</sup> Original petition, received on December 9, 2005: Annex XXXVIII-G, Statement of Efraín García and Helver Vinicio García Escobar, dated November 29, 2004.

made fragmentation grenade and two cyanide capsules. This individual participated in the action carried out against the PR Office of the Presidency, at Plaza 6-26, and the Polytechnic School. 06-05-84: 300" (handwritten). The *Diario Militar* associates her with the PGT and the ORPA.

238. Efraín García, the victim's father, said that his daughter's disappearance had a strong impact on the family. "The gap she left can never be filled; we have been sad all these years, not knowing where she was until we learned, through the *Diario Militar*, that she had been executed by the army."<sup>289</sup>

239. In 1999, following the publication of the *Diario Militar*, the victim's father lodged a complaint with FAMDEGUA.<sup>290</sup>

240. The family reported the case to the Judicial Guard and to the First Corps of the National Police, where they were told to "look for her with her boyfriend."<sup>291</sup>

241. The State reported that in 1999, it took a statement from the victim's father and brother, and from María Emilia García, and it requested information from the Embassy of Canada, the Ministry of Defense, the civil registry (requesting a death certificate), the Archbishopric, the SIC, and the office of the Attorney for Human Rights; in addition, it asked the Public Prosecution Service to assign an investigator to the case. In 2002, requests were made for the certification of birth records, and requests for information were sent to the TSE and the SAT. In 2006, requests for information were sent to the Traffic Department, the General Migration Directorate, the USAC's Department of Records and Statistics, the AEU, and the RTU, and the certification of the ID records of the victim and her next-of-kin was requested. In 2008, requests for information were sent to the office of the Ombudsman for Human Rights, the National Redress Program, and the Forensic Anthropology Foundation.<sup>292</sup>

242. According to the information provided by the petitioners and not disputed by the State, the following individuals have been identified as family members affected by the forced disappearance of Lesbia Lucrecia García Escobar: Francisca Escobar (victim's mother), Efraín García Román (victim's father and petitioner), and Helver Vinicio García Escobar (victim's brother).<sup>293</sup>

**o. Otto René<sup>294</sup> and 4.18 Julio Alberto Estrada Illescas**

243. Otto René Estrada Illescas studied economics at the USAC, was 31 years old, and had a son. He was a student leader and a member of the PGT. His brother Julio Alberto Estrada

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<sup>289</sup> Original petition, received on December 9, 2005: Annex XXXVIII-G, Statement of Efraín García and Helver Vinicio García Escobar, dated November 29, 2004.

<sup>290</sup> Original petition, received on December 9, 2005: Annex XXXVIII-I, Victim's information record at FAMDEGUA, dated September 27, 1999.

<sup>291</sup> Original petition, received on December 9, 2005: Annex XXXVIII-G, Statement of Efraín García and Helver Vinicio García Escobar, dated November 29, 2004.

<sup>292</sup> State's submission, received on October 17, 2008: Annex XVI, Request for information sent by the Public Prosecution Service to the office of the Ombudsman for Human Rights on April 11, 2008, p. 79; Request for information sent by the Public Prosecution Service to the National Redress Program on June 9, 2008, p. 82; and Request for information sent by the Public Prosecution Service to the Forensic Anthropology Foundation on July 3, 2008, p. 84.

<sup>293</sup> Petitioners' submission, received on June 22, 2010.

<sup>294</sup> The IACHR combined Case 9.565 (Otto René Estrada Illescas) with Case 12.590 on November 17, 2006. During the IACHR's on-site visit to Guatemala in May 1985, it received information on this forced disappearance. See: IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*, Ch. II, Forced Disappearance of Persons.

Illescas studied political science at the USAC. He was 32 at the time of his disappearance and was part of the student leadership as part of the Secretariat of Students when Oliverio Castañeda de León was General Secretary of the Association of University Students and of the PGT.<sup>295</sup>

244. According to Otto René's wife, since early 1984 several of his colleagues on the Association of University Students student leadership had been abducted and disappeared, as a result of which the family relocated to a small apartment and handed their son over to his paternal grandparents out of fear that something might happen to them.

245. On May 15, 1984, Otto René Estrada Illescas took his wife to her workplace at the Ministry of Finance and they agreed to meet when she finished work to go and collect their son from his grandparents' house; however, Otto René never showed up. Workmates had remarked that at lunch time, there had been a shoot-out by the INCA (2nd Avenue and 1st Street, Zone 1) at around 10:15 a.m., and that several people had been taken into custody. Later, armed men were seen watching their apartment.<sup>296</sup>

246. Julio Alberto Estrada Illescas took refuge in his sister-in-law's house because he had been followed. On June 14, 1984, Julio Alberto agreed to meet Otto's wife near the shopping district in Zone 4 in order to give her instructions for reporting his brother's disappearance both domestically and internationally, but he never arrived.<sup>297</sup>

247. The *Diario Militar* refers to the case of Otto René Estrada Illescas as No. 133: "(aka) PALMIRO. Was in military information, is currently working for the People's Commission, Grassroots Committee, Central Region, of the PGT. 15-05-84: At 11:00 a.m., captured at 1st Street and 2nd Avenue, Zone 1; upon trying to resist, received a gunshot wound to the buttock. 01-08-84: 300" (handwritten). The case of Julio Alberto Estrada Illescas is No. 156: "(aka) JUAN, ATILIO, 21. False: JOSÉ ROLANDO ROSALES RODRÍGUEZ. Member of the General Staff of the PGT. Chief and responsible for operations, along with (aka) GUANACO, 20, who is abroad. 14-06-84: Captured at 6:00 p.m. on the beltway, in front of Hermano Pedro Hospital, Zone 11. Reported that the General Staff comprises: Head of GS is (aka) RAMIRO. Head of Logistics or Int. is (aka) JOSÉ. Head of Information is (aka) RAÚL. Head of Military Health (aka) RAÚL, 43."

248. Beatriz María Velásquez Díaz, Otto René Estrada Illescas's wife, stated that prior to his capture her husband was afraid of being abducted, since many of his fellow students had recently disappeared. "Otto was emotionally balanced and very calm, and so I was scared to see that something was worrying him. On the night of May 14 he was very sad and said that he could foresee his death; he insisted that if he failed to appear I shouldn't take any risks looking for him, and if he was killed, I shouldn't identify the corpse, because it would be very risky," Beatriz recalled. She also remembered the suffering she underwent while searching for her husband. "On several occasions, I was called in to identify bodies they said were Otto [...]. It is horrible to be a wife, going round morgues in search of the person you love, not caring about how decomposed the bodies are [...]. I used to wonder: Is it fair that a man who fought for his ideals, for a better world,

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<sup>295</sup> Original petition, received on December 9, 2005: Annex XXXIX-D, Statement of Beatriz María Velásquez Díaz, dated January 22, 2005.

<sup>296</sup> Original petition, received on December 9, 2005: Annex XXXIX-D, Statement of Beatriz María Velásquez Díaz, dated January 22, 2005; and Annex XXXIX-J, Statement of María Herculía Illescas Paiz Viuda de Estrada, dated November 29, 2004.

<sup>297</sup> Original petition, received on December 9, 2005: Annex XXXIX-D, Statement of Beatriz María Velásquez Díaz, dated January 22, 2005.

for better conditions for his son, should be searched for in such places, and his family made fun of in that way?"<sup>298</sup>

249. His wife and his son, Paulo René Estrada Velásquez, described the pain they felt, and continue to feel, on account of Otto René's disappearance. "Will I die with the uncertainty of not knowing where my son's father's remains are, after he was unable to watch him grow, be with him during his childhood and adolescence; that his father died without ever seeing him again and that his mother still lives in hope of seeing them again?" asked Beatriz, who said that the harm caused "cannot be remedied with anything other than knowing where his remains are and being able to bury them as any human being deserves." His son offered some thoughts about what it means to lose his father when he was only one year old. "I can't remember him; that makes me sad, it fills me with rage and anger. Not having had my father alongside me causes me no end of feelings: I felt all sorts of things when I was small; I felt bad on Mother's Day, because I didn't have anyone to plot giving her a surprise gift with," recalled Paulo René. The victims' parents also suffered greatly following their sons' disappearance. "My father's entire family was distraught; my grandparents suffered terribly; my grandfather got depressed and my uncle [...] turned to alcohol [...] I remember him talking as if he was talking with his vanished brothers." According to Paulo René, he had to grow up "with the suffering of the entire family on my back." He recalled how his family feared something similar would happen to him.<sup>299</sup> Otto René Estrada Illescas's son said: "I am proud of my father, because what happened made me see life from another perspective. I am not angry with my father for having preferred his ideas over me; instead, it was a lesson for life, one that I want to reassert, so his struggle and his death were not in vain."<sup>300</sup>

250. Paulo René also described how his mother had to bury books that were considered "dangerous" at the time because of the State's persecution of political dissidents. "When the political conditions for freedom of thought improved, my mother dug up my father's books and gave them to me, so I could understand his ideas." He also said that the disappearance of his father and his uncle changed his life. "I studied archaeology, the closest thing to forensic anthropology, so I could look for them and find them in some clandestine grave."<sup>301</sup>

251. In contrast, the mother of the victims only learned of Julio's disappearance with the release of the *Diario Militar*, since the last news she had had of her son was that he was taking refuge in Mexico. "When the government gave out the name of the disappeared and the dead, they were on the list, and so I learned that Julio hadn't made it, and that was very painful."<sup>302</sup>

252. Otto René Estrada Illescas's wife was one of the founders of the GAM.<sup>303</sup> The incident was reported to the media;<sup>304</sup> the family met with the dictator Óscar Mejía Víctores;<sup>305</sup> they

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<sup>298</sup> Original petition, received on December 9, 2005: Annex XXXIX-D, Statement of Beatriz María Velásquez Díaz, dated January 22, 2005.

<sup>299</sup> Original petition, received on December 9, 2005: Annex XXXIX-G, Statement of Paulo René Estrada Velásquez, dated December 20, 2004; and Annex XXXIX-D, Statement of Beatriz María Velásquez Díaz, dated January 22, 2005.

<sup>300</sup> Original petition, received on December 9, 2005: Annex XXXIX-G, Statement of Paulo René Estrada Velásquez, dated December 20, 2004.

<sup>301</sup> Original petition, received on December 9, 2005: Annex XXXIX-G, Statement of Paulo René Estrada Velásquez, dated December 20, 2004.

<sup>302</sup> Original petition, received on December 9, 2005: Annex XXXIX-J, Statement of María Herculía Illescas Paiz Viuda de Estrada, dated November 29, 2004.

<sup>303</sup> Original petition, received on December 9, 2005: Annex XXXIX-D, Statement of Beatriz María Velásquez Díaz, dated January 22, 2005.

<sup>304</sup> Petitioners' submission of October 17, 2007: Annex XXXIX-M, Press cuttings describing how Otto's wife was summoned by the Director of the National Police to question her about the claims being made by Amnesty International on  
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lodged a *habeas corpus* remedy<sup>306</sup> and filed a complaint with FAMDEGUA.<sup>307</sup> On February 23, 2006, they filed another<sup>308</sup> *habeas corpus* action, which was rejected on April 20, 2006, by the 5th First-instance Court for Crimes, Drug-trafficking, and Environmental Offenses.<sup>309</sup>

253. Regarding Otto René Estrada Illescas, the State reported that in 2002, information was requested from the TSE and the SAT, and a request was made for the certification of his ID papers. In 2006, requests for information were sent to the Traffic Department, the General Migration Directorate, the USAC, the AEU, and the RTU-SAT, and a request was made for the certification of the birth certificate and ID records of the victim and his father.

254. In connection with Julio Alberto Estrada Illescas,<sup>310</sup> the State reported that in 1999, Otto René's wife was called to give a statement, and, in 2002, requests for information were sent to the TSE and the SAT. In 2006, requests for information were sent to the Traffic Department, the General Migration Directorate, the USAC, and the AEU, and a request was made for the certification of the victim's birth certificate and ID records. In 2007, requests for information were sent to the office of the Ombudsman for Human Rights and, in 2008, information was requested from the National Redress Program and the Forensic Anthropology Foundation.<sup>311</sup>

255. The records of the Police Archive indicate that Otto René Estrada Illescas's wife gave a statement to the police on September 27, 1984,<sup>312</sup> and that the police recorded the abduction but left the investigation open on the grounds that he was not being held at any police facility.<sup>313</sup>

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behalf of the victim. Also: Original petition, received on December 9, 2005: Annex XXXIX-D, Statement of Beatriz María Velásquez Díaz, dated January 22, 2005.

<sup>305</sup> Original petition, received on December 9, 2005: Annex XXXIX-D, Statement of Beatriz María Velásquez Díaz, dated January 22, 2005; and Annex XXXIX-H, Telegram from the Transmissions Section of the Presidential General Staff, dated May 30, 1984, and December 13, 1984.

<sup>306</sup> Original petition, received on December 9, 2005: Annex XXXIX-I, *habeas corpus* remedy lodged with the judicial authorities (illegible copy). See also: IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*, Ch. II, Forced Disappearance of Persons, I: Absence of legal measures for protection from the problem of illegal arrests and disappearances; Personal exhibition remedies lodged with the Supreme Court of Justice of Guatemala during 1984.

<sup>307</sup> Original petition, received on December 9, 2005: Annex XXXIX-K, Victim's information record at FAMDEGUA, dated July 9, 1999.

<sup>308</sup> State's submission, received on October 17, 2008: Annex XVII, *habeas corpus* remedy, lodged by Mario Alcides Polanco Pérez with the Supreme Court of Justice on February 23, 2006, pp. 4 and 5.

<sup>309</sup> State's submission, received on October 17, 2008: Annex XVII, Resolution issued by the 5th First-instance Court for Crimes, Drug-trafficking, and Environmental Offenses, dated April 20, 2006, pp. 6 and 7.

<sup>310</sup> On April 10, 1985, the Vice Minister of the Interior wrote to the Director General of the National Police, Héctor Rafael Bol de la Cruz, asking him for information on the cases reported to the IACHR, including that of the victim. See: State's submission, received on October 17, 2008: Annex XVII, Document dated April 10, 1985, p. 19. On May 18, 1984, a *habeas corpus* judge reported for duty but, since there was no record of the victim's address, he withdrew.

<sup>311</sup> State's submission, received on October 17, 2008: Annex XVIII, Request for information sent by the Public Prosecution Service to the office of the Ombudsman for Human Rights on April 14, 2007, p. 34; Request for information sent by the Public Prosecution Service to the National Redress Program on June 9, 2008, p. 36; and Request for information sent by the Public Prosecution Service to the Forensic Anthropology Foundation on July 3, 2008, p. 43.

<sup>312</sup> State's submission, received on March 20, 2009: Annex B, Copy from the National Police Historical Archive, p. 200.

<sup>313</sup> State's submission, received on March 20, 2009: Annex B, Copy from the National Police Historical Archive.

256. According to the information provided by the petitioners and not disputed by the State, the following individuals have been identified as family members affected by the forced disappearance of Otto René Estrada Illescas and Julio Alberto Estrada Illescas: Paulo René Estrada Velázquez (Otto René Estrada Illescas's son, Julio Alberto Estrada Illescas's nephew, and petitioner), Marcia Hercilia Illescas Paiz (victims' mother), and Beatriz María Velásquez Díaz (Otto René's wife).<sup>314</sup>

**p. Rubén Amílcar Farfán<sup>315</sup>**

257. Rubén Amílcar Farfán was 40 years of age and was the third of five children. He was an urban primary school teacher and a student in the last semester of pedagogy at the USAC's School of Humanities.<sup>316</sup> He worked in the print shop of the University publications department, and was a student representative on the School's steering committee and an active member of the university workers' trade union.

258. In 1980, because of his trade-union activities at the General Directorate of Highways, he had been arrested by the National Police; he was released the following day thanks to the intervention of the Dean of the USAC's School of Humanities and the judge on duty. Following that incident, he decided to move to keep his family out of danger, since he was being followed and watched by unidentified individuals. According to his sister, Aura Elena Farfán, Rubén thought about leaving the country but received no assistance from his fellow party members.<sup>317</sup> In February 1984, two of his neighbors were abducted and disappeared.<sup>318</sup>

259. His sister recalled the last time she saw him: "I went into his room at 6:00 a.m. [...] He started work at eight. That day I said, 'It's almost six.' 'I'm on my way,' [he answered]. I started work at 7:00; I went to my work [at a hospital] [...] at around ten in the morning we heard fire department sirens [...]." Aura Elena said she found out that something had happened at the University and that there might be people wounded.

260. On May 15, 1984, at around 3:30 p.m., the victim left the print shop of the USAC's publications department where he worked as proof reader to head to the university campus. According to his workmates, he left to find out about the abduction of Carlos Cuevas and Otto René Illescas (see 4.17, *supra*), which had taken place some hours earlier. On the way, armed men in civilian clothing, presumably from the G-2 and the DIT,<sup>319</sup> who were traveling in two cars, one red and the other white, beat him and bundled him into one of their vehicles.<sup>320</sup>

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<sup>314</sup> Petitioners' submission, received on June 22, 2010.

<sup>315</sup> The IACHR combined Case 9.554 (Rubén Amílcar Farfán) with Case 12.590 on November 17, 2006. During the IACHR's on-site visit to Guatemala in May 1985, it received information on this forced disappearance. See: IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*, Ch. II, Forced Disappearance of Persons.

<sup>316</sup> Original petition, received on December 9, 2005: Annex XL-G, Statement of Aura Elena Farfán, dated February 7, 2005. See also: Petitioners' submission, received on March 23, 2009: Statement of Aura Elena Farfán, dated March 25, 2008.

<sup>317</sup> Original petition, received on December 9, 2005: Annex XL-G, Statement of Aura Elena Farfán, dated February 7, 2005.

<sup>318</sup> Petitioners' submission, received on March 23, 2009: Statement of Aura Elena Farfán, dated March 25, 2008.

<sup>319</sup> Original petition, received on December 9, 2005: Annex XL-R, Victim's information record at FAMDEGUA.

<sup>320</sup> In the CEH's report, the case of Rubén Amílcar Farfán is described as follows: "Rubén Amílcar Farfán was 40 years old, was a student at the USAC's School of Humanities, worked in the print shop of the University publications department, and belonged to the university workers' trade union. On May 15, 1984, at 6:00 a.m., Rubén Amílcar left home, in the Primero de Julio district, to go to work at San Carlos University. He worked until 3:30 p.m., when he left for the School of Humanities. On the way, armed men in civilian clothing beat him, bundled him into a vehicle, and took him to an

261. The *Diario Militar* refers to Rubén Amílcar Farfán's case as No. 134: "(aka) VILA. Responsible for the State Sector Grassroots Committee. 15-05-84: At 4 p.m., on 12th Avenue and 9th Street, Zone 1, he was located and, upon resisting, was 300."

262. His sister Aura Elena Farfán remembered that her brother was very concerned about the disappearances of his friends from University and that he feared for his life. In the months prior to his abduction, colleagues of his had been taken and, on the same day he disappeared, Otto René Estrada Illescas (see 4.17, *supra*), another victim of the repression who is listed in the *Diario Militar*, was also abducted.<sup>321</sup> As a result of her brother's disappearance, Aura Elena Farfán participated in the creation of the Mutual Support Group (GAM) in 1984 and, later, in the creation of the Association of Families of the Arrested and Disappeared in Guatemala (FAMDEGUA), which she now leads.<sup>322</sup>

263. The victim's next-of-kin reported the forced disappearance to the media;<sup>323</sup> they were received by the dictator Óscar Mejía Víctores;<sup>324</sup> they sent a letter to the Constitutional President Marco Vinicio Cerezo Arévalo.<sup>325</sup> The former rector of the USAC also reported the victim's case to the media.<sup>326</sup>

264. On May 18, 1984, the family filed their first *habeas corpus* remedy.<sup>327</sup> On June 13 of that same year, the Criminal Chamber of the Supreme Court of Justice, sitting as a *habeas corpus* court, dismissed their filing because the person they sought was not being held and no order had been issued for his arrest.<sup>328</sup>

265. Additional *habeas corpus* remedies were filed on January 10<sup>329</sup> and May 30, 1986,<sup>330</sup> and on April 10<sup>331</sup> and October 6, 1987.<sup>332</sup>

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unknown destination. Two cars were involved in the operation: a red one with license plates P-237053, and a white one with license plates P-113509". CEH, *Guatemala: Memory of Silence*, Vol. VI, Typical Case No. 48, p. 147. Available at: [http://shr.aas.org/guatemala/ceh/gmds\\_pdf/anexo2\\_1.pdf](http://shr.aas.org/guatemala/ceh/gmds_pdf/anexo2_1.pdf).

<sup>321</sup> Petitioners' submission, received on March 23, 2009: Statement of Aura Elena Farfán, dated March 25, 2008.

<sup>322</sup> See: Amnesty International, interview with Aura Elena Farfán, November 15, 2001; available at: [http://www.amnestyusa.org/spanish/paises/guatemala/acciones/acuerdos\\_de\\_paz/farfan\\_entrevista.html](http://www.amnestyusa.org/spanish/paises/guatemala/acciones/acuerdos_de_paz/farfan_entrevista.html).

<sup>323</sup> Petitioners' submission of October 17, 2007: Annex XL-S, Photocopy of story published in the daily *Prensa Libre* on May 22, 1999.

<sup>324</sup> Original petition, received on December 9, 2005: Annex XL-LL, Telegram from the Transmissions Section of the Head of State's General Staff, dated December 13, 1984.

<sup>325</sup> In the case file before the IACHR, Case 9.554: Letter addressed to the Constitutional President, Marco Vinicio Cerezo Arévalo, dated April 22, 1986.

<sup>326</sup> Original petition, received on December 9, 2005: Annex XL-J, Press reports from 1984 on the victim's disappearance.

<sup>327</sup> Original petition, received on December 9, 2005: Annex XL-N, Remedy of *habeas corpus*, lodged with the 2nd First-instance Criminal Court on May 18, 1984. See also: IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*, Ch. II, Forced Disappearance of Persons, I: Absence of legal measures for protection from the problem of illegal arrests and disappearances; Personal exhibition remedies lodged with the Supreme Court of Justice of Guatemala during 1984.

<sup>328</sup> Original petition, received on December 9, 2005: Annex XL-M, Resolution of the Supreme Court of Justice sitting as a *habeas corpus* court, dated June 13, 1984.

<sup>329</sup> Original petition, received on December 9, 2005: Annex XL-Ñ, *habeas corpus* filing, dated May 30, 1986.

<sup>330</sup> Original petition, received on December 9, 2005: Annex XL-Ñ, *habeas corpus* filing, dated May 30, 1986.

<sup>331</sup> Original petition, received on December 9, 2005: Annex XL-O, *habeas corpus* filing, dated April 10, 1986.

266. In addition, on January 22, 1988, the family lodged a complaint with the office of the Ombudsman for Human Rights.<sup>333</sup> After conducting a series of investigations,<sup>334</sup> on February 24, 1988, that office declared that: "I. [...] the forced disappearance of RUBÉN AMÍLCAR FARFÁN represents a violation of human rights by the State of Guatemala by failing to uphold the right to security that all the inhabitants of the Republic of Guatemala share."<sup>335</sup>

267. On October 6, 1987, the family asked for the case to be reopened and, on September 7, 1999, following the publication of the *Diario Militar*, they asked for the case to be reopened in light of the new evidence that had emerged.<sup>336</sup> On June 14, 2004, Aura Elena Farfán lodged an application with the Attorney General of the Republic requesting the appointment of an investigating judge in the case of the *Diario Militar*. The family also contacted FAMDEGUA.<sup>337</sup>

268. The victim's case is included in the report of the Commission for Historical Clarification.<sup>338</sup>

269. The State reported that in 1999, it received the victim's general information record and took a statement from his sister. In the year 2002 it requested information from the TSE and the SAT, along with the certification of his ID record and birth certificate. In 2006, requests for information were sent to the Traffic Department, the General Migration Directorate, the USAC's Department of Records and Statistics, the AEU, and the RTU-SAT, and a fresh request was made for the certification of the ID records and birth certificates of the victim and his sister. In 2008, requests for information were sent to the office of the Ombudsman for Human Rights, the National Redress Program, and the Forensic Anthropology Foundation.<sup>339</sup>

270. The records of the Police Archive contain confidential information dated November 3, 1983, (No. 2-1230-IO/83) stating that in the offices of the General Directorate of Highways, subversive propaganda was being distributed and some employees were carrying firearms. According to those same records, on September 27, 1984, the victim's sister Aura Elena Farfán gave a statement to the Directorate of Technical Investigations and, in spite of the investigations related to the habeas corpus filings, the victim was not registered as being held in police custody.<sup>340</sup>

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<sup>332</sup> Original petition, received on December 9, 2005: Annex XL-P, *habeas corpus* filing, dated October 6, 1987.

<sup>333</sup> Original petition, received on December 9, 2005: Annex XL-Q, Case file P-059-88 from the office of the Ombudsman for Human Rights.

<sup>334</sup> Original petition, received on December 9, 2005: Annex XL-Q, Case file P-059-88 from the office of the Ombudsman for Human Rights.

<sup>335</sup> In the case file before the IACHR, Case 9.554: Resolution of the office of the Ombudsman for Human Rights, dated February 24, 1988.

<sup>336</sup> In the case file before the IACHR, Case 9.554: Submission by the petitioner, Aura Elena Farfán, received on September 7, 1999. The case was addressed in a general resolution on forced disappearances in Guatemala, 25/86.

<sup>337</sup> Original petition, received on December 9, 2005: Annex XL-R, Victim's information record at FAMDEGUA.

<sup>338</sup> Original petition, received on December 9, 2005: Annex XL-I, Commission for Historical Clarification, *Guatemala: Memory of Silence*, Vol. VI, Typical Cases, Annex I, Typical Case No 48, pp. 145-153.

<sup>339</sup> State's submission, received on October 17, 2008: Annex XIX, Request for information sent by the Public Prosecution Service to the office of the Ombudsman for Human Rights on April 14, 2008, p. 157; Request for information sent by the Public Prosecution Service to the National Redress Program on June 11, 2008, p. 163; and Request for information sent by the Public Prosecution Service to the Forensic Anthropology Foundation on July 3, 2008, p. 165.

<sup>340</sup> State's submission, received on March 20, 2009: Annex B, Copy from the National Police Historical Archive, p. 228.



271. According to the information provided by the petitioners and not disputed by the State, the following individuals have been identified as family members affected by the forced disappearance of Rubén Amílcar Farfán: Aura Elena Farfán (victim's sister and petitioner), Adela Farfán Izquierdo (victim's mother), Luis Alberto Velásquez Farfán (victim's brother), Aura Elena Suchini Farfán (victim's niece), Manuel Antonio Mendoza Farfán (victim's nephew), and Mario Alfredo Farfán (victim's nephew).<sup>341</sup>

**q. Sergio Leonel Alvarado Arévalo<sup>342</sup>**

272. Sergio Leonel Alvarado Arévalo was 20 years old and was the youngest of five children. In 1982, he was admitted to the USAC's School of Economics, where he was involved in the student movement through the Association of University Students, at a time when that organization's leadership was kept anonymous because of government persecution.<sup>343</sup> He was also a member of the PGT's Patriotic Youth.

273. On December 14, 1981, his brother Rolando Kaibil, the General Secretary of the Bank Industry Trade Union and a member of the Guatemalan Labor Party, was forcibly disappeared by the Guatemalan security forces.<sup>344</sup>

274. His sister studied economics at the USAC alongside him. On May 20, 1984, they had a mathematics exam, but Sergio Leonel never arrived at the University.<sup>345</sup> He was detained on 7th Avenue, in front of the Guatemalan Social Security Institute's General Hospital.

275. The *Diario Militar* refers to Sergio Leonel Alvarado Arévalo's case as No. 138: "(aka) OTTO and ÁNGEL. Member of the Organizational Apparatus of the PGI-PGT. Responsible, along with (aka) CARLOS or JUAN, for trying to conduct a photograph and microfilm study of the PGI-PGT. Participated in several operations, removing (aka) GUNTER, RIVAS or 32 from the Roosevelt Hospital in March 1984. 20-05-84. Captured on 7th Avenue, in front of the IGSS General Hospital, Zone 9. 05-06-84: 300."

276. The disappearance of Alvarado Arévalo came after that of his brother Rolando Kaibil in December 1981. The victims' siblings described the profound effect it had on the family: "Our parents never lost hope of seeing them alive one day. Father died in 1997 with the pain of not knowing his sons' whereabouts. Mother kept her disappeared sons' belongings," they recalled.<sup>346</sup> "My father never lost hope that the two of them [Rolando and Sergio Leonel] were still alive. He

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<sup>341</sup> Petitioners' submission, received on June 22, 2010.

<sup>342</sup> The IACHR combined the parts of Case 9.326 related to the victim Sergio Leonel Alvarado Arévalo with Case 12.590 on November 17, 2006. During the IACHR's on-site visit to Guatemala in May 1985, it received information on this forced disappearance. See: IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*, Ch. II, Forced Disappearance of Persons.

<sup>343</sup> Original petition, received on December 9, 2005: Annex XLI-LL, Statement of Luis Rodolfo Alvarado Arévalo, dated April 18, 2005.

<sup>344</sup> Original petition, received on December 9, 2005: Annex XLI-F, Statement of Tania Marbella Alvarado Arévalo and Miguel Ángel Alvarado Arévalo, dated November 2, 2004.

<sup>345</sup> Original petition, received on December 9, 2005: Annex XLI-F, Statement of Tania Marbella Alvarado Arévalo and Miguel Ángel Alvarado Arévalo, dated November 2, 2004.

<sup>346</sup> Original petition, received on December 9, 2005: Annex XLI-F, Statement of Tania Marbella Alvarado Arévalo and Miguel Ángel Alvarado Arévalo, dated November 2, 2004.

never gave them up for dead; he died [...] with the dream that they would one day appear," said Miguel Ángel Alvarado Arévalo, the victims' brother.<sup>347</sup>

277. "[The publication of the *Diario Militar*] was a hard blow for [my mother]; all her hopes of finding Sergio alive vanished and even we [his brothers], who in some way or another had assimilated his murder, felt that they had killed him again at that moment."<sup>348</sup> His brother Miguel Ángel recalled that it was he who told the family about the appearance of the *Diario Militar*. "It was horrible when I took the information home and had to give the news to my mother and sister. [...] There was a wailing to end all wailings, the house was completely in tears. [...] It was as if they were stabbing him at that very moment," he said.<sup>349</sup> The family were also forced to abandon their home, and they suffered persecution, surveillance, and a degree of social ostracism following the disappearance of two of its members.<sup>350</sup>

278. The family looked for him in hospitals, morgues, police stations, and the General Directorate of Prisons,<sup>351</sup> and they reported the incident to the media.<sup>352</sup> The rector of the USAC and the board of the USAC's School of Economics<sup>353</sup> also made public complaints.

279. The family lodged a habeas corpus filing, which was rejected by the Supreme Court on June 14, 1984.<sup>354</sup>

280. The victim's next-of-kin were among the joint founders of the GAM in 1984, but they had to leave the group because of the killings of its leaders, the constant threats, and the persecution of its members.<sup>355</sup>

281. On October 9, 1984, the family filed another *habeas corpus* remedy.<sup>356</sup> On April 29, 1985, the victim's mother lodged a further *habeas corpus* remedy.<sup>357</sup> On October 3, 1985, the

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<sup>347</sup> Petitioners' submission, received on March 23, 2009: Statement of Miguel Ángel Alvarado Arévalo, dated March 27, 2008.

<sup>348</sup> Original petition, received on December 9, 2005: Annex XLI-F, Statement of Tania Marbella Alvarado Arévalo and Miguel Ángel Alvarado Arévalo, dated November 2, 2004; and Annex XLI-LL, Statement of Luis Rodolfo Alvarado Arévalo, dated April 18, 2005.

<sup>349</sup> Petitioners' submission, received on March 23, 2009: Statement of Miguel Ángel Alvarado Arévalo, dated March 27, 2008.

<sup>350</sup> Original petition, received on December 9, 2005: Annex XLI-F, Statement of Tania Marbella Alvarado Arévalo and Miguel Ángel Alvarado Arévalo, dated November 2, 2004; and Annex XLI-LL, Statement of Luis Rodolfo Alvarado Arévalo, dated April 18, 2005.

<sup>351</sup> The reply of March 8, 1985, indicated that the victim was not being held at any prison facility. Original petition, received on December 9, 2005: Annex XLI-H, Document from the General Directorate of Prisons, dated March 8, 1985.

<sup>352</sup> Original petition, received on December 9, 2005: Annex XLI-F, Statement of Tania Marbella Alvarado Arévalo and Miguel Ángel Alvarado Arévalo, dated November 2, 2004.

<sup>353</sup> Original petition, received on December 9, 2005: Annex XLI-K, USAC communiqués related to the victim's disappearance.

<sup>354</sup> The Court found the *habeas corpus* remedy groundless and ordered referral of the matter to the 6th First-instance Criminal Court for the corresponding investigation to be prepared. See: Original petition, received on December 9, 2005: Annex XLI-G, Resolution of the Criminal Chamber of the Supreme Court of Justice, sitting as a *habeas corpus* court, dated June 14, 1984. See also: IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*, Ch. II, Forced Disappearance of Persons, I: Absence of legal measures for protection from the problem of illegal arrests and disappearances; Personal exhibition remedies lodged with the Supreme Court of Justice of Guatemala during 1984.

<sup>355</sup> Original petition, received on December 9, 2005: Annex XLI-F, Statement of Tania Marbella Alvarado Arévalo and Miguel Ángel Alvarado Arévalo, dated November 2, 2004; and Annex XLI-LL, Statement of Luis Rodolfo Alvarado Arévalo, dated April 18, 2005.

Criminal Chamber of the Supreme Court of Justice, sitting as a *habeas corpus* court, dismissed the filing and ordered the opening of an investigation to determine the victim's whereabouts.<sup>358</sup> A fresh filing for *habeas corpus* was lodged on February 23, 2006.<sup>359</sup>

282. The State reported that in 1999 it received the victim's general information and, in 2002, it sent requests for information to TSE and the SAT and requested the certification of his birth certificate. In 2006, requests for information were sent to the Traffic Department, the General Migration Directorate, the USAC, the AEU, the RTU-SAT, and the Ministry of National Defense, and the certification of the birth certificates and ID records of the victim and his next-of-kin was requested. In 2006, a statement was taken from Mario Alcides Polanco Pérez, who lodged the *habeas corpus* filing on February 23, 2006, and, in 2008, requests for information were sent to the office of the Ombudsman for Human Rights and the National Redress Program.<sup>360</sup>

283. The records of the Police Archive indicate that he was neither detained nor arraigned by any section of the police.<sup>361</sup>

284. According to the information provided by the petitioners and not disputed by the State, the following individuals have been identified as family members affected by the forced disappearance of Sergio Leonel Alvarado Arévalo: Miguel Ángel Alvarado Arévalo (victim's brother and petitioner), Tania Marbella Alvarado Arévalo (victim's sister), and Luis Rodolfo Alvarado Arévalo (victim's brother).<sup>362</sup>

**r. Joaquín Rodas Andrade**

285. Joaquín Rodas Andrade was 23 years old and was the second of four children.<sup>363</sup> In 1979 he was admitted to the USAC's Western University Center to study agronomy. He attended meetings of the PGT's Patriotic Working Youth and was also a student leader at the Western University Center (CUNOC).<sup>364</sup>

286. According to his family's testimony, on March 2, 1985, he was on his way to his topography practice at the Western University Center, the final course he had to complete to graduate as an agronomist. He had walked a block and, on the corner of 4th Street and 15th

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<sup>356</sup> Original petition, received on December 9, 2005: Annex XLI-L, *habeas corpus* remedy, filed on October 9, 1984.

<sup>357</sup> Original petition, received on December 9, 2005: Annex XLI-L, *habeas corpus* remedy, filed on April 29, 1985.

<sup>358</sup> Original petition, received on December 9, 2005: Annex XLI-L, Resolution of the Criminal Chamber of the Supreme Court of Justice, sitting as a *habeas corpus* court, dated October 3, 1985.

<sup>359</sup> State's submission, received on October 17, 2008: Annex XX, *habeas corpus* remedy, filed by Mario Alcides Polanco Pérez on February 23, 2006, pp. 5 and 6.

<sup>360</sup> State's submission, received on October 17, 2008: Annex XX, Request for information sent by the Public Prosecution Service to the office of the Ombudsman for Human Rights on April 14, 2008, p. 92; Request for information sent by the Public Prosecution Service to the National Redress Program on June 11, 2008, p. 95.

<sup>361</sup> State's submission, received on March 20, 2009: Annex B, Copy from the National Police Historical Archive, p. 295.

<sup>362</sup> Petitioners' submission, received on June 22, 2010.

<sup>363</sup> Original petition, received on December 9, 2005: Annex XLII-F, Statement of Augusto Jordán Rodas Andrade, dated November 19, 2004.

<sup>364</sup> Original petition, received on December 9, 2005: Annex XLII-D, Statement of Josefa Elizabeth Andrade Reyes de Rodas, dated November 19, 2004; Annex XLII-E, Statement of Héctor Salomón Rodas Andrade, dated November 19, 2004; and Annex XLII-F, Statement of Augusto Jordán Rodas Andrade, dated November 19, 2004.

Avenue, Zone 3, in the city of Quetzaltenango, in front of the Hotel Centroamericana Inn, he was shot in the legs from an Army Jeep. State security personnel in a pickup truck without license plates then took him into custody.<sup>365</sup> The following day, *Prensa Libre* reported a shoot-out in that area of the city in which a young man, wearing similar clothes to the victim, had been injured.<sup>366</sup>

287. Before the victim left home, his family had received a telephone call asking whether he was at home or whether he had already left.<sup>367</sup>

288. The following day, his mother went to the Fifth Military Zone in search of her son, but she was told that he was not there.<sup>368</sup> Following his forced disappearance, the family received telephone calls claiming that “they had Joaquín,” but asking them to stop publicizing the matter in the media and with the authorities.<sup>369</sup> In addition, in the days following the disappearance, military vehicles had reportedly parked in front of the family home and shone flashlights through the windows.<sup>370</sup>

289. The *Diario Militar* refers to Joaquín Rodas Andrade’s case as No. 174: “(aka) JAVIER. Responsible for propaganda of MRP. IXIM, dissident from ORPA. “Javier” is a dissident from the PGT-COMIL. Relative of “PELO LINDO.” 020900MAR85, captured on 4th Street and 14th and 15th Avenues, Zone 3, city of Quetzaltenango. 061500MAR85, handed over to S-2 in Xela, at San Lucas.”

290. The victim’s parents and siblings described the intense suffering the victim’s disappearance caused them. Augusto Jordán Rodas Andrade, the victim’s younger brother, described how the disappearance of Joaquín Rodas Andrade affected his parents: “It changed their lives, it marked them, fearful of further repression against the rest of the family,” he explained.<sup>371</sup> His mother, Josefa Elizabeth Andrade Reyes, recalled the last time she saw her son. “It was Saturday, March 2, 1985. I was in the kitchen cleaning the cabinets when I saw that Joaquín was there and was about to have breakfast. He then took his leave, saying, ‘I’ll be back soon, mother.’ I didn’t know that would be the last time I would see him. He went through the kitchen door to the street and was gone. That day, I went to the market with Augusto, my husband, to do some shopping. I was going to prepare Joaquín his favorite lunch: fried liver and eggs. Midday came and went, and Joaquín didn’t arrive. [...] Hours passed by and [...] I had a feeling, as a mother, that

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<sup>365</sup> Original petition, received on December 9, 2005: Annex XLII-E, Statement of Héctor Salomón Rodas Andrade, dated November 19, 2004; and Statement of Josefa Elizabeth Andrade Reyes de Rodas, dated October 9, 2007, presented to the IACHR on October 17, 2007.

<sup>366</sup> Original petition, received on December 9, 2005: Annex XLII-D, Statement of Josefa Elizabeth Andrade Reyes de Rodas, dated November 19, 2004.

<sup>367</sup> Original petition, received on December 9, 2005: Annex XLII-D, Statement of Josefa Elizabeth Andrade Reyes de Rodas, dated November 19, 2004.

<sup>368</sup> Statement of Josefa Elizabeth Andrade Reyes de Rodas, dated October 9, 2007, presented to the IACHR on October 17, 2007.

<sup>369</sup> Statement of Josefa Elizabeth Andrade Reyes de Rodas, dated October 9, 2007, presented to the IACHR on October 17, 2007.

<sup>370</sup> Original petition, received on December 9, 2005: Annex XLII-E, Statement of Héctor Salomón Rodas Andrade, dated November 19, 2004.

<sup>371</sup> Original petition, received on December 9, 2005: Annex XLII-D, Statement of Josefa Elizabeth Andrade Reyes de Rodas, dated November 19, 2004; and Annex XLII-E, Statement of Héctor Salomón Rodas Andrade, dated November 19, 2004. See also: Original petition, received on December 9, 2005: Annex XLII-L, in particular the story “The Creative Idea” of May and June 1999 and the opinion column “Where is my cousin Joaquín?” by Pablo Rodas Martini.

something had happened to him." His family never saw him again, although his mother still hopes she will see him alive one day.<sup>372</sup>

291. The publication of the *Diario Militar* brought back the pain caused by Joaquín's abduction. "We were furious and indignant, because they had the cynicism to document, in detail, everything they did to the students, trade unionists, and professionals they thought were their enemies," said his mother. Since the *Diario Militar* does not explicitly state that Joaquín was murdered, his father and mother maintain a slight hope that he is still alive.

292. At the same time, his mother described how Joaquín's disappearance "destroyed" the family. She explained how her daughter Berenice "has had an intense bitterness in her life" since her brother Joaquín disappeared. She also described how their brother's disappearance affected her sons Héctor and Jordán: "It affected Jordán enormously, because he tried to imitate Joaquín in everything. Jordán tried to imitate a lot of things about him, even his signature and his mannerisms. He was the youngest when Joaquín was abducted and he [still] talks about [him] a lot." "Our life has been turned upside down. We were a very happy, very content family. (...) But everything was destroyed."<sup>373</sup>

293. The family said they went to the morgue, police stations, prisons, and hospitals, and they reported the forced disappearance to the media. The professors at the Agronomy School also reported the disappearance.<sup>374</sup> The family also filed a *habeas corpus* remedy, and they met with the wife of the *de facto* head of state, Óscar Mejía Víctores.<sup>375</sup>

294. In 1999, they reported the case to FAMDEGUA<sup>376</sup> and to the media. On July 5 of that year, the Public Prosecution Service appointed a special team for Joaquín's case, as a result of the report the family made to the media.<sup>377</sup>

295. The State reported that in 1999, information was requested from the following: National Police, General Central of Workers of Guatemala, National Federation of Public Servants, Interior Ministry, Confederation of Trade-union Unity, AEU, United Nations Verification Mission in Guatemala, Myrna Mack Chang Foundation, Guillermo Torriello Foundation, and Ombudsman for Human Rights. Statements were also taken from the victim's mother and father<sup>378</sup> and, according to a report by the Public Prosecution Service from that year, two witnesses had assured the victim's mother that he was alive but it had been unable to interrogate them. In 2001, the Public Prosecution Service was asked to assign investigators to the case. In 2006, requests for information were sent to the Traffic Department, the General Migration Directorate, the USAC, the AEU, and

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<sup>372</sup> Statement of Josefa Elizabeth Andrade Reyes, dated October 9, 2007, received by the IACHR on October 17, 2007.

<sup>373</sup> Statement of Josefa Elizabeth Andrade Reyes, dated October 9, 2007, received by the IACHR on October 17, 2007.

<sup>374</sup> Original petition, received on December 9, 2005: Annex XLII-H, Note addressed to the *de facto* head of state, Humberto Mejía Víctores, dated March 6, 1985; and Annex XLII-I, Press story on the victim's disappearance, dated March 4, 1985.

<sup>375</sup> Original petition, received on December 9, 2005: Annex XLII-D, Statement of Josefa Elizabeth Andrade Reyes de Rodas, dated November 19, 2004; and Statement of Josefa Elizabeth Andrade Reyes de Rodas, dated October 9, 2007, presented to the IACHR on October 17, 2007.

<sup>376</sup> Original petition, received on December 9, 2005: Annex XLII-K, Victim's information record at FAMDEGUA.

<sup>377</sup> Statement of Josefa Elizabeth Andrade Reyes de Rodas, dated October 9, 2007, presented to the IACHR on October 17, 2007.

<sup>378</sup> State's submission of October 17, 2008: Annex I.1, Statement of José Augusto Rodas Ralón to Assistant Prosecutor of the Public Prosecution Service, dated July 5, 1999.

the RTU-SAT, and a request was made for the certification of the birth certificate and ID records of the victim and his next-of-kin. In 2008, requests for information were sent to the office of the Ombudsman for Human Rights, the National Redress Program, and the Forensic Anthropology Foundation.<sup>379</sup>

296. The records of the National Police Archive indicate that complaints were lodged in connection with the victim, but in each one the police reported that it had not detained him.<sup>380</sup>

297. According to the information provided by the petitioners and not disputed by the State, the following individuals have been identified as family members affected by the forced disappearance of Joaquín Rodas Andrade: Augusto Jordán Rodas Andrade (victim's brother and petitioner), Josefa Elizabeth Andrade Reyes (victim's mother), José Augusto Rodas Ralón (victim's father), Olivia Berenice Rodas Andrade (victim's sister), and Héctor Salomón Rodas Andrade (victim's brother).<sup>381</sup>

**s. Alfonso Alvarado Palencia**

298. Alfonso Alvarado Palencia was 36 years of age and was the oldest of ten siblings. He had three children and his wife was pregnant.<sup>382</sup> He worked for the Guatemala City Government and was a member of the Municipal Workers' Union.<sup>383</sup>

299. His family stated that on the morning of January 31, 1984, he said goodbye, went off to work, and never returned.<sup>384</sup>

300. The *Diario Militar* refers to the case of Alfonso Alvarado Palencia as No. 58: "(aka) FELIPE. Member of the FAR. and CNT. 31-01-84: Captured on Calzada Roosevelt and 5th Avenue, Zone 11, opposite INCAP, along with MILQUICIDET MIRANDA CONTRERAS (aka) OTTO. 06-03-84: 300."

301. As a consequence of his disappearance, his father was forced to stop working and died shortly afterward. In addition, his wife had a miscarriage because of the stress caused by the situation.<sup>385</sup> The victim's mother, Jesús Palencia Juárez, was given a hearing with the dictator in power at the time, Óscar Humberto Mejía Víctores. Jesús Palencia Juárez said she was received by

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<sup>379</sup> State's submission, received on October 17, 2008: Annex XXI, Request for information sent by the Public Prosecution Service to the office of the Ombudsman for Human Rights on April 14, 2008, p. 99; Request for information sent by the Public Prosecution Service to the National Redress Program on June 11, 2008, p. 102; and Request for information sent by the Public Prosecution Service to the Forensic Anthropology Foundation on July 3, 2008, p. 103.

<sup>380</sup> State's submission, received on March 20, 2009: Annex B, Copy from the National Police Historical Archive, pp. 320-322.

<sup>381</sup> Petitioners' submission, received on June 22, 2010.

<sup>382</sup> His/her siblings are still alive. See: Petitioners' submission, received on March 23, 2009: Statement of Jesús Palencia Juárez, dated March 26, 2008.

<sup>383</sup> Petitioners' submission, received on March 26, 2007: Annex II-K, Statement of Jesús Palencia Juárez and Amanda Lizeth Alvarado Sánchez, dated August 11, 2006. See also: Petitioners' submission, received on March 23, 2009: Statement of Jesús Palencia Juárez, dated March 26, 2008.

<sup>384</sup> In the CEH's report, the case of Alfonso Alvarado Palencia is described in the following terms: "FORCED DISAPPEARANCE. Identified victims. On January 31, 1984, on Calzada Roosevelt in Guatemala City, members of the DIC of the National Police captured Alfonso Alvarado Palencia, who was a member of the municipal authority's trade union and had previously been involved with the CNT. After that date, his whereabouts is unknown." CEH, *Guatemala: Memory of Silence*, Vol. VIII, Submitted Cases, Annex II, p. 370. Available at: [http://shr.aas.org/guatemala/ceh/gmnds\\_pdf/anexo2\\_1.pdf](http://shr.aas.org/guatemala/ceh/gmnds_pdf/anexo2_1.pdf).

<sup>385</sup> Petitioners' submission, received on March 26, 2007: Annex II-K, Statement of Jesús Palencia Juárez and Amanda Lizeth Alvarado Sánchez, dated August 11, 2006.

a group of soldiers who humiliated her and roared at her with laughter, and as a result of that mistreatment she fainted.<sup>386</sup>

302. His mother recalled what her son's disappearance meant for her: "It has been difficult for me [...], it is difficult for me because he is still in my mind. I cannot forget my son, how loving he was toward me." Jesús Palencia Juárez also related how her husband turned to drink and tobacco, and how he began to miss work because there were days when he did not want to get out of bed on account of the sorrow.<sup>387</sup> The victim's wife went into exile in the United States and their children went to live with her mother, helped by the rest of the family.

303. On the day of the disappearance, the family home was raided, as a result of which they decided to move to their maternal grandmother's home. His siblings also report suffering attempted abductions.<sup>388</sup>

304. When the *Diario Militar* was published, the GAM – to which the victim's mother belongs – organized a meeting with the family to which it invited the press. "The boy [the victim's son] went to hide in an office; he didn't want any photographs or anything. He never wanted to be photographed. Instead, he started crying: 'Tell me what they did to my dad! What did they do to my dad?' Because he wouldn't leave his side, even at mealtimes," recalled Jesús Palencia, who also claimed to have suffered illnesses on account of her sorrow. "I couldn't talk [...] I was in bed, people would speak to me and it was as if they weren't speaking ... 'Why is my mother like that? Is she like that because of my brother?' my children would ask. 'And how do you want me to react, if I've got my son here inside my head?' [...] What am I to do? I have no energy for anything, I can only think of my son. [...] Where is my son, so I can take him flowers? [...] The years go by, the saints' days, and I've nowhere to take flowers. 'Where did they leave my son?' I would say, and I'd start crying. [...] You don't know how it hurts to have a son taken away from you. It is a piece of my life they took away, and for that piece of my life I continue to fight."<sup>389</sup>

305. On September 22, 2002, one of the victim's children was executed upon leaving work, receiving a gunshot wound to the head and another in the back. The medical examiner who did the testing reportedly said that his face was marked by a print from an Army-issue boot. In addition, two weeks later, the victim's youngest daughter was followed by a red vehicle with tinted windows inside which there were heavily armed men.<sup>390</sup> In 2004, the victim's mother received an anonymous call telling her they had a photo they had taken of her granddaughter Claudia, the victim's eldest daughter. They asked her if what had happened to her son and grandson was not enough.<sup>391</sup>

306. On January 22, 1988, case file P-87-88 was opened with the office of the Ombudsman for Human Rights. On March 11, 1988, the Ombudsman declared: "(I) That the forced

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<sup>386</sup> Petitioners' submission, received on March 26, 2007: Annex II-K, Statement of Jesús Palencia Juárez and Amanda Lizeth Alvarado Sánchez, dated August 11, 2006.

<sup>387</sup> Petitioners' submission, received on March 23, 2009: Statement of Jesús Palencia Juárez, dated March 26, 2008.

<sup>388</sup> Petitioners' submission, received on March 26, 2007: Annex II-K, Statement of Jesús Palencia Juárez and Amanda Lizeth Alvarado Sánchez, dated August 11, 2006.

<sup>389</sup> Petitioners' submission, received on March 23, 2009: Statement of Jesús Palencia Juárez, dated March 26, 2008.

<sup>390</sup> Petitioners' submission, received on March 26, 2007: Annex II-K, Statement of Jesús Palencia Juárez and Amanda Lizeth Alvarado Sánchez, dated August 11, 2006.

<sup>391</sup> Petitioners' submission, received on March 26, 2007: Annex II-K, Statement of Jesús Palencia Juárez and Amanda Lizeth Alvarado Sánchez, dated August 11, 2006.

disappearance of ALFONSO ALVARADO PALENCIA represents a violation of human rights by the State of Guatemala by failing to uphold the right to security and to life that all the inhabitants of the Republic share."<sup>392</sup>

307. The State reported that in 2006, Amanda Lizeth Alvarado opened a case file with the National Redress Program. In 2007, the State requested information from the TSE and the SAT and, in 2008, it requested information from the office of the Ombudsman for Human Rights, the National Redress Program, and the Forensic Anthropology Foundation.<sup>393</sup>

308. His mother, Jesús Palencia Juárez, said how important it would be for her and her children (the victim's brothers and sisters) to find her son's remains. She recalled what one of her children had said a few days before giving testimony in the case at hand: "Oh, mother, if only Alfonso's ashes could appear. Keep fighting, mother, if only for the ashes to appear."<sup>394</sup>

309. The Police Archives contain an arrest in 1979 for "stirring up trouble" and distributing propaganda. In addition, in response to a request for information in 1984, the records state that the victim was not being held by the National Police.

310. According to the information provided by the petitioners and not disputed by the State, the following individuals have been identified as family members affected by the forced disappearance of Alfonso Alvarado Palencia: Amanda Lizeth Alvarado Sánchez (victim's daughter and petitioner), Jesús Palencia Juárez (victim's mother), María Regina Sánchez Morales (victim's wife), Carla Fabiola Alvarado Sánchez (victim's daughter), María Angelina Alvarado Palencia (victim's sister), Carlos Enrique Alvarado Palencia (victim's brother), Héctor Raúl Alvarado Palencia (victim's brother), José Alberto Alvarado Palencia (victim's brother), Blanca Odilia Alvarado Palencia (victim's sister), María del Carmen Alvarado Palencia (victim's sister), Aurelio Alvarado Palencia (victim's brother), José León Alvarado Palencia (victim's brother), and Regina Alvarado Palencia (victim's sister).<sup>395</sup>

**t. Zoilo Canales Salazar and 4.24 Moisés Canales Godoy**

311. The circumstances prior to the disappearance of Zoilo Canales Salazar were described by his son Yordín Eduardo Herrera Urizar, who was nine years old at the time: "We lived in Zone 1 near Gerona, near the railroad tracks, and from there the party sent my mother, Alba Marina Urizar Ortega, to Cuba. Then we moved to Zone 6. We had just moved to that house when my father returned to Zone 1 to clean the house and return the keys to the owner. I never saw him alive again after that day."<sup>396</sup>

312. Moisés Canales Godoy, Zoilo Canales Salazar's son, was living with his pregnant girlfriend at the time of his disappearance. He previously used to live with his father.<sup>397</sup>

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<sup>392</sup> State's submission, received on October 17, 2008: Annex XXII, Indicated in the communication sent by the Ombudsman for Human Rights to the Public Prosecution Service on June 3, 2008, pp. 21 to 23.

<sup>393</sup> State's submission of October 17, 2008: Annex I.2.

<sup>394</sup> Petitioners' submission, received on March 23, 2009: Statement of Jesús Palencia Juárez, dated March 26, 2008.

<sup>395</sup> Petitioners' submission, received on June 22, 2010.

<sup>396</sup> Petitioners' submission, received on March 26, 2007: Annex III-F, Statement of Yordín Eduardo Herrera Urizar, dated August 25, 2006.

<sup>397</sup> Petitioners' submission, received on March 26, 2007: Annex III-F, Statement of Yordín Eduardo Herrera Urizar, dated August 25, 2006.



313. Yordín Eduardo Herrera Urizar, Zoilo Canales Salazar's son and Moisés's brother, reported that these events took place in February 1984. He also stated that two days after the abduction of his father and brother, "men from Guatemalan military intelligence came to where we were living with my grandmother, Blanca Rosa Ortega, in the house in Zone 6. They opened the front door with my father's keys, came in brandishing pistols, shouting and making death threats; they pushed us to the ground and blindfolded us (...) Then they took us away, blindfolded and against our will; they put us in a car and took us somewhere unknown."<sup>398</sup> He added that he and his grandmother were locked in a room without any furniture other than a bloodstained mattress on the floor. They were held for four days and only received food on four occasions. From that room they could hear the torture being inflicted on other abductees.

314. The *Diario Militar* refers to Zoilo Canales Salazar's case as No. 75: "(aka) SALVADOR. Member of the DN of the PGT-CC, right wing, was responsible for the military apparatus, lived in Los Álamos, was fingered by (aka) Claudia at 5:30 p.m. on 15th Avenue "A," Zone 1, near Gerona. False names: ABRAHAM URÍZAR ORTEGA. CRECENCIA MÉLCHOR SALAZAR. 29-03-84: 300" (handwritten).

315. The *Diario Militar* refers to Moisés Canales Godoy's case as No. 77: "(aka) CANCRE. Member of the PGT-CC. Responsible for links with personnel in the Eastern Region (Jalapa, Jutiapa). 01-03-84: Captured at a vegetable stall in Col. Paulo VI, Calzada San Juan, Zone 7. Working at the Jutiapa Military Zone" (handwritten).

316. The victims' son and brother recalled how their disappearance affected him: "I was affected physically, emotionally, and psychologically. Physically because my family was destroyed, my father and brother disappeared; my grandmother and I had to move to a tiny room and, after that, try to survive for years; we would often eat tortillas with salt and lemon and nothing else, and we had a quetzal or two per week. My grandmother used to wash clothes for people, for a few quetzals. Emotionally because they took my family from me, and, finally, psychologically because it has taken me my entire life to try and understand the workings of a corrupt government, how the few people who want to do something to improve the lives of others are abducted, tortured, mutilated, and killed. Today, 23 years later, I am still full of anger, resentment, hate, grief, and condemnation at people and at what happened in my beloved country where I was born. (...) If there's one thing I will remember all my life, it's the moans and screams of all those people who were tortured when we were abducted. I still cry sometimes, and my heart sinks when I remember my father and my brother, just imagining that it was probably my father and my brother being tortured and mutilated in those rooms. That they were so close to me and, at the same time, so far away. Just imagining that I'll never see them again."

317. The family took no legal action because they feared for their lives and physical integrity.<sup>399</sup>

318. The State reported that in 2007, requests for information were sent to the SAT and the TSE and, in 2008, requests for information were sent to the office of the Ombudsman for

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<sup>398</sup> Petitioners' submission, received on March 26, 2007: Annex III-F, Statement of Yordín Eduardo Herrera Urizar, dated August 25, 2006.

<sup>399</sup> Petitioners' submission, received on March 26, 2007: Annex III-F, Statement of Yordín Eduardo Herrera Urizar, dated August 25, 2006. Petitioners' submission, received on March 26, 2007: Annex III-G, Statement of Elsa Noemí Urizar, dated March 21, 2007.

Human Rights,<sup>400 401</sup> the National Redress Program,<sup>402 403</sup> and the Forensic Anthropology Foundation.<sup>404 405</sup>

319. According to the information provided by the petitioners and not disputed by the State, the following individuals have been identified as family members affected by the forced disappearance of Zoilo Canales Salazar and Moisés Canales Godoy: Yordín Eduardo Herrera Urizar (Zoilo Canales Salazar's son, Moisés Canales Godoy's brother, and petitioner) and Blanca Rosa Ortega (Zoilo Canales Salazar's wife, and Moisés Canales Godoy's stepmother).<sup>406</sup>

**u. Félix Estrada Mejía**

320. Félix Estrada Mejía was 25 years old and studied at the Central Teacher-Training School for Men, which was destroyed in the 1976 earthquake. Along with schoolmates, he organized protests for a new building to be built. He had three brothers and two sisters. In 1978, the victim traveled to Cuba to the Student Youth Festival and then to the same festival in Russia; his brother explained that given the State's repressive policies at the time, this caused him problems. He was in his fifth year of teacher training but dropped out when he began to participate in the Patriotic Working Youth.<sup>407</sup>

321. Salomón Estrada Mejía, the victim's brother, reported that on May 15, 1984, Félix left home at 7:30 a.m., saying nothing in particular: "It was a normal day. I used to sleep with him, we slept in the same bed. He got up, had a shower like always [...] he even played with me: he threw his tee-shirt at me," recalled his brother Salomón. They never saw him again.<sup>408</sup> He also reported that another brother, César Augusto Estrada Mejía, was forcibly disappeared in 1990.<sup>409</sup>

322. The *Diario Militar* refers to Félix Estrada Mejía's case as No. 131: "(aka) MELESTO and ANTONIO. Liaison between the Directorate and Secondary Education of the PGT, left wing. 15-05-84: At 08:35 a.m., captured on 6th Avenue, Zone 9. 05-06-84: 300" (handwritten).

323. His brother stated that they heard nothing for a few days, but that it was normal for his brother to go off without saying where. However, two weeks after his disappearance, his sisters started searching the morgues and hospitals. "It was a silent search [...]. We kept it between the

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<sup>400</sup> State's submission, received on October 17, 2006: Annex XXIII, Request for information sent by the Public Prosecution Service to the office of the Ombudsman for Human Rights on April 11, 2008, p. 23.

<sup>401</sup> State's submission, received on October 17, 2006: Annex XXIV, Request for information sent by the Public Prosecution Service to the office of the Ombudsman for Human Rights on April 11, 2008, p. 35.

<sup>402</sup> State's submission, received on October 17, 2006: Annex XXIII, Request for information sent by the Public Prosecution Service to the National Redress Program on June 11, 2008, p. 25.

<sup>403</sup> State's submission, received on October 17, 2006: Annex XXIV, Request for information sent by the Public Prosecution Service to the National Redress Program on June 11, 2008, p. 37.

<sup>404</sup> State's submission, received on October 17, 2006: Annex XXIII, Request for information sent by the Public Prosecution Service to the Forensic Anthropology Foundation on July 3, 2008, p. 27.

<sup>405</sup> State's submission, received on October 17, 2006: Annex XXIV, Request for information sent by the Public Prosecution Service to the Forensic Anthropology Foundation on July 3, 2008, p. 39.

<sup>406</sup> Petitioners' submission, received on June 22, 2010.

<sup>407</sup> Petitioners' submission, received on March 26, 2007: Annex IV-C, Statement of Salomón Estrada Mejía, dated August 14, 2006.

<sup>408</sup> Petitioners' submission received on October 2, 2006: Annex IV-B, Victim's information record at FAMDEGUA.

<sup>409</sup> Petitioners' submission, received on March 23, 2009: Statement of Salomón Estrada Mejía, dated March 26, 2008.

brothers and sisters,” said Salomón. Meanwhile, the sisters noticed that upon leaving the places where they had searched for their brother’s whereabouts, they were followed by strangers, either on foot or in vehicles. That scared the entire family, and so they stopped searching. “Deep down, we believed my brother was alive,” said Salomón.

324. On July 7, 1999, after it was confirmed that he had disappeared, the victim’s brother Salomón Estrada Mejía asked for his disappearance and death to be investigated<sup>410</sup> and, in 2005, he opened a case file with the office of the Ombudsman for Human Rights.<sup>411</sup>

325. In its report, the State indicated that in 1999 it received a statement from the victim’s brother;<sup>412</sup> in 2002 it requested information from the SAT; in 2007, details on his father and mother from the TSE; and, in 2008, information from the office of the Ombudsman for Human Rights, the National Redress Program, and the Forensic Anthropology Foundation. In addition, on November 4, 2004, Salomón Estrada Mejía opened a case file with the National Redress Program.<sup>413</sup>

326. The records of the Police Archives indicate that the *habeas corpus* remedy lodged on behalf of the victim was dismissed on the grounds of insufficient information.<sup>414</sup>

327. According to the information provided by the petitioners and not disputed by the State, the following individuals have been identified as family members affected by the forced disappearance of Félix Estrada Mejía: Salomón Estrada Mejía (victim’s brother and petitioner), Félix Estrada Hernández (victim’s father), Victoria Mejía (victim’s mother), Manuel de Jesús Estrada (victim’s brother), Blanca Estela Estrada Mejía (victim’s sister), and Argelia Estrada Mejía (victim’s sister).<sup>415</sup>

#### **v. Crescencio Gómez López**

328. Crescencio Gómez López was 41 years old in 1984. He worked for 20 years for the Coca-Cola company and was the Conflicts Secretary of the company’s trade union. He stopped working there after seven people were killed, including two general secretaries, and he received death threats himself. Later, he continued assisting the trade union as an external consultant, on matters related to union activity.<sup>416</sup> He was abducted on June 23, 1984, in the vicinity of the Roosevelt Hospital, where his son was receiving treatment.<sup>417</sup>

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<sup>410</sup> Petitioners’ submission received on October 2, 2006: Annex IV-A, Complaint lodged with the Public Prosecution Service by Salomón Estrada Mejía, dated July 7, 1999. Petitioners’ submission, received on March 26, 2007: Annex IV-C, Statement of Salomón Estrada Mejía, dated August 14, 2006.

<sup>411</sup> State’s submission, received on October 17, 2006: Annex XXV, Contained in the communication from the Ombudsman for Human Rights to the Public Prosecution Service dated May 27, 2008, p. 45.

<sup>412</sup> State’s submission, received on October 17, 2006: Annex XXV, Statement of Salomón Estrada Mejía to the Public Prosecution Service, dated July 7, 1999, p. 31.

<sup>413</sup> State’s submission of October 17, 2008: Annex I.2.

<sup>414</sup> State’s submission, received on March 20, 2009: Annex B, Copy from the National Police Historical Archive, p. 181.

<sup>415</sup> Petitioners’ submission, received on June 22, 2010.

<sup>416</sup> Petitioners’ submission received on October 2, 2006: Annex V-A, Victim’s information record at FAMDEGUA. Petitioners’ submission, received on March 26, 2007: Annex V-B, Testimony of Fredy Anelson Gómez Moreira, dated August 1, 2006.

<sup>417</sup> Petitioners’ submission, received on March 26, 2007: Annex V-B, Testimony of Fredy Anelson Gómez Moreira, dated August 1, 2006.

329. The *Diario Militar* refers to Crescencio Gómez López's case as No. 158: "(aka) SULIVAN. Member of the PGT-PC. 23-06-84: Captured at the main entrance, near out-patients, of the Roosevelt Hospital. 01-08-84 = 300" (handwritten).

330. The family pursued formalities with the National Police, the Army, the Judicial Police Command, the G-2, and other agencies, but filed no formal complaints with the judicial authorities out of fear of reprisals.<sup>418</sup>

331. The victim's son, Fredy Anelson Gómez Moreira, stressed the fact that his father's disappearance changed the family's lives forever: his mother had to work to satisfy their basic needs. Three years after the disappearance and because of the family's precarious economic situation, Fredy had to emigrate illegally to the United States, where he remained for seven years.<sup>419</sup>

332. In 1999, following the publication of the *Diario Militar*, the victim's son lodged a complaint with FAMDEGUA.<sup>420</sup>

333. The State reported that in 2006, it received a statement from the victim's son and, in 2007, it established that the victim was not being held at the Pavón Penal Farm in 1982.<sup>421</sup> In 1999, the Public Prosecution Service sent requests for information to the Civil Registry of Guatemala Municipality, the Traffic Department, the TSE, the USAC, the National Police, and the Roosevelt Hospital. In 2000, requests for information were sent to the Embassy of Canada, the prison system, the Jorge Toriello Foundation, the Coca-Cola workers' union, and the Coca-Cola company. In 2002, requests were sent to the ID Registry and to the SAT. In 2008, requests for information were sent to the office of the Ombudsman for Human Rights, the National Redress Program, the Forensic Anthropology Foundation, and the Migration Directorate.<sup>422</sup>

334. According to the information provided by the petitioners and not disputed by the State, the following individuals have been identified as family members affected by the forced disappearance of Crescencio Gómez López: Fredy Anelson Gómez Moreira (victim's brother and petitioner), Wendley Estuardo Gómez Moreira (victim's brother), Mildred Marilú Gómez Moreira (victim's sister), Alba Rosemary Gómez Moreira (victim's sister), and Norman Fidel Gómez Moreira (victim's brother).<sup>423</sup>

**w. Luis Rolando Peñate Lima**

335. Luis Rolando Peñate Lima was 25 years old and was married with a pregnant wife. He was an urban primary education teacher and belonged to a student organization.

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<sup>418</sup> Petitioners' submission, received on March 26, 2007: Annex V-B, Testimony of Fredy Anelson Gómez Moreira, dated August 1, 2006.

<sup>419</sup> Petitioners' submission, received on March 26, 2007: Annex V-B, Testimony of Fredy Anelson Gómez Moreira, dated August 1, 2006.

<sup>420</sup> State's submission, received on October 17, 2006: Annex XXVI, Victim's general information record at FAMDEGUA, dated May 20, 1999, pp. 3 to 6.

<sup>421</sup> State's submission of October 17, 2008: Annex I.2.

<sup>422</sup> State's submission, received on October 17, 2006: Annex XXVI, Request for information sent by the Public Prosecution Service to the office of the Ombudsman for Human Rights on April 11, 2008, p. 74; Request for information sent by the Public Prosecution Service to the National Redress Program on June 11, 2008, p. 78; Request for information sent by the Public Prosecution Service to the Forensic Anthropology Foundation on July 3, 2008, p. 78; Request for information sent by the Public Prosecution Service to the General Migration Directorate on April 10, 2008, p. 69.

<sup>423</sup> Petitioners' submission, received on June 22, 2010.

336. According to his wife's testimony, on the morning of October 11, 1984, they woke up to find the family vehicle with its four tires punctured. Later, she left with her husband for work and agreed to meet at the bus stop at 6:00 p.m., but her husband never arrived. The victim's wife, who was five months pregnant at the time, returned home alone. At around 7:00 p.m., a group of armed men entered their home, breaking down walls and doors.<sup>424</sup> According to information provided by FAMDEGUA, that same day her husband was abducted and taken away in a white panel van to an unknown location.<sup>425</sup>

337. The *Diario Militar* refers to Luis Rolando Peñate Lima's case as No. 165: "(aka) "Manuel," "Moisés," "Ricardo." (False Name) CARLOS JOSÉ MENDOZA RIVERA. (False Name) VÍCTOR MANUEL SAMAYOA GÁLVEZ. Second Chief of the S.O.E of PGT-IZQUIERDA, attorney (degree pending) by profession. 11-10-84. Captured at 5:30 p.m., on Avenida del Cementerio and 14th Street, in Zone 3. Handed over weapons, including a Galil he had at his home in Barrio San Miguel, San José Pinula. Handed over to the D.I. at 302030APR85" (handwritten).

338. Luis Moisés Peñate Munguía, the victim's son, said that thinking about his father made him very sad, since he never met him: "How can you measure the level of harm to people if you don't know how deeply it affects them to have people in their lives who are a part of them?" he asked. Ana Dolores Munguía Sosa, the victim's wife, said that following her husband's disappearance she had to work to maintain the family, which meant that her son spent a lot of time alone or with his grandmother, who suffered a brain hemorrhage shortly after her son's disappearance and was left partially disabled.<sup>426</sup>

339. The victim's brother searched for him at hospitals, morgues, detention centers, and prisons. His wife pursued no domestic actions because of the threats and the fear of reprisals.<sup>427</sup> In 2004, they lodged a complaint with FAMDEGUA.

340. The State reported that on January 18, 2006, Ana Dolores Munguía Sosa opened a case file with the National Redress Program and that, in 2008, requests for information were sent to the office of the Ombudsman for Human Rights, the National Redress Program, and the Forensic Anthropology Foundation.<sup>428</sup>

341. The records of the Police Archive contain information about an incident when the victim lost his papers, but there is no information related to his disappearance.<sup>429</sup>

342. According to the information provided by the petitioners and not disputed by the State, the following individuals have been identified as family members affected by the forced disappearance of Luis Rolando Peñate Lima: Ana Dolores Munguía Sosa (victim's wife), Luis Moisés

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<sup>424</sup> Petitioners' submission, received on March 26, 2007: Annex VI-L, Testimony of Ana Dolores Munguía Sosa and Luis Moisés Peñate Munguía, dated August 2, 2006.

<sup>425</sup> Petitioners' submission received on October 2, 2006: Annex VI-G, Victim's information record at FAMDEGUA.

<sup>426</sup> Petitioners' submission, received on March 26, 2007: Annex VI-L, Testimony of Ana Dolores Munguía Sosa and Luis Moisés Peñate Munguía, dated August 2, 2006.

<sup>427</sup> Petitioners' submission, received on March 26, 2007: Annex VI-L, Testimony of Ana Dolores Munguía Sosa and Luis Moisés Peñate Munguía, dated August 2, 2006.

<sup>428</sup> State's submission, received on October 17, 2006: Annex XXVII, Request for information sent by the Public Prosecution Service to the office of the Ombudsman for Human Rights on April 11, 2008, p. 19; Request for information sent by the Public Prosecution Service to the National Redress Program on June 11, 2008, p. 21; and Request for information sent by the Public Prosecution Service to the Forensic Anthropology Foundation on July 3, 2008, p. 28.

<sup>429</sup> State's submission, received on March 20, 2009: Annex B, Copy from the National Police Historical Archive, p. 297.

Peñate Munguía (victim's son and petitioner), Rina Leticia Lima Morales (victim's mother), Moisés Remberto Peñate Salguero (victim's father), Douglas Roberto Peñate Lima (victim's brother), and Laura Marina Peñate Lima (victim's sister).<sup>430</sup>

**x. Rudy Gustavo Figueroa Muñoz<sup>431</sup>**

343. Rudy Gustavo Figueroa Muñoz was 33 years old and the father of three children. He worked for the Guatemalan Social Security Institute (IGSS) and belonged to the institute's trade union. He also lectured at the USAC's Law School, belonged to the University Council, and practiced as an attorney.<sup>432</sup>

344. His mother recalled that some days before his abduction, her son had said he was leaving for Mexico. "My father died that day. Then he came home. He was saying goodbye, because he said he was going to go to Mexico." The victim's mother said that her son was going to see friends of his who had gone into exile in Mexico. "They've killed all my friends," his mother recalled Rudy Gustavo saying.

345. According to the narrative given by his mother, who learned about the incident from eye-witnesses who spoke to the victim's wife, Figueroa Muñoz was taken from his office by police officers in a white panel van. Figueroa Muñoz resisted arrest, and was consequently beaten in the head. The soldiers who took him also took papers and valuables from his office. The next day, they took the victim to his home, from which they also stole items. The last news the family had of Rudy Gustavo while he was still alive was through the testimony of a clerk at a bank where the victim had an account, who spoke to the victim's wife. "They went to that bank; they took him in handcuffs. The girl at the bank knew him, because he [used to go] to that bank often. [...] He was all bruised. And she said to him, 'Mr. Rudy, can I help you with something?' 'No, thank you,' [replied Rudy Gustavo]. He withdrew all the money he had at the bank, and the men took him away. [...] [That was] about a month after they had abducted him," his mother said.

346. The *Diario Militar* refers to Rudy Gustavo Figueroa Muñoz's case as No. 166: "(False Name) JUAN CARLOS ESTRADA GALINDO. (aka) "Chayo," "Martínez," "Alfredo," "Gustavo." Head of the S.O.E. of the PGT-IZQUIERDA, replacement for "Guanaco." 12-10-84. Captured at 8:30 a.m., at his office on Ruta 3, 2-70, Zone 4. Handed over another Galil he had at his apartment located at 8th Avenue and 9th Street, in Zone 7, Apartment "C," Col. Landívar. 3-12-84=300. COL. JRB 3-21" (handwritten).

347. His son remembers him with great affection. "We used to have great conversations, he and I. [...] When he was at University, in the last years, [...] while he gave classes on Saturday he would take me with my bicycle to the University car park, so I could play, alone but with him watching me." "We were very close [...]. We used to talk a lot, a great amount... It was a very good relationship."<sup>433</sup>

348. The family reported the incident to the media but made no official complaints because of fear of reprisals and their lack of trust in the justice system. Following the appearance of

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<sup>430</sup> Petitioners' submission, received on June 22, 2010.

<sup>431</sup> During the IACHR's on-site visit to Guatemala in May 1985, it received information on the forced disappearance of Rudy Gustavo Figueroa Muñoz. See: IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala, 1985, op. cit.*, Ch. II, Forced Disappearance of Persons.

<sup>432</sup> Petitioners' submission, received on March 23, 2009: Statement of Mercedes Muñoz, dated March 25, 2008.

<sup>433</sup> Petitioners' submission, received on March 23, 2009: Statement of Rudy Alberto Figueroa Maldonado, dated March 28, 2008.

her son's photograph, his mother went to speak about the matter with a neighbor who worked for the police. "He told me, 'Why publish it, why put it in the newspaper? He'll turn up dead now, you'll see,' he said. And true enough, he turned up dead the next day, after the photo was published," his mother recalled.<sup>434</sup>

349. On December 3, 1984, his body turned up one block from his home. To date, he is the only victim in the case at hand who does not remain disappeared. His ex wife recognized the victim (even though he was dressed differently than on the day of his disappearance), and his body showed signs of strangulation and torture. His son, Rudy Figueroa, stated how painful it was for him to remember his father's death.<sup>435</sup>

350. In 2006, the victim's next-of-kin approached the Myrna Mack Foundation to lodge a complaint with the IACHR.<sup>436</sup> Asked why they did not take action immediately, his mother explained, "Because we were afraid! Back then, if the family did anything, they would come and kill the whole household. It was a time we spent with so much fear at home, so much fear."<sup>437</sup>

351. The State reported that in 2001, it requested information from the National Civilian Police and the certification of the death certificate. In 2002, a request for information was sent to the SAT. In 2008, requests for information were sent to the office of the Ombudsman for Human Rights, the National Redress Program, and the Forensic Anthropology Foundation.<sup>438</sup>

352. According to the information provided by the petitioners and not disputed by the State, the following individuals have been identified as family members affected by the forced disappearance of Rudy Gustavo Figueroa Muñoz: Rudy Alberto Figueroa Maldonado (victim's son and petitioner), Brenda Marisol Figueroa Maldonado (victim's daughter), Francisca Florinda Maldonado Jerez (victim's wife), and Mercedes Muñoz Rodas de Figueroa (victim's mother).<sup>439</sup>

## **VI. ANALYSIS OF LAW**

353. In this analysis, the Commission takes as established and accredited the facts detailed in section V of this report and will now examine the responsibility of the State of Guatemala under the American Convention and other inter-American instruments cited above. The IACHR will analyze whether in the case at hand, the State of Guatemala violated the rights enshrined in Articles 3, 4, 5, 7, 8, 11, 13, 16, 17, 19, 22, 23 and 25 of the American Convention, in conjunction with the State's obligations of ensuring those rights and of adopting domestic provisions set out in Articles 1.1 and 2 of the Convention, together with its possible violation of Article 1 of the Inter-American Convention on Forced Disappearance of Persons, Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, and Article 7 of the Convention of Belém do Pará.

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<sup>434</sup> Petitioners' submission, received on March 23, 2009: Statement of Mercedes Muñoz, dated March 25, 2008.

<sup>435</sup> Petitioners' submission, received on March 23, 2009: Statement of Rudy Alberto Figueroa Maldonado, dated March 28, 2008.

<sup>436</sup> Petitioners' submission, received on March 26, 2007: Annex VII-H, Statement of Rudy Alberto Figueroa Maldonado, dated March 28, 2008.

<sup>437</sup> Petitioners' submission, received on March 23, 2009: Statement of Mercedes Muñoz, dated March 25, 2008.

<sup>438</sup> State's submission of October 17, 2008: Annex I.2,

<sup>439</sup> Petitioners' submission, received on June 22, 2010.

**A. The forced disappearance of 26 victims: Articles 3,<sup>440</sup> 4,<sup>441</sup> 5,<sup>442</sup> and 7<sup>443</sup> of the American Convention, in connection with Article 1.1 thereof<sup>444</sup>**

354. Since its earliest cases, the Inter-American Court has spoken of the practice of forced disappearances in the following terms:

Forced or involuntary disappearance is one of the most serious and cruel human rights violations, in that it not only produces arbitrary deprivation of freedom but places the physical integrity, security, and the very life of the detainee in danger. It also leaves the detainee utterly defenseless, bringing related crimes in its wake. Hence, it is important for the State to take all measures as may be necessary to avoid such acts, to investigate them and to sanction those responsible, as well as to inform the next-of-kin of the disappeared person's whereabouts and to make reparations where appropriate.<sup>445</sup>

355. The Commission has said that the crime of forced disappearance is of a permanent or continuous nature. Its effects remain until the fate or whereabouts of the victim is determined. This characteristic means that the State is in an ongoing violation of its international obligations.<sup>446</sup> In addition, the Court has ruled that the forced disappearance of persons constitutes an unlawful act

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<sup>440</sup> Article 3 of the Convention provides: "Every person has the right to recognition as a person before the law."

<sup>441</sup> Article 4.1 of the Convention provides: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."

<sup>442</sup> Article 5 of the Convention stipulates:

"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."

<sup>443</sup> Article 7 of the Convention reads:

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

"2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.

"3. No one shall be subject to arbitrary arrest or imprisonment.

"4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.

"5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

"6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

"7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for nonfulfillment of duties of support."

<sup>444</sup> Article 1.1 of the Convention establishes: "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

<sup>445</sup> I/A Court H. R., *Case of Blake v. Guatemala*, Preliminary Objections, Judgment of July 2, 1996, Series C No. 27, para. 66.

<sup>446</sup> IACHR, Application to the Inter-American Court in the case of Renato Ticona Estrada *et al.* (12.527) against the Republic of Bolivia, August 8, 2007, para. 108.



that gives rise to a multiple and continuing violation of a number of rights protected by the Convention. It also means that the obligation to organize the apparatus of the State in such a manner as to guarantee the rights recognized in the Convention has been disregarded.<sup>447</sup> By carrying out or tolerating actions intended to lead to forced or involuntary disappearances, by failing to properly investigate them, and by not punishing the perpetrators, the State violates the duty to respect the rights protected by the American Convention and to ensure their free and full exercise.<sup>448</sup>

356. Given that it is an autonomous and permanent crime, with multiple interconnected elements, the Inter-American Court has ruled that the analysis of a possible forced disappearance should not be approached in an isolated, divided, and segmented way, based only on the detention or possible torture or risk of loss of life, but on the full set of facts presented in the case in question.<sup>449</sup> Consequently, the comprehensive analysis of a forced disappearance as a complex human rights violation has led the Court to jointly analyze the violation of several rights protected by the Convention.<sup>450</sup>

357. Thus, the Court has used a comprehensive approach toward forced disappearance of persons by reason of the plurality of behaviors that, joined together toward a single purpose, permanently violate juridical rights protected by the American Convention.<sup>451</sup> In particular, in forced disappearance cases, the Court has jointly analyzed violations of the rights to personal liberty, to humane treatment, to life, and to recognition as a person before the law, enshrined in Articles 3, 4, 5, and 7 of the Convention.<sup>452</sup>

358. Furthermore the Court has ruled that the IACFDP and other international instruments<sup>453</sup> agree in establishing the following as concurring and constituting elements of the crime of forced disappearance: (a) deprivation of liberty, (b) direct involvement or acquiescence of governmental officials, and (c) refusal to acknowledge the deprivation of liberty and to disclose the fate and whereabouts of the person in question.<sup>454</sup>

359. The Court has noted that forced disappearance frequently involves the secret execution without trial of the detainee, followed by concealment of the body to eliminate any

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<sup>447</sup> I/A Court H. R., *Case of the 19 Merchants v. Colombia*, Judgment of July 5, 2004, Series C No. 109, para. 142.

<sup>448</sup> I/A Court H. R., *Paniagua Morales et al. Case*, Judgment of March 8, 1998, Series C No. 37, para. 90.

<sup>449</sup> I/A Court H. R., *Case of Ticona Estrada v. Bolivia*, Merits, Reparations, and Costs, Judgment of November 27, 2008, Series C No. 191, para. 56.

<sup>450</sup> I/A Court H. R., *Case of Tiu Tojin v. Guatemala*, Merits, Reparations, and Costs, Judgment of November 26, 2008, Series C No. 190; and *Case of Ticona Estrada v. Bolivia*, Merits, Reparations, and Costs, Judgment of November 27, 2008, Series C No. 191.

<sup>451</sup> I/A Court H. R., *Case of Radilla Pacheco v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 23, 2009, Series C No. 209, para. 138.

<sup>452</sup> I/A Court H. R., *Case of Anzualdo Castro v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of September 22, 2009, Series C No. 202, paras. 51-103; *Case of Radilla Pacheco v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 23, 2009, Series C No. 209, paras. 138-59.

<sup>453</sup> The Court refers to the following instruments: United Nations Economic and Social Council, *Report of the Working Group on Enforced or Involuntary Disappearances*, General Observations to Article 4 of the Declaration on the Protection of all Persons from Enforced Disappearance, January 15, 1996, (E/CN. 4/1996/38), para. 55; and Article 2 of the International Convention for the Protection of All People from Enforced Disappearance.

<sup>454</sup> I/A Court H. R., *Case of Anzualdo Castro v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of September 22, 2009, Series C No. 202, para. 60.

material evidence of the crime and ensure the impunity of those responsible.<sup>455</sup> Nevertheless, one of the characteristics of forced disappearance, in contrast to extrajudicial execution, is that it implies the State's refusal to acknowledge that the victim is under its custody and provide information in that regard, in order to create uncertainty as to his whereabouts, life, or death, and cause intimidation and the repression of rights.<sup>456</sup> Thus, the denial of the truth of the facts is a common characteristic in all stages of forced disappearance cases.<sup>457</sup> For that reason, the IACFDP provides that forced disappearance is deemed to be "continuous or permanent as long as the fate or whereabouts of the victim has not been determined."<sup>458</sup>

360. It thus follows that one of the aims of forced disappearance is to prevent the exercise of the applicable legal remedies and procedural guarantees when a person has been detained, abducted, or in any way deprived of his freedom with the purpose of causing his forced disappearance; if the victim himself cannot access the available remedies, it is essential that his family or other people are able to secure access to swift and effective judicial procedures or resources as a way to determine his whereabouts or conditions of health and to identify the authority that ordered or carried out his detention.<sup>459</sup> Similarly, pursuant to Article 7.6 of the Convention, habeas corpus is, among indispensable judicial guarantees, the most suitable means to ensure freedom, oversee respect for life and personal integrity, and avoid disappearances or lack of information about detention centers, as well as to protect the individual from torture or other forms of cruel, inhuman, or degrading treatment.<sup>460</sup>

361. In addition, whenever reasonable grounds exist for suspecting that a person has suffered forced disappearance, an investigation must be launched.<sup>461</sup>

362. That obligation applies regardless of whether a complaint has been lodged, given that in forced disappearance cases, international law and the general duty to ensure rights require that the matter be investigated on an *ex officio* basis, without delay, and in a serious, impartial, and effective fashion. That is a fundamental and necessary element for the protection of certain guarantees that are affected by such situations, such as the rights to personal liberty, humane treatment, and life.<sup>462</sup> In any case, every state authority, public official, or private citizen who is

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<sup>455</sup> I/A Court H. R., *Case of Anzualdo Castro v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of September 22, 2009, Series C No. 202, para. 85.

<sup>456</sup> I/A Court H. R., *Case of Anzualdo Castro v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of September 22, 2009, Series C No. 202, para. 91.

<sup>457</sup> I/A Court H. R., *Case of Anzualdo Castro v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of September 22, 2009, Series C No. 202, para. 63.

<sup>458</sup> IACFDP, Art. 3.

<sup>459</sup> See: the obligation referred to in Article X of the IACFDP. See also: I/A Court H. R., *Case of Anzualdo Castro v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of September 22, 2009, Series C No. 202, para. 64.

<sup>460</sup> I/A Court H. R., *Case of La Cantuta v. Peru*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 162, para. 111; *Case of the Serrano Cruz Sisters v. El Salvador*, Judgment of March 1, 2005, Series C No. 120, para. 79; *Case of the Gómez Paquiyauri Brothers v. Peru*, para. 97; and *Case of Juan Humberto Sánchez v. Honduras*, Judgment of June 7, 2003, Series C No. 99, para. 122.

<sup>461</sup> See: Article 12.2 of the International Convention for the Protection of All People from Enforced Disappearance and Article 13 of the Declaration on the Protection of all Persons from Enforced Disappearances. Furthermore, the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on June 25, 1993, provides: "It is the duty of all States, under any circumstances, to make investigations whenever there is reason to believe that an enforced disappearance has taken place on a territory under their jurisdiction and, if allegations are confirmed, to prosecute its perpetrators" (para. 62).

<sup>462</sup> I/A Court H. R., *Case of the Massacre of Pueblo Bello v. Colombia*, Merits, Reparations, and Costs, Judgment of January 31, 2006, Series C No. 140, para. 145.

aware of acts intended to forcibly disappear persons is required to report them immediately.<sup>463</sup> The State's obligation to uphold the rights to physical integrity and life, analyzed in conjunction with the obligation to respect and ensure the rights enshrined in the American Convention and set out in Article 1.1 thereof, necessarily demands an investigation that is conducted using all legal means available and is aimed at establishing the truth and pursuing the investigation, search, arrest, trial, and punishment of all those who both planned and perpetrated such crimes, especially when officials of the State are or may be involved.<sup>464</sup>

363. By failing to meet this obligation of conducting an investigation that arises from the general obligation of ensuring protected rights, a State is in violation of Article 1.1 of the Convention in conjunction with the substantive rights requiring protection or guarantee.<sup>465</sup> So, for example, the Court has spoken of the "the procedural obligation derived from the duty to guarantee rights arising from Articles 4 and 5 of the Convention, in relation to Article 1.1 thereof."<sup>466</sup> Thus, in forced disappearance cases, the State's obligation to conduct an investigation arises in favor of those entitled to the rights enshrined in Articles 4, 5, and 7 of the Convention (in conjunction with Article 1.1) – namely, those individuals who have been forcibly disappeared.<sup>467</sup>

364. According to the proven facts, in the case at hand it has been shown that the following victims were forcibly disappeared by agents of the Guatemalan State: José Miguel Gudiel Álvarez, Orencio Sosa Calderón, Óscar Eduardo Barillas Barrientos, José Porfirio Hernández Bonilla, Octavio René Guzmán Castañeda, Álvaro Zacarías Calvo Pérez, Víctor Manuel Calderón Díaz, Amancio Samuel Villatoro, Manuel Ismael Salanic Chiguil, Carlos Guillermo Ramírez Gálvez, Sergio Saúl Linares Morales, Luz Haydeé Méndez Calderón, Juan Pablo Armira López, María Quirina Armira López, Lesbia Lucrecia García Escobar, Otto René Estrada Illescas, Julio Alberto Estrada Illescas, Rubén Amílcar Farfán, Sergio Leonel Alvarado Arévalo, Joaquín Rodas Andrade, Alfonso Alvarado Palencia, Zoilo Canales Salazar, Moisés Canales Godoy, Félix Estrada Mejía, Crescencio Gómez López, and Luis Rolando Peñate Lima.

365. The *Diario Militar* sets out the circumstances in which these victims were detained by the Guatemalan State's security forces. The 26 individuals were captured over the space of approximately one year, from the abduction of José Miguel Gudiel Álvarez on September 22, 1983, to that of Luis Rolando Peñate Lima on October 11, 1984. With regard to 17 of the 26 victims in the case at hand who remain disappeared, the encoded information in the *Diario Militar* indicates that they were allegedly extrajudicially executed.<sup>468</sup> Nevertheless, none of the 26 victims has ever been seen again.

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<sup>463</sup> I/A Court H. R., *Case of Anzualdo Castro v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of September 22, 2009, Series C No. 202, para. 65.

<sup>464</sup> See: IACHR, Application to the Inter-American Court in the case of Renato Ticona Estrada *et al.* (12.527) against the Republic of Bolivia, August 8, 2007, para. 151, citing: I/A Court H. R., *Case of Baldeón García v. Peru*, Judgment of April 6, 2006, Series C No. 147, para. 94; *Case of the Massacre of Pueblo Bello*, Judgment of January 31, 2006, Series C No. 140, para. 143.

<sup>465</sup> I/A Court H. R., *Case of the Massacre of Pueblo Bello v. Colombia*, Merits, Reparations, and Costs, Judgment of January 31, 2006, Series C No. 140, para. 142.

<sup>466</sup> I/A Court H. R., *Case of the Dos Erres Massacre v. Guatemala*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 24, 2009, Series C No. 211, para. 48.

<sup>467</sup> I/A Court H. R., *Case of the Dos Erres Massacre v. Guatemala*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 24, 2009, Series C No. 211, para. 49.

<sup>468</sup> See: *Diario Militar*. Those people are: Orencio Sosa Calderón, Óscar Eduardo Barillas Barrientos, José Porfirio Hernández Bonilla, Octavio René Guzmán Castañeda, Álvaro Zacarías Calvo Pérez, Amancio Samuel Villatoro, Manuel Ismael Salanic Chiguil, Carlos Guillermo Ramírez Gálvez, Sergio Saúl Linares Morales, Lesbia Lucrecia García Escobar, Otto René Estrada Illescas, Rubén Amílcar Farfán, Sergio Leonel Alvarado Arévalo, Alfonso Alvarado Palencia, Zoilo Canales Salazar, Félix Estrada Mejía, and Crescencio Gómez López.

366. The available testimony, together with the described *modus operandi* of the Guatemalan security forces in carrying out forced disappearances at the time, allow the conclusion that the victims were arbitrarily and violently captured.

367. The information set out in the *Diario Militar* suggests that most of the victims were held in clandestine prisons for between two weeks and two months prior to being executed. However, some of them were held in detention for longer periods. The victim Orencio Sosa Calderón, for example, was captured on October 25, 1983, and allegedly executed on February 7, 1984, more than three months later.<sup>469</sup> Likewise, the victim Luis Rolando Peñate Lima was taken into custody on October 11, 1984, and was “handed over to the D.I. [Intelligence Directorate]” on April 30, 1985, indicating that he remained alive for at least six months following his abduction.<sup>470</sup> In contrast, according to the *Diario Militar*, the victim Rubén Amílcar Farfán was executed during his abduction on May 15, 1984. However, his body, like those of the other victims, never appeared.

368. The evidence indicates that the victims, selected by the authorities on account of their alleged membership in “subversive” groups,<sup>471</sup> were kept alive to extract information from them, in order “to break up or annihilate political organizations, labor unions, and grassroots associations.”<sup>472</sup> For some of the disappeared victims, there is testimony from survivors who witnessed the torture inflicted on them.<sup>473</sup> In addition, as already stated, the IACHR has documented that at the time, the *modus operandi* of forced disappearances in Guatemala involved the use of torture in “almost all interrogations.”<sup>474</sup> It is therefore logical to conclude that the security forces tortured the people listed in the *Diario Militar*, including the victims in the instant case, in order to obtain intelligence. That conclusion is supported by the references made in the *Diario Militar* itself to betrayals, which were presumably obtained through torture.<sup>475</sup>

369. According to claims made by the families of several of the victims in this case, they were subjected to surveillance and harassment before and after the abduction of their loved ones; and, in some cases, they were explicitly warned by the security forces that they should not report the disappearances.<sup>476</sup> Regardless of the potential risks, the families of at least thirteen of the

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<sup>469</sup> *Diario Militar*, Case No. 17.

<sup>470</sup> *Diario Militar*, Case No. 165.

<sup>471</sup> See: *Diario Militar*. The people listed in the *Diario Militar* have a letter written alongside their photos to indicate the purported allegiance: “W” for the Revolutionary Organization of the People in Arms (ORPA), “Y” for the Rebel Armed Forces (FAR), “Z” for the Guatemalan Labor Party (PGT), etc. See also: Katharine Doyle, “Analysis of the *Diario Militar*,” Washington, May 26, 2005, Annex V of the original petition, received on December 9, 2005, p. 6.

<sup>472</sup> CEH, *Guatemala: Memory of Silence*, Vol. II, Ch. XI: Forced Disappearances, p. 412.

<sup>473</sup> See, for example: Original petition, received on December 9, 2005: Annex XXXVI-A, Statement of Wendy Santizo Méndez, dated November 3, 2004; and Annex XXXIV-F, Statement of Jorge Alberto Ramírez Gálvez, dated February 4, 2005.

<sup>474</sup> IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*, Ch. II, paras. 16-27.

<sup>475</sup> The *Diario Militar* uses codes such as “handed over” and “fingered” to indicate that situation. See, for example: *Diario Militar*, Cases Nos. 71, 79, and 94. See also: Katharine Doyle, “Analysis of the *Diario Militar*,” Washington, May 26, 2005, Annex V of the original petition, received on December 9, 2005, pp. 6-7.

<sup>476</sup> See: “Established facts” section, in particular the cases involving the next-of-kin of the victims Amancio Samuel Villatoro, Manuel Ismael Salanic Chiguil, Carlos Guillermo Ramírez Gálvez, Sergio Saúl Linares Morales, Joaquín Rodas Andrade, Zoilo Canales Salazar, and Félix Estrada Mejía. See also, in general: IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*, Ch. II, paras. 92-97.

disappeared victims lodged complaints or filed for habeas corpus.<sup>477</sup> The families of at least four of the victims even managed to meet with the dictator at the time, Mejía Víctores, or with his wife, in their efforts to locate the disappeared.<sup>478</sup> In none of those cases did the judicial branch take any serious action toward locating the disappeared or identifying their abductors.<sup>479</sup> The families of the disappeared were at no point informed that their loved ones were in the custody of the State. For many of them, the publication of the *Diario Militar* in 1999 marked the first time that they received any official information about their missing relatives.

370. The State of Guatemala, in addition to recognizing the authenticity of the *Diario Militar*, has not denied that its agents were responsible for the forced disappearances reported in this case. This fact notwithstanding, the Inter-American Commission notes that following the incidents, and even after the publication of the *Diario Militar* in 1999, the state authorities adopted no diligent, effective measures to cast light on the facts or to investigate those responsible. From the evidence contained in the domestic criminal case files, the Inter-American Commission believes it has been established that no serious investigation was conducted into the circumstances of the forced disappearance of these 26 victims. Regardless of the judicial inactivity that followed the victims' disappearance, the publication of the *Diario Militar* and the evidence it contained should have triggered an effective and coordinated investigation aimed at locating the disappeared and identifying the state agents who participated in the incidents it documents. The information furnished to the Commission by the State indicates, however, that the *Diario Militar* cases reported to the Public Prosecution Service in 1999 were initially distributed to 38 different prosecutors' offices.<sup>480</sup> Although they were later combined into a single case file, the proceedings are still at the investigation stage and the Public Prosecution Service has neither located any of the disappeared in this case nor has it identified any of the persons allegedly responsible for their forced disappearances.

371. In light of the analysis offered so far, the Commission reiterates that between September 1983 and October 1984, agents of the Guatemalan State arbitrarily detained José Miguel Gudiel Álvarez, Orencio Sosa Calderón, Óscar Eduardo Barillas Barrientos, José Porfirio Hernández Bonilla, Octavio René Guzmán Castañeda, Álvaro Zacarías Calvo Pérez, Víctor Manuel Calderón Díaz, Amancio Samuel Villatoro, Manuel Ismael Salanic Chiguil, Carlos Guillermo Ramírez Gálvez, Sergio Saúl Linares Morales, Luz Haydeé Méndez Calderón, Juan Pablo Armira López, María Quirina Armira López, Lesbia Lucrecia García Escobar, Otto René Estrada Illescas, Julio Alberto Estrada Illescas, Rubén Amílcar Farfán, Sergio Leonel Alvarado Arévalo, Joaquín Rodas Andrade, Alfonso Alvarado Palencia, Zoilo Canales Salazar, Moisés Canales Godoy, Félix Estrada Mejía, Crescencio Gómez López, and Luis Rolando Peñate Lima. The Guatemalan State held those persons in isolation from the outside world and denied them the judicial review of their detentions. The families were at all times denied any and all information about their whereabouts. To date, none of

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<sup>477</sup> In particular, the families of: Sergio Leonel Alvarado Arévalo, Óscar Eduardo Barillas Barrientos, Álvaro Zacarías Calvo Pérez, Otto René Estrada Illescas, Rubén Amílcar Farfán, Lesbia Lucrecia García Escobar, Sergio Saúl Linares Morales, Luz Haydeé Méndez Calderón, Carlos Guillermo Ramírez Gálvez, Manuel Ismael Salanic Chiguil, Orencio Sosa Calderón, Amancio Samuel Villatoro, and Joaquín Rodas Andrade. See: Petitioners' merits submission, received on March 15, 2007.

<sup>478</sup> See: "Proven facts" section, in particular the cases of Alfonso Alvarado Palencia, Joaquín Rodas Andrade, Sergio Saúl Linares Morales, and Orencio Sosa Calderón.

<sup>479</sup> That result was consistent with judicial practice at the time. In the conclusions of its report, the CEH spoke of the "actions and omissions of the judicial branch, such as the systematic denial of *habeas corpus* remedies, interpretations that consistently favored the authorities, [and] indifference toward the torture of abductees." CEH, *Guatemala: Memory of Silence*, Vol. V, Ch. IV: Conclusions, p. 45.

<sup>480</sup> State's submission, received on November 27, 2007. Communication of the Public Prosecution Service, dated November 20, 2007.

those 26 people has been seen again, and so their forced disappearances, at the hands of state agents, continue to the present day.<sup>481</sup>

372. Based on the foregoing, the Commission concludes that in the case at hand the State of Guatemala violated Articles 3, 4, 5, and 7 of the American Convention, in conjunction with Article 1.1 thereof, with respect to the disappeared victims listed in the previous paragraph.

373. Finally, the Commission notes that according to both the Inter-American Court and the IACFDP, forced disappearance as part of a systematic pattern constitutes a crime against humanity.<sup>482</sup> For example, in the *La Cantuta* case, the Court found that the forced disappearances in question took place in the context of generalized and systematic attacks on sectors of the civilian population and therefore amounted to crimes against humanity.<sup>483</sup> As a consequence, the Court noted that “the duty to investigate and eventually conduct trials and impose sanctions becomes particularly compelling and important,”<sup>484</sup> including with regard to the adoption and application of laws granting amnesty for crimes against humanity, which violate the Convention.<sup>485</sup> The Commission notes that the forced disappearances in the case at hand were a part of the systematic pattern of forced disappearances in Guatemala that the IACHR documented at the time of the incidents. The Commission consequently decides, in line with its practice in earlier cases,<sup>486</sup> to declare that the forced disappearances of the victims in the instant case constitute crimes against humanity.

**B. The violation of the rights of the child with respect to the disappeared victims Juan Pablo and María Quirina Armira López: Article 19<sup>487</sup> of the Convention, in conjunction with Article 1.1 thereof**

374. In addition to Articles 3, 4, 5, and 7, the State violated Article 19 of the Convention with regard to Juan Pablo Armira López and his sister María Quirina, who were aged 12 and 15 respectively at the time of their forced disappearances. The Inter-American Court has ruled that:

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<sup>481</sup> In addition to the aforesaid inter-American jurisprudence on the permanent and continuing nature of forced disappearance, it should be noted that in the document signed on October 20, 2006, as part of the instant case, the State affirmed that “in accordance with the National Reconciliation Law and the Inter-American Convention on Forced Disappearance of Persons, the State of Guatemala accepts that forced disappearance is a crime of a permanent nature that does not conclude until the victims are found.” Minutes of the working meeting of October 20, 2006, held at IACHR Headquarters, signed by Commissioner Víctor Abramovich on behalf of the IACHR, Frank La Rue (President of COPREDEH) and Mario Estuardo Gordillo Galindo (Attorney General of the Nation) on behalf of the State of Guatemala, and Helen Mack Chang (President of the Myrna Mack Foundation) and Leslie Figueroa (Myrna Mack Foundation) on behalf of the petitioners.

<sup>482</sup> IACFDP, preamble; I/A Court H. R., *Case of La Cantuta, v. Peru*, Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, para. 115.

<sup>483</sup> I/A Court H. R., *Case of La Cantuta v. Peru*, Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, para. 157.

<sup>484</sup> I/A Court H. R., *Case of La Cantuta v. Peru*, Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, para. 157.

<sup>485</sup> I/A Court H. R., *Case of La Cantuta v. Peru*, Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, para. 168; *Case of Almonacid Arellano et al. v. Chile*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 26, 2006, Series C No. 154, para. 114.

<sup>486</sup> IACHR, Application to the Inter-American Court in the case of Manuel Cepeda Vargas (12.531) against the Republic of Colombia, November 14, 2008, para. 73.

<sup>487</sup> Article 19 of the Convention provides: “Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.”

The obligation of the State to respect the right to life of every person under its jurisdiction takes on special aspects in the case of children, and it becomes an obligation to “prevent situations that might lead, by action or omission, to breach it.”<sup>488</sup>

375. The IACHR has made similar rulings, establishing that states must adopt special measures to prevent children from falling victim to state actions that involve the use of force.<sup>489</sup>

376. In the case of the minors Juan Pablo Armira López and María Quirina Armira López, the State of Guatemala violated Article 19 of the Convention, in conjunction with Articles 3, 4, 5, 7 and 1.1, when its agents forcibly disappeared the victims.

**C. The forced disappearance and extrajudicial killing of Rudy Gustavo Figueroa Muñoz: Articles 3, 4, 5, and 7 of the Convention, in conjunction with Article 1.1 thereof**

377. The Commission’s findings regarding the aforesaid 26 victims in the instant case who remain disappeared largely apply to the case of Rudy Gustavo Figueroa Muñoz. As indicated in the *Diario Militar*, Mr. Figueroa was abducted from his office on October 10, 1984, and killed on December 3, 1984.<sup>490</sup> Unlike the other disappearance victims in this case, who remain disappeared, Mr. Figueroa’s body was found on December 4, 1984, one block from his home. His family states that they identified the corpse.

378. According to the established facts, which the State has not disputed, Rudy Gustavo Figueroa Muñoz was arbitrarily detained by agents of the Guatemalan State, held in a clandestine prison for almost two months, and extrajudicially executed by state agents. According to the testimony of Mr. Figueroa’s son, his mother embarked on a search following the abduction, including visits to the police, the morgue, and hospitals.<sup>491</sup> As in the remaining cases, at no point did the State provide Mr. Figueroa’s family with any information on his whereabouts, thus consummating his forced disappearance in breach of Articles 3, 4, 5, and 7 of the Convention, in conjunction with Article 1.1 thereof.

379. Mr. Figueroa’s forced disappearance continued until December 4, 1984, when his body was found near his home in Guatemala City. The *Diario Militar* records his extrajudicial killing at the hands of the security forces with the code “3-12-84=300,”<sup>492</sup> and the National Police verified that his death was the result of “wounds inflicted with a bladed weapon.”<sup>493</sup>

380. The right to life is a fundamental right, on which the enjoyment of the other rights enshrined in the Convention depends.<sup>494</sup> States have the obligation to ensure the creation of such

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<sup>488</sup> I/A Court H. R., *Case of the Mapiripán Massacre v. Colombia*, Merits, Reparations, and Costs, Judgment of September 15, 2005, Series C No. 134, para. 162.

<sup>489</sup> IACHR, Report No. 57/02, Case 11.382, Merits, Finca La Exacta, Guatemala, October 21, 2002, para. 81.

<sup>490</sup> See: *Diario Militar*, Case No. 166.

<sup>491</sup> Petitioners’ submission, received on March 26, 2007: Annex VII-H, Statement of Rudy Alberto Figueroa Maldonado, dated August 22, 2006.

<sup>492</sup> *Diario Militar*, Case No. 166.

<sup>493</sup> See: State’s submission of October 13, 2008: Criminal case file of Rudy Gustavo Figueroa Muñoz, Communication from Fingerprinting Section Henry, Criminalistics Office of the National Civilian Police, to the Diario Militar Unit of the Public Prosecution Service, dated July 18, 2001.

<sup>494</sup> I/A Court H. R., *Case of Myrna Mack Chang v. Guatemala*, Merits, Reparations, and Costs, Judgment of November 25, 2003, Series C No. 101, para. 152.

conditions as may be required to avoid violations of this right and, “specifically, the duty of avoiding attempts against it by the agents of the State.”<sup>495</sup>

381. The Inter-American Court has also ruled that compliance with the obligations imposed by Article 4 of the Convention, in conjunction with Article 1.1, entails obligations of both a positive and negative nature. In addition to not depriving any person arbitrarily of their life, the State has the duty to adopt all the measures necessary to protect and preserve the right to life of all people who are under its jurisdiction.<sup>496</sup> From the general obligation of ensuring rights set out in Article 1.1, in conjunction with Article 4, arises the additional obligation of conducting an effective official investigation in cases where a violation of the right to life occurs.<sup>497</sup> As already noted, the Inter-American Court has recognized the “procedural obligation derived from the duty to guarantee rights arising from Articles 4 and 5 of the Convention, in relation to Article 1.1 thereof.”<sup>498</sup> The European Court of Human Rights has also ruled on the procedural dimension of the right to life.<sup>499</sup> According to that tribunal’s analysis, when a person dies in circumstances that could involve the State’s responsibility, the right to life triggers the State’s duty to respond appropriately by punishing those responsible.<sup>500</sup>

382. The information available in the criminal case file submitted to the IACHR by the State of Guatemala reveals that the cause and date of Rudy Gustavo Figueroa Muñoz’s death were recorded in the State’s criminal record archives. Those archives also contain two photographs of Mr. Figueroa, apparently taken in the morgue on December 4, 1984.<sup>501</sup> The information provided to the Commission indicates that no autopsy was performed on Mr. Figueroa, nor was any forensic evidence collected at the time of his death.<sup>502</sup> In addition, it appears that the Public Prosecution Service was unable to access any information on the case that might exist in the police general archive.<sup>503</sup> The information provided indicates that the “Fourth Criminal Peace Court” of Guatemala

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<sup>495</sup> I/A Court H. R., *Case of Myrna Mack Chang v. Guatemala*, Merits, Reparations, and Costs, Judgment of November 25, 2003, Series C No. 101, para. 152.

<sup>496</sup> I/A Court H. R., *Case of Myrna Mack Chang v. Guatemala*, Merits, Reparations, and Costs, Judgment of November 25, 2003, Series C No. 101, para. 153.

<sup>497</sup> I/A Court H. R., *Case of the Massacre of Pueblo Bello v. Colombia*, Merits, Reparations, and Costs, Judgment of January 31, 2006, Series C No. 140, para. 142.

<sup>498</sup> I/A Court H. R., *Case of the Dos Erres Massacre v. Guatemala*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 24, 2009, Series C No. 211, para. 48.

<sup>499</sup> See, for example: ECHR, *Case of Budayeva and Others v. Russia*, Applications Nos. 15339/02, 20058/02, 11673/02, and 15343/02, Judgment, March 20, 2008, para. 131.

<sup>500</sup> ECHR, *Case of Budayeva and Others v. Russia*, Applications Nos. 15339/02, 20058/02, 11673/02, and 15343/02, Judgment, March 20, 2008, para. 138.

<sup>501</sup> See: State’s submission of October 13, 2008: Criminal case file of Rudy Gustavo Figueroa Muñoz, Communication from Henry Fingerprinting Section, Criminalistics Office of the National Civilian Police, to the Diario Militar Unit of the Public Prosecution Service, dated July 18, 2001.

<sup>502</sup> See: State’s submission of October 13, 2008: Criminal case file of Rudy Gustavo Figueroa Muñoz, Request for certification of autopsy protocol, communication from the Diario Militar Unit of the Public Prosecution Service to the Director of the judiciary’s Forensic Medicine Service, dated July 6, 2001; and Communications from the Diario Militar Unit of the Public Prosecution Service to the Director of the Criminal Investigation Service of the National Civilian Police dated July 10 and July 19, 2001. See also: Communication from Henry Fingerprinting Section, Criminalistics Office, National Civilian Police, to the Diario Militar Unit of the Public Prosecution Service, dated July 18, 2001.

<sup>503</sup> See: State’s submission of October 13, 2008: Criminal case file of Rudy Gustavo Figueroa Muñoz, Communication from the National Civilian Police, Criminal Investigation Service, Homicide Section, to the Diario Militar Unit of the Public Prosecution Service, dated July 26, 2001, stating that “this section holds files and investigation reports from the year 1990 to date [...] and so that information should be requested through the General Directorate of the National Civilian Police, in order for it to be located in the General Archive.” The case file submitted to the IACHR contains no evidence that the information in the General Archive was ever requested by the Public Prosecution Service.



City heard the case, but there is no record of the investigations, if any, carried out by that court.<sup>504</sup> In light of the documents received, and bearing in mind the breakdown of the justice system at the time of the events in this case, the Commission concludes that beyond the merest formalities, the State made no true effort to investigate Mr. Figueroa's death when it occurred, thereby violating its procedural obligation arising from Article 4 of the Convention, in conjunction with Article 1.1 thereof.

383. Subsequently, however, following the publication of the *Diario Militar* in 1999, the Public Prosecution Service launched an investigation into Mr. Figueroa's death and pursued various formalities. The judicial authorities asked other state agencies for Mr. Figueroa's birth and death certificates, his electoral and tax records, and any information about him held by the National Redress Program or by the office of the Ombudsman for Human Rights.<sup>505</sup> In addition, actions were taken to establish whether an autopsy was performed on Mr. Figueroa, whether photographs, evidence, or test results were collected at the time of the events, and whether the Guatemalan Forensic Anthropology Foundation had any information on him or the location where he was buried.<sup>506</sup> Those actions allowed, essentially, the determination of the date and cause of Rudy Gustavo Figueroa Muñoz's death, the failure to collect evidence at the time (with the exception of the photographs already referred to), and the place where he was buried. The proceedings are still at the investigation phase, and to date none of the persons responsible for Mr. Figueroa's death have been identified, prosecuted, or punished.

384. The Commission recalls that since its first judgment, the Inter-American Court has stated that investigating human rights violations is an obligation of method or behavior that is not rendered unmet by the simple fact that the investigation fails to produce satisfactory results. At the same time, the obligation must be undertaken in a serious manner and not as a mere formality preordained to be ineffective.<sup>507</sup> In the case of the victim Rudy Gustavo Figueroa Muñoz, the Commission finds that the vast majority of the steps taken to date by the Public Prosecution Service since 2001 are intended to establish information on the victim and that while those details could be relevant, they do nothing toward identifying the persons responsible for his disappearance and execution. The Commission highlights the fact that even with the benefit of the *Diario Militar* as an element of proof, the Public Prosecution Service has requested no information from the military or the intelligence services. The IACHR also notes that the information provided indicates that the investigation was totally paralyzed between 2003 and 2007, and that although the investigation recommenced in 2008, the Public Prosecution Service has still not taken statements or gathered

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<sup>504</sup> See: Criminal case file in the State's submission of October 13, 2008: Criminal case file of Rudy Gustavo Figueroa Muñoz, Communication from Henry Fingerprinting Section, Criminalistics Office, National Civilian Police, to the Diario Militar Unit of the Public Prosecution Service, dated July 18, 2001.

<sup>505</sup> See: State's submission of October 13, 2008: Criminal case file of Rudy Gustavo Figueroa Muñoz, Communication from the Diario Militar Unit of the Public Prosecution Service to the Civil Registrar of the Guatemala City government, dated June 28, 2001; Communication from the Diario Militar Unit of the Public Prosecution Service to the Civil Registrar of the municipal government of Pajapita, San Marcos, dated November 7, 2001; Communication from the Supreme Electoral Tribunal to the Public Prosecution Service, dated April 18, 2002; Communication from the Diario Militar Unit of the Public Prosecution Service to the Director of the Tax Administration Superintendency, dated June 28, 2002; and Communication from the Public Prosecution Service's Human Rights Prosecution Section to the National Redress Program, dated June 9, 2008.

<sup>506</sup> See: State's submission of October 13, 2008: Criminal case file of Rudy Gustavo Figueroa Muñoz, Communications from the Diario Militar Unit of the Public Prosecution Service to the Director of the Criminal Investigation Service of the National Civilian Police, dated July 10 and July 19, 2001; Communication from Henry Fingerprinting Section, Criminalistics Office, National Civilian Police, to the Diario Militar Unit of the Public Prosecution Service, dated July 18, 2001; Communication from Public Prosecution Service investigations technicians Otto Roberto Hernández Posadas and Luis Fernando Sierra Pacay to the Diario Militar Unit of the Public Prosecution Service, dated October 29, 2001.

<sup>507</sup> I/A Court H. R., *Case of Velásquez Rodríguez v. Honduras*, Merits, Judgment of July 29, 1988, Series C No. 4, para. 177.

evidence. The IACHR also points out that in some communications from 2008, the Public Prosecution Service erroneously claims that Mr. Figueroa remains disappeared.<sup>508</sup>

385. The Commission believes that notwithstanding the actions carried out by the Guatemalan State following the publication of the *Diario Militar*, the State has failed to meet its procedural obligation to investigate the forced disappearance and extrajudicial killing of Rudy Gustavo Figueroa Muñoz arising from Article 4 of the Convention. The vast majority of the steps taken have been formal and administrative procedures that offer no possibility of progress in identifying the perpetrators of the crime and that indicate no serious interest in clarifying the case. During the years that have passed since the publication of the *Diario Militar*, the State appears to have made no progress toward identifying and punishing the people responsible for Mr. Figueroa's disappearance and death. Consequently, the Commission concludes that there is a continued violation of the procedural dimension of Article 4 of the American Convention, in conjunction with Article 1.1, with respect to Rudy Gustavo Figueroa Muñoz.

**D. The abduction and torture of the victim Wendy Santizo Méndez: Articles 5, 7, 11, and 19 of the Convention, in conjunction with Article 1.1 thereof; Articles 1,<sup>509</sup> 6,<sup>510</sup> and 8<sup>511</sup> of the Inter-American Convention to Prevent and Punish Torture; Article 7<sup>512</sup> of the Convention of Belém do Pará**

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<sup>508</sup> See: State's submission of October 13, 2008: Criminal case file of Rudy Gustavo Figueroa Muñoz, Communication from the Public Prosecution Service's Human Rights Prosecution Section to the office of the Ombudsman for Human Rights, dated April 10, 2008; Communication from the Public Prosecution Service's Human Rights Prosecution Section to the Guatemalan Forensic Anthropology Foundation, dated June 26, 2008.

<sup>509</sup> Article 1 of the IACPPT establishes: "The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention."

<sup>510</sup> Article 6 of the IACPPT provides:

"In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction.

"The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature.

"The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction."

<sup>511</sup> Article 8 of the IACPPT states:

"The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case.

"Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.

"After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State."

<sup>512</sup> Article 7 of the Convention of Belém do Pará reads:

"The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to: (a) Refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation; (b) Apply due diligence to prevent, investigate, and impose penalties for violence against women; (c) Include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary; (d) Adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property; (e) Take all appropriate measures, including legislative measures, to amend or

Continues....

386. Article 7 of the Convention states that no person may be illegally or arbitrarily deprived of their liberty. With regard to sections 2 and 3 of this article, the Inter-American Court has ruled:

Pursuant to the first of these provisions, no person may be deprived of his or her personal freedom except for reasons, cases or circumstances expressly defined by law (material aspect) and, furthermore, subject to strict adherence to the procedures objectively set forth in that law (formal aspect). The second provision addresses the issue that no one may be subjected to arrest or imprisonment for reasons and by methods which, although classified as legal, could be deemed to be incompatible with the respect for the fundamental rights of the individual because, among other things, they are unreasonable, unforeseeable or lacking in proportionality.<sup>513</sup>

387. In addition, Article 5.1 of the American Convention stipulates that “every person has the right to have his physical, mental, and moral integrity respected.” Article 5.2 thereof places an absolute ban on torture and guarantees respect for the human dignity of people deprived of their freedom. The Inter-American Convention to Prevent and Punish Torture defines torture in the following terms:

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.

388. Similarly, Article 11 of the American Convention guarantees all persons the right to have their honor respected and their dignity recognized, and it further provides that “no one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.”

389. The IACHR has stated that sexual violence committed by members of state security forces against the civilian population constitutes torture and, in all cases, a serious violation of the human rights protected by Articles 5 and 11 of the American Convention.<sup>514</sup>

390. The Inter-American Court has said that sexual violence against women has physical, emotional, and psychological consequences that are devastating for the victims.<sup>515</sup> The Court has also ruled that the sexual rape of a detainee by a state agent is an especially gross and

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...continuation

repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women; (f) Establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures; (g) Establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and (h) Adopt such legislative or other measures as may be necessary to give effect to this Convention.”

<sup>513</sup> I/A Court H. R., *Case of Bámaca Velásquez v. Guatemala*, Merits, Judgment of November 25, 2000, Series C No. 70, para. 139.

<sup>514</sup> IACHR, Report No. 53/01 (Merits), Case 11.565, Ana, Beatriz, and Celia González Pérez, Mexico, April 4, 2001, para. 45. IACHR, Application to the Inter-American Court of Human Rights in the case of Inés Fernández Ortega (12.580) against the United Mexican States, May 2, 2009; Application to the Inter-American Court of Human Rights in the case of Valentina Rosendo Cantú *et. al.* (12.579) against the United Mexican States, August 2, 2009.

<sup>515</sup> I/A Court H. R., *Case of the Miguel Castro Castro Prison v. Peru*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 313.

reprehensible act, taking into account the victim's vulnerability and the abuse of power displayed by the agent.<sup>516</sup> It has also maintained that rape is an extremely traumatic experience that may have serious consequences<sup>517</sup> and that it causes great physical and psychological damage which leaves the victim "physically and emotionally humiliated" – a situation that, in contrast to other traumatic experiences, is difficult to overcome with time.<sup>518</sup> Under international law, in certain circumstances, rape also constitutes torture, a stance that has been adopted by the United Nations Special Rapporteur on Torture<sup>519</sup> and the International Criminal Tribunal for the former Yugoslavia.<sup>520</sup>

391. Acts of sexual violence against children are especially heinous because of minors' particular vulnerability and because of the special measures of protection that states must afford them under Article 19 of the Convention and the international body of law governing the protection of children.<sup>521</sup> That was established by the IACHR in the case of an adolescent girl arbitrarily detained and raped by the Mexican military,<sup>522</sup> in which it stated that:

The illegal detention, followed by the physical abuse and rape of the adolescent, as well as the subsequent and continuing impunity of the perpetrators, is a clear violation of the duty of the Mexican State to accord her the special protection guaranteed under the American Convention and other applicable international instruments.<sup>523</sup>

392. The Inter-American Court has ruled that the failure to investigate such serious violations of humane treatment as torture and sexual violence at times of armed conflict and/or as part of systematic patterns<sup>524</sup> represents a failure by the State to meet its obligations in the wake of

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<sup>516</sup> I/A Court H. R., *Case of the Miguel Castro Castro Prison v. Peru*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 311.

<sup>517</sup> I/A Court H. R., *Case of the Miguel Castro Castro Prison v. Peru*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 311.

<sup>518</sup> I/A Court H. R., *Case of the Miguel Castro Castro Prison v. Peru*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 311, citing: ECHR, *Case of Aydın v. Turkey* (GC), Judgment of September 25, 1997, App. No. 57/1996/676/866, para. 83.

<sup>519</sup> United Nations, E./CN.4/1986/15, paras. 119 and 431.

<sup>520</sup> ICTY, *Prosecutor v. Anto Furundžija*, Judgment of December 10, 1998, para. 163; upheld on appeal by the Appeals Chamber of the ICTY in a judgment of July 21, 2000.

<sup>521</sup> I/A Court H. R., *Judicial condition and human rights of the child*, Advisory Opinion OC-17/02 of August 28, 2002, Series A No. 17, para. 60.

<sup>522</sup> IACHR, Report No. 53/01, Case 11.565, Merits, Ana, Beatriz, and Celia González Pérez, Mexico, April 4, 2001, para. 50.

<sup>523</sup> IACHR, Report No. 53/01, Case 11.565, Merits, Ana, Beatriz, and Celia González Pérez, Mexico, April 4, 2001, para. 60.

<sup>524</sup> Several courts of international law have ruled on this question. Thus, the International Criminal Court for the former Yugoslavia has compared sexual violence to torture and other cruel, inhuman, and degrading treatment when committed as part of a systematic practice against the civilian population and with the intention of obtaining information or of punishing, intimidating, humiliating, or discriminating against the victim or another person. See: ICTY, Trial Ch II, *Prosecutor v. Anto Furundžija*, Judgment, Dec. 10, 1998, paras. 267.i, 295; ICTY, Trial Ch II, *Prosecutor v. Delalić et al. (Čelebići Case)*, Judgment, Nov. 16, 1998, paras. 941; ICTY, Appeals Ch., *Prosecutor v. Delalić et al. (Čelebići Case)*, Judgment, Feb. 20, 2001, paras. 488, 501; and ICTY, Trial Ch II, *Prosecutor v. Kunarac et al.*, Judgment, Feb. 22, 2001, paras. 656, 670, 816. The International Criminal Tribunal for Rwanda has also compared rape to torture, stating that it can constitute torture when it is perpetrated with the acquiescence, consent, or instigation of a public official. See: ICTR, Trial Ch I, *Prosecutor v. Akayesu, Jean-Paul*, Judgment, Sep. 2, 1998, paras. 687, 688. In turn, the European Court of Human Rights has ruled that rape can amount to torture when committed by state agents against persons in their custody. See: ECHR, *Case of Aydın v. Turkey*, Judgment, Sep. 25, 1997, paras. 86, 87; and *Case of Maslova and Nalbandov v. Russia*, Judgment, Jul. 7, 2008, para. 108.

serious human rights violations, which flout nonderogable rules<sup>525</sup> and trigger obligations for the State<sup>526</sup> including that of investigating and punishing such practices in compliance with the American Convention, the IACPPT, and the Convention of Belém do Pará.<sup>527</sup>

393. Based on the foregoing, states must initiate, ex officio and without delay, a serious, impartial, and effective investigation of all of acts of torture and violence against women, with a gender perspective and in conformity with Articles 8.1 and 25.1 of the Convention, and the specific obligations set forth in Articles 1, 6, and 8 of the Inter-American Convention against Torture and 7 of the Convention of Belém do Pará.<sup>528</sup>

394. In this regard, Article 7.b of the Convention of Belém do Pará, an international instrument ratified by Guatemala on April 4, 1995, establishes that the states parties condemn “all forms of violence against women” and agree to take steps to prevent, punish, and eradicate that violence, including the application of “due diligence to prevent, investigate, and impose penalties for violence against women.”<sup>529</sup> Similarly, Article 9 of that convention states that in fully complying with their obligations, the signatory states must take particular account of the vulnerable situation of women of minor age.<sup>530</sup>

395. According to the proven facts, it has been established in the case at hand that the victim Wendy Santizo Méndez was arbitrarily detained and tortured by agents of the Guatemala State. During her detention she was raped by a member of the State’s security forces.

396. On March 8, 1984, when Wendy Santizo Méndez was 9 years old, state agents arrived at her home to detain her mother, Luz Haydeé Méndez Calderón, as indicated in the *Diario Militar*.<sup>531</sup> As already stated, Luz Haydeé Méndez Calderón was forcibly disappeared and has never been seen since.

397. According to the testimony of Wendy Santizo, on March 8, 1984, she and her brother arrived home from school and were immediately received by around ten members of the Guatemalan security forces who were already inside the house. The children were interrogated and locked in one room, from which they could hear the agents interrogating their mother in another part of the house. Later, Wendy was separated from her brother, and a soldier locked her in a room, threw himself on her, and raped her. Following that, the state agents stood her and her brother against a wall and, with their machine-guns held against the children’s heads, threatened to kill

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<sup>525</sup> I/A Court H. R., *Case of Goiburú et al. v. Paraguay*, Merits, Reparations, and Costs, Judgment of September 22, 2006, Series C No. 153, para. 128.

<sup>526</sup> I/A Court H. R., *Case of Goiburú et al. v. Paraguay*, Merits, Reparations, and Costs, Judgment of September 22, 2006, Series C No. 153, para. 131.

<sup>527</sup> I/A Court H. R., *Case of the Dos Erres Massacre v. Guatemala*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 24, 2009, Series C No. 211, para. 140.

<sup>528</sup> I/A Court H. R., *Case of the Dos Erres Massacre v. Guatemala*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 24, 2009, Series C No. 211, para. 141.

<sup>529</sup> Article 7.b of the Convention of Belém do Pará.

<sup>530</sup> Article 9 of the Convention of Belém do Pará states:

“With respect to the adoption of the measures in this Chapter, the States Parties shall take special account of the vulnerability of women to violence by reason of among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socio-economically disadvantaged, affected by armed conflict or deprived of their freedom.”

<sup>531</sup> See: *Diario Militar*, Case No. 83.

them. Wendy and her brother were forced to watch their mother's physical torture. Wendy recalls that she "almost could not recognize her because of the injuries to her face" and that, in front of her and her brother, "they began to remove her fingernails with pliers."<sup>532</sup>

398. Wendy Santizo Méndez and her brother were then separated from their mother. The security forces placed them in a vehicle and took them to a clandestine detention center. Wendy was held in a cell where she could hear the cries of other people, including her mother. They held her for several days, during which time she was tortured with electrical shocks. She managed to see her mother wearing a hood and hear her interrogations. Finally Wendy and her brother were returned home, unconscious, and when they awoke they took refuge with relatives, remaining there for two years before managing to leave the country.<sup>533</sup>

399. The IACHR assigns full credibility to Wendy Santizo Méndez's testimony regarding the events that occurred. The facts have not been disputed by the State of Guatemala and they are consistent with the practices of the security forces at the time.<sup>534</sup>

400. The Commission finds that the State of Guatemala violated Articles 5, 7, 11, and 19 of the Convention when state agents detained and tortured the minor Wendy Santizo Méndez. The IACHR highlights the extreme cruelty of the security forces' actions in raping a nine-year-old girl, subjecting her to electrical shocks and death threats, and forcing her to watch her mother being physically tortured. The Commission believes that those actions, in addition to representing physical torture, necessarily had a serious psychological impact on the victim Wendy Santizo and thus constitute psychological torture.

401. In addition, the IACHR finds that in the case at hand, the State has failed to meet its obligation of ensuring the right to personal liberty and to humane treatment through a serious and effective investigation. The jurisprudence of the inter-American system has held on repeated occasions that the failure to investigate and punish violations constitutes a failure on the part of the State to ensure the free and full exercise of human rights.<sup>535</sup> In this case, the Guatemalan State was under the obligation to investigate the serious violations of Wendy Santizo Méndez's physical integrity and to punish the persons responsible, in accordance with the procedural dimension of Articles 5 and 7 of the Convention, Article 7 of the Convention of Belém do Pará, and Articles 1, 6, and 8 of the IACPPT.<sup>536</sup> It must be noted that in cases of violence against women, in addition to the general obligations enshrined in the American Convention, states have a heightened obligation based

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<sup>532</sup> Original petition, received on December 9, 2005: Annex XXXVI-A, Statement of Wendy Santizo Méndez, dated November 3, 2004.

<sup>533</sup> Original petition, received on December 9, 2005: Annex XXXVI-A, Statement of Wendy Santizo Méndez, dated November 3, 2004.

<sup>534</sup> IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, 1985, *op. cit.*, Ch. II, para. 21, referring to the Guatemalan security forces' practice of "keeping detainees close to where other people are being tortured so they can hear the screams and blows and become familiar with the nature of the torment that awaits them" and of "applying electrical shocks." In turn, the CEH noted that "the methods of physical torture used frequently" included "torturing or killing others in their presence," "sexual torture," and "electric torture." According to the CEH, "the most common form of violence used against women was rape. It was even practiced massively, because it inflicted so much pain on the women." CEH, *Guatemala: Memory of Silence*, Vol. II, Ch. 2, Title XII: Torture and Other Cruel, Inhuman, and Degrading Treatment, pp. 476-77.

<sup>535</sup> IACHR, Report No. 25/09, Case 12.310, Merits, Sebastião Camargo Filho, Brazil, March 19, 2009, paras. 90-91. See also, I/A Court H. R., *Case of the Massacre of Pueblo Bello v. Colombia*, Merits, Reparations, and Costs, Judgment of January 31, 2006, Series C No. 140, para. 142; *Case of the Dos Erres Massacre v. Guatemala*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 24, 2009, Series C No. 211, para. 48.

<sup>536</sup> I/A Court H. R., *Case of the Dos Erres Massacre v. Guatemala*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 24, 2009, Series C No. 211, para. 141.

on the Convention of Belém do Pará,<sup>537</sup> and that obligation was already in force for Guatemala at the time the *Diario Militar* was published. In the case at hand, Wendy Santizo herself reported her abduction and torture to the Public Prosecution Service during the investigation into the forced disappearance of her mother, Luz Haydeé Méndez Calderón.<sup>538</sup> Based on that information, the State was obliged to launch an *ex officio* investigation of the allegations.<sup>539</sup> However, the petitioners maintain that “the violations of Wendy Santizo Méndez’s human rights were never investigated,”<sup>540</sup> and that claim has not been disputed by the State of Guatemala. Nor does the criminal case file submitted by the State indicate the launch of an independent investigation into the incident. The Commission therefore concludes that in the case at hand, there is a continued failure to comply with the aforesaid provisions of the American Convention, the Convention of Belém do Pará, and the IACPPT, with respect to the victim Wendy Santizo Méndez.

**E. The right to humane treatment of the victims’ families: Article 5 of the Convention, in conjunction with Article 1.1 thereof**

402. In numerous cases, the Inter-American Court has held that the next-of-kin of the victims of human rights violations may, in turn, be victims.<sup>541</sup> In particular, in cases involving the forced disappearance of persons, it can be understood that the violation of the right to mental and moral integrity of the victims’ next-of-kin – enshrined in Article 5 of the Convention – is a direct result of this phenomenon, and that forced disappearance causes them severe anguish owing to the act itself, which is increased, among other factors, by the constant refusal of the state authorities to provide information on the whereabouts of the victim or to open an effective investigation to clarify what occurred.<sup>542</sup> Thus, the Court has held that the continued denial of the truth about the whereabouts of a disappeared person constitutes a form of cruel and inhuman treatment for that person’s family.<sup>543</sup>

403. In the event of a forced disappearance, the State also has the obligation of ensuring the right to humane treatment of the next-of-kin through effective investigations. Furthermore, the absence of effective remedies has been found by the Court to be a source of additional suffering and anguish for the victims and their next-of-kin.<sup>544</sup>

404. Sections V.B.4.1 to V.B.4.27 of this report (*supra*) list the names of the people who, in the petitioners’ opinion, were affected by the facts of the instant case and who decided to

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<sup>537</sup> I/A Court H. R., *Case of González et al. (“Cotton Field”) v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 16, 2009, Series C No. 205, para. 258.

<sup>538</sup> See: Original petition, received on December 9, 2005: Annex XXXVI-B, *habeas corpus* remedy lodged on behalf of Luz Haydeé Méndez Calderón, dated March 10, 1984; Annex XXXVI-C, Report lodged with the office of the Ombudsman for Human Rights by the next-of-kin of Luz Haydeé Méndez Calderón, dated August 13, 1991; and Annex XXXVI-E, Statement given to the Public Prosecution Service by Wendy Santizo Méndez and Marcia Méndez Calderón, dated June 11, 1999.

<sup>539</sup> See: I/A Court H. R., *Case of the Miguel Castro Castro Prison v. Peru*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 436.

<sup>540</sup> See: Original petition, received on December 9, 2005, p. 58.

<sup>541</sup> I/A Court H. R., *Case of Bámaca Velásquez v. Guatemala*, Merits, Judgment of November 25, 2000, Series C No. 70, para. 160.

<sup>542</sup> I/A Court H. R., *Case of Anzaldo Castro v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of September 22, 2009, Series C No. 202, para. 105.

<sup>543</sup> I/A Court H. R., *Case of Radilla Pacheco v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 23, 2009, Series C No. 209, para. 166.

<sup>544</sup> I/A Court H. R., *Case of Anzaldo Castro v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of September 22, 2009, Series C No. 202, para. 113.

participate in its litigation before the IACHR.<sup>545</sup> The Commission notes that the families of the victims who were forcibly disappeared in this case have undergone – in the terms set out by the Court in its past rulings – suffering, pain, anguish, uncertainty, and fear, and that many of them also faced harassment and threats on account of the steps they took to find out what ultimately happened to their loved ones. As indicated by the established facts, after the disappeared victims were abducted, many of their family members embarked on thorough searches at hospitals, morgues, and police stations in the hope of locating their missing relatives. As a consequence of the state authorities’ constant refusals to provide them with information about the victims’ whereabouts or to begin effective investigations into their cases, however, it was not until the publication of the *Diario Militar* in 1999 that the vast majority of them obtained any information about the fate of their loved ones. To date, none of the families has full certainty in this regard, since the 26 victims remain disappeared. In addition, the evidence indicating that the abductees were tortured has had an additional impact on the integrity of their next-of-kin.<sup>546</sup> The IACHR therefore concludes that the State is responsible for violating the right to humane treatment enshrined in Article 5 of the Convention, in conjunction with the general obligation of ensuring rights set out in Article 1.1 thereof, with respect to the direct relatives of the 26 victims in the case at hand who remain disappeared.<sup>547</sup>

405. The same conclusion applies with respect to the relatives of Rudy Gustavo Figueroa Muñoz and Wendy Santizo Méndez,<sup>548</sup> because they experienced feelings of insecurity, frustration, anguish, and powerlessness as a result of the forced disappearance and extrajudicial killing of Gustavo and the abduction and torture of Wendy. They also experienced frustration and powerlessness at the State’s failure to comply with its duty to investigate what happened.<sup>549</sup>

406. Thus, the IACHR declares that the State of Guatemala did violate Article 5 of the Convention, in conjunction with Article 1.1 thereof, with respect to the next-of-kin of the 26 abducted victims who remain disappeared and with respect to the next-of-kin of Rudy Gustavo Figueroa Muñoz and Wendy Santizo Méndez.

## **F. The rights of the family: Article 17<sup>550</sup> of the Convention**

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<sup>545</sup> See: Petitioners’ submission, received on June 25, 2010.

<sup>546</sup> IACHR, Application to the Inter-American Court of Human Rights in Case 11.552, Julia Gomes Lund *et al.* (Guerrilha do Araguaia) against Brazil, March 26, 2009, para. 164.

<sup>547</sup> See Annex: List of family members.

<sup>548</sup> See Annex: List of family members.

<sup>549</sup> I/A Court H. R., *Case of Valle Jaramillo et al. v. Colombia*, Merits, Reparations, and Costs, Judgment of November 27, 2008, Series C No. 192, para. 115.

<sup>550</sup> Article 17 of the Convention provides as follows:

“1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

“2. The right of men and women of marriageable age to marry and to raise a family shall be recognized, if they meet the conditions required by domestic laws, insofar as such conditions do not affect the principle of nondiscrimination established in this Convention.

“3. No marriage shall be entered into without the free and full consent of the intending spouses.

“4. The States Parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of any children solely on the basis of their own best interests.

“5. The law shall recognize equal rights for children born out of wedlock and those born in wedlock.”



407. Article 17 of the American Convention recognizes that the family is the natural and fundamental group unit of society and that it is entitled to protection by society and the state. In light of the importance of the rights of the family, the Court has ruled that states are under the obligation to promote the development and strengthening of the family group<sup>551</sup> and that the separation of children from the family can, in certain conditions, represent a violation of their family rights.<sup>552</sup> Thus, “the child has the right to live with his/her family, called to satisfy their material, psychological, and emotional needs. The right of each person to receive protection against arbitrary and illegal interferences with the family forms a part, implicitly, of the right to the protection of the family and the child.”<sup>553</sup> In this regard, in Advisory Opinion No. 17, on the juridical status and human rights of children, the Court ruled that the mutual enjoyment of coexistence between parents and children is a fundamental element in family life.<sup>554</sup>

408. The Commission notes that the very nature of the systematic disappearance of persons entails, among the goals sought with its practice, the predetermined infliction of severe harm on the social structures, collectives, and institutions against which it is used. In the case at hand, forced disappearance was part of a counterinsurgency policy; as such, at the same time as it sought the elimination with impunity of the abductees, in some cases it also pursued the goal of destroying the victims’ family structures, along with the structures of any other social groups or units to which they belonged, thereby using fear to spread its message of intimidation among their other contacts.

409. In that regard, *Memory of Silence* states that:

The practice of forced disappearance also served to punish not only the victims, but also the political or social organizations to which they belonged, their communities, and their families [...] with the specific aim of punishing the collective of which the victim was a part.<sup>555</sup>

410. In connection with Guatemala’s internal armed conflict, the REMHI Report states:

Not only do traumatic incidents have an individual impact; they also have consequences for the families, such as worsening living conditions and profound changes in their structures and functioning. On many occasions families have lost several members and have suffered, as family groups, harassment and political repression. All this led to a brutal impact at the time of the incidents. With the passage of time, the families tried to rebuild themselves, but those efforts were made in a context of grave losses, social breakdown, and fundamental alterations in their ways of life.

411. Similarly, the Working Group on Enforced or Involuntary Disappearances has said that:

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<sup>551</sup> I/A Court H. R., *Case of Chitay Nech et al. v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of May 25, 2010, Series C No. 212, paras. 156-158; *Juridical condition and human rights of the child*, Advisory Opinion OC-17/02 of August 28, 2002, Series A No. 17, para. 66.

<sup>552</sup> I/A Court H. R., *Case of Chitay Nech et al. v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of May 25, 2010, Series C No. 212, paras. 156-158; *Juridical condition and human rights of the child*, Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paras. 71-72.

<sup>553</sup> I/A Court H. R., *Case of Chitay Nech et al. v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of May 25, 2010, Series C No. 212, paras. 156-158; *Juridical condition and human rights of the child*. Advisory Opinion OC-17/02 of August 28, 2002, Series A No. 17, para. 108.

<sup>554</sup> I/A Court H. R., *Case of Chitay Nech et al. v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of May 25, 2010, Series C No. 212, paras. 156-158; *Juridical condition and human rights of the child*, Advisory Opinion OC-17/02 of August 28, 2002, Series A No. 17, para. 72.

<sup>555</sup> See: CEH, *Guatemala, Memory of Silence*, Vol. II, Ch. 2, Title XI: Forced Disappearances, p. 428, available at: <http://shr.aaas.org/guatemala/ceh/gmds.pdf>.

The family and friends of disappeared persons [...] aware [...] that they too are threatened, [know] that they may suffer the same fate themselves, and that to search for the truth may expose them to even greater danger [...].<sup>556</sup>

412. The Commission believes that in the case at hand, it has been established that the families of the forcibly disappeared victims and of the girl who was tortured and raped by agents of the Guatemalan State suffered serious harm on account of the criminal acts committed against their loved ones.

413. The testimony given by the victims' relatives indicates that the effects on their families were such that they entailed, in different cases, the cultural uprooting caused by exile, the denial of their own traditions by ceasing to use typical Guatemalan regional dress, the disintegration or separation of the survivors' families, the abandoning of their homes, the silence surrounding the events for some family members, and even, in some cases, social rejection caused by having a relative who was abducted and disappeared. All this was in addition to the effects related to Article 5 of the American Convention.

414. Many of the petitioners reported that they received threats and harassment from the State's security forces before, during, and after the abduction of their loved ones. Those explicit threats were made in a social context of oppression that pervaded society in general and discouraged the filing of complaints, since the very State responsible for investigating crimes was the perpetrator of those acts. One example of the threats suffered by some of the victims' relatives was the case of the Armira López family, who were harassed before the disappearance of Juan Pablo and María Quirina.<sup>557</sup> Similarly, the relatives of Amancio Samuel Villatoro were attacked and intimidated by the security forces during Amancio Samuel's abduction. In particular, the victim's son recalled that his father's abductors threatened the family, telling them that if they reported the incident they would come back and kill them, and that it was better for them all to leave the country.<sup>558</sup> The abductors of Manuel Ismael Salanic Chiguil told his family that they would burn down their home, with them inside, if they reported the incident.<sup>559</sup> Threats were also made against the next-of-kin of Carlos Guillermo Ramírez Gálvez<sup>560</sup> and Zoilo Canales Salazar during their abductions.<sup>561</sup> In addition, many of the victims' relatives were threatened during their searches for their disappeared family members. For example, Álvaro Zacarías Calvo Pérez's relatives were threatened by police officers as they reported his disappearance to the National Police.<sup>562</sup> Following

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<sup>556</sup> United Nations, OHCHR, "Enforced or Involuntary Disappearances," Fact Sheet No. 6, Geneva, 1993, pp. 1 and 2.

<sup>557</sup> Original petition, received on December 9, 2005: Annex XXXVII-E, Statement of Eduarda López Pinol, María Froilana Armira López, and María Lidia Marina Armira López, dated July 28, 2005.

<sup>558</sup> Original petition, received on December 9, 2005: Annex XXXII-G, Statement given by Néstor Amílcar Villatoro Bran on August 18, 1999, to Prosecution Agency No. 10 of the Guatemala District Prosecutor's Office of the Public Prosecution Service.

<sup>559</sup> Original petition, received on December 9, 2005: Annex XXXIII-F, Statement of Manuel Ismael Salanic Tuc and María Ofelia Salanic Chiguil, dated February 9, 2005.

<sup>560</sup> Petitioners' submission, received on March 26, 2007: Annex XXXIV-N, Statement of Hugo Leonel Ramírez Gálvez, dated January 28, 2005.

<sup>561</sup> Petitioners' submission, received on March 26, 2007: Annex III-F, Statement of Yordín Eduardo Herrera Urizar, dated August 25, 2006.

<sup>562</sup> Original petition, received on December 9, 2005: Annex XXX-G, Statement of Ana Dolores Monroy Peralta de Calvo, dated November 2, 2004.

the abduction of the victims, the families of Sergio Leonel Alvarado Arévalo<sup>563</sup> and Luis Rolando Peñate Lima were harassed.<sup>564</sup>

415. The Commission believes that in addition to the violation of the right to humane treatment with respect to the next-of-kin of the disappeared in the case at hand, the disappearance of the victims themselves, together with the constant threats, harassment, and persecution suffered by their families, the violation of their human rights, and the absence of an adequate investigation make for a violation of the victims' right to the protection of the family. The forced disappearance of a loved one not only affects each member of the family, it also has an irreparable impact on the family itself – in its structure, its composition, and its functioning.

416. The Commission notes that in the case of *Florencio Chitay Nech v. Guatemala*, the Inter-American Court found that forced disappearance was intended to punish not only the victim, but also his family and community.<sup>565</sup> On that occasion, the Court ruled that the State had violated Article 17 of the American Convention, finding that there was a direct impact on the victim's next-of-kin: "the constant threats and persecutions that they suffered, the displacement of which they were the victims, the uproot from their community, the fragmentation of their familial nucleus, and the loss of the essential figure of their father that they suffered through [his] disappearance."<sup>566</sup>

417. Based on the foregoing considerations, the Commission believes that the State is responsible for violating Article 17 of the American Convention, in conjunction with Article 1.1 thereof, with respect to the victims' families, in that the State failed to meet its obligation to protect the families in the instant case from arbitrary or illegal interference.

**G. The right of access to justice: Articles 8<sup>567</sup> and 25<sup>568</sup> of the Convention, in conjunction with Articles 1.1 and 2 thereof; Article I of the Inter-American**

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<sup>563</sup> Original petition, received on December 9, 2005: Annex XLI-F, Statement of Tania Marbella Alvarado Arévalo and Miguel Ángel Alvarado Arévalo, dated November 2, 2004; and Annex XLI-LL, Statement of Luis Rodolfo Alvarado Arévalo, dated April 18, 2005.

<sup>564</sup> Petitioners' submission, received on March 26, 2007: Annex VI-L, Testimony of Ana Dolores Munguía Sosa and Luis Moisés Peñate Munguía, dated August 2, 2006.

<sup>565</sup> I/A Court H. R., *Case of Florencio Chitay Nech v. Guatemala*, Preliminary Objections, Merits, and Reparations, Judgment of May 25, 2010, Series C No. 212, para. 163.

<sup>566</sup> I/A Court H. R., *Case of Florencio Chitay Nech v. Guatemala*, Preliminary Objections, Merits, and Reparations, Judgment of May 25, 2010, Series C No. 212, para. 163.

<sup>567</sup> Article 8.1 of the Convention stipulates:

"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."

<sup>568</sup> Article 25 of the Convention provides:

"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."

**Convention on Forced Disappearance of Persons;<sup>569</sup> Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture; and Article 7 of the Convention of Belém do Pará**

418. The active protection of the rights embodied in the American Convention is an element of the State's obligation to ensure the free and full exercise of the rights of all those subject to its jurisdiction and requires the State to adopt the measures necessary to punish human rights violations, and also to prevent its own security forces or third parties acting with their acquiescence from violating any of those rights.<sup>570</sup> In this regard, the Court has ruled that:

The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victims adequate compensation.<sup>571</sup>

419. The close relationship that exists between Articles 1.1, 8, and 25 of the American Convention has been addressed by the Court on repeated occasions. Thus, Article 25 in relation to Article 1.1 of the American Convention obliges the State to guarantee every individual under its jurisdiction access to the administration of justice and, in particular, to simple and prompt recourse, so that, *inter alia*, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered. In that way, it is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society. This is directly connected to Article 8.1, which protects the right of all people to be heard with due guarantees in the determination of their rights of any nature.<sup>572</sup> As the Court has stated:

Article 8.1 of the American Convention, in connection with Article 25.1 thereof, confers to victims' relatives the right to investigate their disappearance and death by State authorities, to carry out a process against the liable parties of unlawful acts, to impose the corresponding sanctions, and to compensate damages suffered by their relatives.<sup>573</sup>

420. The particular seriousness of the crime of forced disappearance and the nature of the rights it violates triggers a special duty to investigate and punish the perpetrators.<sup>574</sup> The Court has ruled on the State's duty of investigating an incident while there is still uncertainty about the fate of the person who has disappeared, and on the need to provide a simple and prompt recourse in the case, with due guarantees.<sup>575</sup> The Commission recalls in this regard that States should

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<sup>569</sup> Article I.b of the IACFPD provides: "The States Parties to this Convention undertake [...] to punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories."

<sup>570</sup> I/A Court H. R., *Case of the 19 Merchants v. Colombia*, Merits, Reparations, and Costs, Judgment of July 5, 2004, Series C No. 109, para. 183.

<sup>571</sup> I/A Court H. R., *Case of Velásquez Rodríguez v. Honduras*, Merits, Judgment of July 29, 1988, Series C No. 4, para. 174.

<sup>572</sup> I/A Court H. R., *Case of Loayza Tamayo v. Peru, Reparations*, Judgment of November 27, 1998, Series C No. 42, para. 169.

<sup>573</sup> I/A Court H. R., *Case of Durand and Ugarte v. Peru*, Merits Judgment of August 16, 2000, Series C No. 68, para. 130.

<sup>574</sup> I/A Court H. R., *Case of Goiburú et al. v. Paraguay*, Merits, Reparations, and Costs, Judgment of September 22, 2006, Series C No. 153, para. 84.

<sup>575</sup> I/A Court H. R., *Case of Bámaca Velásquez v. Guatemala*, Merits, Judgment of November 25, 2000, Series C No. 70, para. 197.

guarantee the right to truth of the victim and his or her next-of-kin through the investigation and trial required by articles 8 and 25 of the Convention.<sup>576</sup>

421. Under Article I (a) and (b) of the IACFDP, the signatory states undertake not to practice, permit, or tolerate the forced disappearance of persons under any circumstance and to punish its perpetrators within their jurisdictions. This is with a logical consequence of the State's obligation to respect and ensure the rights set out in Article 1.1 of the American Convention.<sup>577</sup> Thus, this obligation implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.<sup>578</sup> As part of that obligation, the State has a legal duty to "reasonably prevent human rights violations and to seriously investigate with the means within its reach the violations committed within its jurisdiction in order to identify those responsible, impose upon them the appropriate punishments, and guarantee the victim an adequate reparation."<sup>579</sup>

422. Similarly, and as has already been stated, Articles 1, 6, and 8 of the IACPPT trigger specific obligations requiring *ex officio* investigations of acts of torture and the imposition of appropriate sanctions on those who commit such crimes, guaranteeing the victims' right to impartial proceedings.

423. To fulfill its duty to investigate, the State must undertake "an effective search for the truth," it must work to punish the physical perpetrators and masterminds, and the investigation must be carried out "in a serious manner and not as a mere formality preordained to be ineffective."<sup>580</sup> This obligation falls to the State since it has "the duty to immediately and *ex officio* begin an effective investigation to identify, try, and punish those responsible,"<sup>581</sup> and that obligation must be met within a reasonable time.<sup>582</sup> Due diligence on the part of the judicial authorities requires that attention be paid to the complexity of the facts, the context in which they took place, and the patterns that explain why the events occurred, with no omissions in gathering evidence or in the development of logical lines of investigation, particularly when those factors denote a complex structure of individuals involved in the planning and execution of the crime.<sup>583</sup>

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<sup>576</sup> I/A Court H. R., *Case of the La Rochela Massacre v. Colombia*, Merits, Reparations, and Costs, Judgment of May 11, 2007, Serie C No. 163, para. 147.

<sup>577</sup> I/A Court H. R., *Case of the Mapiripán Massacre v. Colombia*, Merits, Reparations, and Costs, Judgment of September 15, 2005, Series C No. 134, paras. 111 and 113.

<sup>578</sup> I/A Court H. R., *Case of Velásquez Rodríguez v. Honduras*, Merits, Judgment of July 29, 1988, Series C No. 4, para. 166.

<sup>579</sup> I/A Court H. R., *Case of Radilla Pacheco v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 23, 2009, Series C No. 209, para. 142.

<sup>580</sup> I/A Court H. R., *Case of Velásquez Rodríguez v. Honduras*, Merits, Judgment of July 29, 1988, Series C No. 4, para. 177.

<sup>581</sup> I/A Court H. R., *Case of Tibi v. Ecuador*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 7, 2004, Series C No. 114, para. 159.

<sup>582</sup> I/A Court H. R., *Case of the Miguel Castro Castro Prison v. Peru*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 436.

<sup>583</sup> I/A Court H. R., *Case of the La Rochela Massacre v. Colombia*, Merits, Reparations, and Costs, Judgment of May 11, 2007, Series C No. 163, para. 158.

424. Consequently, the mere existence of courts and laws intended to enforce the obligations set out in Articles 8.1 and 25 is not in itself sufficient.<sup>584</sup> The mere provision of resources is not enough if they fail to produce effective results or answers for addressing the violation of rights protected by the American Convention.<sup>585</sup>

425. The information furnished to the IACHR by both parties indicates that a situation of impunity still prevails in the case at hand: no one has been prosecuted or punished for the abductions, torture, and forced disappearances in question, or for the abduction, torture, and extrajudicial killing of Rudy Gustavo Figueroa Muñoz, or for the abduction and torture of Wendy Santizo Méndez. In addition, with the exception of Mr. Figueroa, all the victims forcibly disappeared by the State remain disappeared. It thus falls to the Commission to analyze whether the State of Guatemala has fulfilled the obligations that arise from Articles 8 and 25 of the American Convention, in conjunction with Articles 1.1 and 2 thereof, mindful of the fact that the obligation to investigate is an obligation of means or behavior that is not breached merely because the investigation does not produce a satisfactory result.<sup>586</sup>

426. The petitioners in the case blame the situation of impunity on a series of factors generated by the Guatemalan State. They maintain, for example, that the failure of the judiciary to act at the time of the events can be attributed to the lack of independence and impartiality of the judicial system,<sup>587</sup> and to the State's enactment of a series of amnesty laws that remained in force until December 10, 1997.<sup>588</sup> They also claim that the investigation launched in 1999 as a result of the publication of the *Diario Militar* has been deficient and incomplete, and that the State has failed to respect the principle of reasonable time.<sup>589</sup>

427. The State of Guatemala, in turn, offered no comments on the actions of the judicial system prior to 1999. In connection with the investigation launched following the publication of the *Diario Militar*, the State initially sent a summary of the investigative activities pursued with respect to 20 of the disappeared victims.<sup>590</sup> Later, the State sent the IACHR a copy of the criminal case file,<sup>591</sup> along with another summary of the activities pursued.<sup>592</sup> In a communication of May 2006, the Guatemalan State referred to 15 "pending actions to be carried out by the Public Prosecution Service."<sup>593</sup> In addition, in a communication sent on April 9, 2008, in response to the deficiencies in the investigation alleged by the petitioners, the State reported that "the Unit for Special Cases and Human Rights Violations has conducted and is continuing to pursue the investigation in order to establish and identify the persons responsible for the disappearances described in the document known as the *Diario Militar*." The State indicated that in the investigation carried out by that unit of the Public Prosecution Service, it had "collected reports and witness statements from the victims'

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<sup>584</sup> I/A Court H. R., *Case of Bámaca Velásquez v. Guatemala*, Merits, Judgment of November 25, 2000, Series C No. 70, para. 191.

<sup>585</sup> I/A Court H. R., *Case of the 19 Merchants v. Colombia*, Merits, Reparations, and Costs, Judgment of July 5, 2004, Series C No. 109, para. 193.

<sup>586</sup> I/A Court H. R., *Case of Velásquez Rodríguez v. Honduras*, Merits, Judgment of July 29, 1988, Series C No. 4, para. 177.

<sup>587</sup> Petitioners' submission on the merits, received on March 15, 2007, pp.100-110.

<sup>588</sup> Petitioners' submission on the merits, received on March 15, 2007, pp.110-112, 137-138.

<sup>589</sup> Petitioners' submission on the merits, received on March 15, 2007, pp.112-118.

<sup>590</sup> State's submission, received on May 26, 2006.

<sup>591</sup> State's submission, received on October 13, 2008.

<sup>592</sup> See: State's submission, received on November 27, 2007.

<sup>593</sup> State's submission, received on May 26, 2006.

relatives and from people who, in spite of appearing in the *Diario Militar*, are alive," and that it was "carrying out a series of activities in order to obtain information from the Ministry of Defense, from the security agencies active during those years, and another series of activities."<sup>594</sup>

428. The IACHR believes that at the time of the incidents described in the instant case, the rule of law did not exist in Guatemala. As stated in the CEH's report, the military governments in power from 1982 to 1986 replaced the 1965 Constitution with a new basic statute that concentrated executive and legislative power in the hands of the military junta and granted the president of that military junta the authority to appoint the members of the Supreme Court of Justice and the other en banc courts.<sup>595</sup> Those actions led to the "failure of the judicial system,"<sup>596</sup> a situation that was characterized by "the systematic denial of *habeas corpus* remedies, interpretations that consistently favored the authorities, [and] indifference toward the torture of those detained."<sup>597</sup> As already stated, the evidence before the Commission indicates that even when the families of this case's disappeared victims in this case took the risk of formally reporting the incidents, the judicial authorities lacked the will or the real ability to perform their duty of determining the victims' whereabouts and investigating the individuals responsible for the abductions and disappearances.

429. In addition, the IACHR notes the relevance of the fact that in Guatemala, norms were in effect that granted amnesties to state agents who had participated in criminal acts. The CEH makes particular reference, for example, to Decree Law 8-86, enacted by *de facto* President Mejía Víctores one day before leaving office.<sup>598</sup> That legislation extended a general amnesty to individuals convicted or accused of having committed political crimes and related common offenses during the period March 23, 1982, to January 14, 1986,<sup>599</sup> thus covering the time the events in this case took place. The CEH states that "although the decree was never directly invoked before the law courts, judges and magistrates enforced it on a *de facto* basis by simply refraining from acting appropriately in cases with a political background."<sup>600</sup> The Commission therefore considers that Decree Law 8-86 contributed to the impunity that surrounds the initial facts of this case. Under the jurisprudence of the inter-American system – whereby amnesty provisions, statutes of limitations, and measures designed to eliminate responsibility in order to prevent the investigation and punishment of the perpetrators of serious human rights violations are inadmissible<sup>601</sup> – that statute violated Article 2 of the Convention, in conjunction with Articles 8 and 25 thereof, a violation that continued until the Decree Law was repealed on December 10, 1997.<sup>602</sup>

430. As has already been noted, in 1999, following the publication of the *Diario Militar*, Guatemala's Public Prosecution Service launched an investigation into the abductions and

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<sup>594</sup> State's submission, received on April 9, 2008.

<sup>595</sup> CEH, *Guatemala: Memory of Silence*, Vol. III, Ch. 2, Title XVI: Denial of Justice, p. 137.

<sup>596</sup> CEH, *Guatemala: Memory of Silence*, Vol. III, Ch. 2, Title XVI: Denial of Justice, p. 137.

<sup>597</sup> CEH, *Guatemala: Memory of Silence*, Vol. V, Ch. 4, Conclusions, p. 45.

<sup>598</sup> CEH, *Guatemala: Memory of Silence*, Vol. III, Ch. 2, Title XVI: Denial of Justice, p. 148.

<sup>599</sup> Decree Law No. 8-86, Art. 1.

<sup>600</sup> CEH, *Guatemala: Memory of Silence*, Vol. III, Ch. 2, Title XVI: Denial of Justice, p. 148.

<sup>601</sup> I/A Court H. R., *Case of Barrios Altos v. Peru*, Merits, Judgment of March 14, 2001, Series C No. 75, para. 41. See also: IACHR, Report No. 28/92, Cases 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311, Argentina, October 2, 1992, para. 41; Report No. 29/92, Cases 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374, and 10.375, Uruguay, October 2, 1992, para. 51.

<sup>602</sup> See: Decree No. 133-97 of the Congress of the Republic, December 10, 1997, Art. 1.

disappearances described in that document.<sup>603</sup> The Commission believes, following the logic of inter-American jurisprudence, that due diligence by the judicial authorities responsible for this investigation implied following the logical lines of investigation indicated by the *Diario Militar* itself, taking into account that the document depicts a complex structure of state agents involved in the planning and execution of crimes.

431. The Commission again notes, however, that according to the information provided by the State, the investigation of the events documented in the *Diario Militar* was initially distributed among 38 different prosecution offices and only six years later, on August 1, 2005, were all the case files referred to the Unit for Special Cases and Human Rights Violations.<sup>604</sup> The Commission further notes that as indicated by the established facts, the vast majority of the steps taken by the Public Prosecution Service were intended to gather information on the victims: for example, the numerous communications sent to agencies such as the Supreme Electoral Tribunal, the Traffic Department, the Tax Administration System, the USAC, the office of the Ombudsman for Human Rights, the National Redress Program, and the Guatemalan Forensic Anthropology Foundation. While those measures may have had some importance to the investigation in its earliest stages, it is noteworthy that almost a decade after the investigation began, the Public Prosecution Service continued to request information of this kind.

432. The numerous activities pursued by the Public Prosecution Service with the aim of securing basic information about the victims stand in contrast to the relatively few steps that were taken with the clear aim of clarifying the victims' fate or identifying those responsible for the disappearances. In particular, given the existence of the *Diario Militar* as a fundamental piece of evidence, it is remarkable that the Public Prosecution Service appears not to have focused its investigative efforts on the security forces. While there are a few requests for information sent by the Public Prosecution Service to the Ministry of Defense, in general these merely inquire as to the names of the people who held given positions at the time of the incidents.<sup>605</sup> Only in exceptional instances did the Public Prosecution Service request military files<sup>606</sup> or take statements from former members of the security forces,<sup>607</sup> and the case documents do not indicate that the judicial authorities ever conducted inspections of military facilities. In addition, and notwithstanding the limited scope of the requests made by the Public Prosecution Service, the Commission perceives a clear lack of cooperation on the part of the Ministry of Defense, whose responses to those requests were often either totally or partially obstructive.<sup>608</sup>

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<sup>603</sup> See: State's submission, received on November 27, 2007.

<sup>604</sup> See: State's submission, received on November 27, 2007.

<sup>605</sup> See, for example: State's submission, received on October 13, 2008: Criminal case file in the case of Óscar Eduardo Barillas Barrientos, Communication from the Public Prosecution Service to the Minister of Defense, dated February 20, 2007.

<sup>606</sup> See, for example: State's submission, received on October 13, 2008: Criminal case file in the case of Lesbia Lucrecia García Escobar, Communication from the Public Prosecution Service to the Minister of Defense dated June 2, 1999, asking "whether his files contain records of investigations carried out by the G-2 Directorate of Military Intelligence" in connection with Lesbia Lucrecia García Escobar, Julio René Estévez Rodríguez, Víctor René López Pérez, Miguel Ángel Reyes González, and Félix Estrada Mejía. The Defense Minister's reply, dated June 15, 1999, was negative and claimed that "the request did not meet the requirements set out in Article 245 of the Code of Criminal Procedure." The Public Prosecution Service requested the information again in a communication to the Minister of National Defense dated June 16, 1999, and the criminal case file indicates that the Ministry of Defense never responded to that request.

<sup>607</sup> See, for example: State's submission, received on October 13, 2008: Criminal case file in the case of Óscar Eduardo Barillas Barrientos, Statement of Héctor Rafael Bol de la Cruz to the Prosecution Unit for Special Cases and Human Rights Violations of the Public Prosecution Service, dated February 26, 2007. Mr. Bol de la Cruz was asked seven questions, to which he replied that he had no information on illegal arrests or forced disappearances.

<sup>608</sup> See, for example: State's submission, received on October 13, 2008. Criminal case file in the case of Óscar Eduardo Barillas Barrientos, Communication from the Minister of Defense to the Public Prosecution Service, dated March 13,



433. Based on a comprehensive analysis of the judicial proceedings carried out following the publication of the *Diario Militar* in 1999, the Commission notes that as regards the victims in the case at hand, the proceedings have been plagued by formalities and characterized by the refusal of the judicial authorities to diligently follow logical lines of investigation, thus condemning the process to the fruitlessness that has existed to date. With respect to the abduction and torture of Wendy Santizo Méndez, there is no evidence of any investigation whatsoever.

434. A study of the criminal case file does not indicate that the Public Prosecution Service implemented a clear, consistent, logical and determined strategy for making progress toward locating the disappeared and identifying the people responsible for the forced disappearances in this case and for the extrajudicial killing of Rudy Gustavo Figueroa Muñoz. Nor does it indicate that the other agencies of the State – the security forces in particular – fully cooperated with those objectives. In this regard, the Commission notes that each state action that makes up the investigation process, as well as the investigation as a whole, must be oriented toward a specific purpose: the determination of the truth and the investigation, persecution, capture, trial, and, if appropriate, punishment of the persons responsible.<sup>609</sup> The Commission further notes that the State has the duty to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.<sup>610</sup>

435. Although the State has reported that the investigation remains ongoing, the Commission recalls the obligation to conclude the process within a reasonable time. In the case at hand, the more than ten years that have passed since the *Diario Militar* was published must be added to the fifteen years or so that had already gone by since the incidents occurred. Taking note of the absolute lack of progress in the proceedings and the long periods of scant investigative activity (for example, 1983 to 1999 and 2003 to 2005), the IACHR concludes that the State has not met its obligation to conduct, within a reasonable time, an effective investigation capable of locating the disappeared victims and for identifying, prosecuting, and punishing the persons responsible for the violations addressed in the instant case.

436. The petitioners argued that the National Reconciliation Law, Decree 145-96 of December 27, 1996, which created a mechanism for the extinction of criminal responsibility for crimes committed during the internal armed conflict in Guatemala, gave rise to “stagnation in the investigations of crimes committed during the internal armed conflict, including those in the case at hand.”<sup>611</sup> The Commission notes that this statute does not apply to forced disappearance cases<sup>612</sup> and that, as conceded by the petitioners, “it has not been enforced in violation of its own terms.”<sup>613</sup> At the same time, the Commission cannot dismiss the possibility that the impunity surrounding this case was generated, at least in part, by the dissuasive effect that this legislation could have had on the criminal investigation of crimes committed during the internal armed conflict. In any event, the

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...continuation

2007; and Criminal case file in the case of Lesbia Lucrecia García Escobar, Communication from the Minister of Defense to the Public Prosecution Service, dated June 15, 1999.

<sup>609</sup> I/A Court H. R., *Case of Radilla Pacheco v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 23, 2009, Series C No. 209, para. 192.

<sup>610</sup> I/A Court H. R., *Case of Velásquez Rodríguez v. Honduras*, Merits, Judgment of July 29, 1988, Series C No. 4, para. 166.

<sup>611</sup> Petitioners’ merits submission, received on March 15, 2007, p. 139.

<sup>612</sup> Decree 145-96, Art. 8.

<sup>613</sup> Petitioners’ merits submission, received on March 15, 2007, p. 138.

Commission believes it should reiterate, as the Inter-American Court did in a recent judgment,<sup>614</sup> that the forced disappearance of persons cannot be considered a political crime or related to political crimes under any circumstance, to the effect of preventing the criminal persecution of this type of crimes or suppressing the effects of a conviction.<sup>615</sup> In addition, according to the constant jurisprudence of the Inter-American Court, amnesty provisions and statutes of limitations cannot be applied to serious human rights violations such as torture, forced disappearances, and extrajudicial, summary, or arbitrary executions.<sup>616</sup>

437. Finally, the IACHR cannot fail to register its serious concern regarding the structural weaknesses in the Guatemalan justice system revealed by the present case. In its 2003 report, *Justice and Social Inclusion: Challenges to Democracy in Guatemala*, the IACHR stated:

The judicial branch has yet to ensure the majority of Guatemalans the respect for their individual human rights through the investigation of complaints and the identification and punishment of those responsible for human rights violations both past and present. The Guatemalan State's failure to provide an adequate and efficient judicial system and impartial and independent justice impedes Guatemalans' access to justice. Without a strong judicial system that respects individuals' fundamental rights it is impossible to achieve the strengthening of the democratic State and the rule of law that Guatemala requires.<sup>617</sup>

The Commission observes that since then, and even in recent years, a number of international bodies have expressed similar sentiments<sup>618</sup>, making it clear that Guatemala has yet to overcome the legal and *de facto* obstacles witnessed in the instant case which impede the justice system's ability to effectively guarantee the rights of Guatemalans.

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<sup>614</sup> I/A Court H. R., *Case of Tiu Tojín v. Guatemala*, Merits, Reparations, and Costs, Judgment of November 26, 2008, Series C No. 190, para. 91.

<sup>615</sup> Similarly, as stated by Article V of the Inter-American Convention on Forced Disappearance of Persons, "the forced disappearance of persons shall not be considered a political offense for purposes of extradition." In addition, Article 13 of the International Convention for the Protection of All People from Enforced Disappearance establishes that "for the purposes of extradition between States Parties, the offence of enforced disappearance shall not be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives." Likewise, Article 5 of the International Convention for the Protection of All People from Enforced Disappearance stipulates that "the widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law."

<sup>616</sup> I/A Court H. R., *Case of Barrios Altos v. Peru*, Merits, Judgment of March 14, 2001, Series C No. 75, para. 41; *Case of the Dos Erres Massacre v. Guatemala*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 24, 2009, Series C No. 211, para. 129.

<sup>617</sup> IACHR. *Justice and Social Inclusion: Challenges to Democracy in Guatemala*, OEA/Ser.L/V/II.118 Doc. 5 rev. 1, approved December 29, 2003, ch. 1, para. 87. Unofficial translation of the original Spanish text:

El Poder Judicial no ha asegurado aún a la mayoría de guatemaltecos y guatemaltecas el respeto de los derechos humanos de los individuos a través de la investigación de las denuncias y la individualización y sanción de los responsables de violaciones a los derechos humanos del presente y del pasado. La falta de capacidad del Estado guatemalteco de proveer un sistema de administración de justicia adecuado y eficiente, y una justicia independiente e imparcial, impide el acceso de los guatemaltecos a la justicia. Sin una administración de justicia fuerte y respetuosa de los derechos fundamentales de los individuos es imposible lograr el fortalecimiento democrático del Estado y de la vigencia del Estado de Derecho que Guatemala requiere.

<sup>618</sup> See United Nations, Report of the Special Rapporteur on the independence of the judges and lawyers - Mission to Guatemala, A/HRC/11/41/Add.3, October 1, 2009; Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions - Mission to Guatemala, A/HRC/11/2/Add.7, May 4, 2009, pp. 10-17; Report of the United Nations High Commissioner for Human Rights on the activities of her Office in Guatemala, A/HRC/13/26/Add.1, March 3, 2010, paras. 28-40, 89-93. See also I/A Court H.R., *Case of Tiu Tojín v. Guatemala*. Merits, Reparations and Costs. Judgment of November 26, 2008. Serie C No. 190, paras. 29 and 70.

438. For all the above reasons, the Commission declares that in the case at hand, the State of Guatemala violated Articles 8 and 25 of the American Convention on Human Rights, in conjunction with Articles 1.1 and 2 thereof, together with Article I of the IACFDP and Articles 1, 6, and 8 of the IACPPT, with respect to the 26 victims who were abducted and disappeared, with respect to Rudy Gustavo Figueroa Muñoz, and with respect to their next-of-kin. In addition, the State violated Articles 8 and 25 of the American Convention on Human Rights, in conjunction with Articles 1.1 and 2 thereof, together with Article 7 of the Convention of Belém do Pará and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, with respect to the victim Wendy Santizo Méndez and her next-of-kin.

**H. The right of access to information: Articles 13 and 23 of the Convention, in conjunction with Articles 1.1 and 2 thereof**

439. Article 13 of the Convention provides as follows:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
  - a. respect for the rights or reputations of others; or,
  - b. the protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

440. In this case, the IACHR must determine whether, as the petitioners claim, there was indeed a violation of the victims' right of access to information. It has been established that the families of the victims who were abducted and disappeared in the case at hand were denied access, both directly and through the Commission for Historical Clarification that was set up in Guatemala, to documents such as the *Diario Militar* and the records held in the National Police Historical Archive. The IACHR must examine whether those restrictions were justified under Article 13 of the Convention. To resolve this matter, the IACHR will lay out: (1) an overview of the scope of the right of access to information; (2) the established precedents on access to information regarding human rights violations held in state archives; (3) standards for access to information in transitional contexts; (4) the scope of the right of access to information in connection with such extrajudicial mechanisms as truth commissions; (5) the right of access to personal information related to human rights violations held in state files (*habeas data*); and (6) how the above considerations apply to the facts of this case.

## 1. Overview of the scope of the right of access to information

441. The right of access to information is a basic right protected by Article 13 of the American Convention. The Inter-American Court has ruled that Article 13, by expressly enshrining the right to “seek” and “receive” information, protects the right of all individuals to access state-held information, with the exceptions permitted by the strict regime of restrictions established in the Convention.<sup>619</sup>

442. According to the inter-American system’s jurisprudence, Article 13 of the American Convention entails the positive obligation of states to permit all persons access to the information in their power.<sup>620</sup> The duty to ensure and protect the right of access to information also entails the duty to produce and preserve the information necessary for the performance of state functions and for the enjoyment of the individuals’ basic rights.<sup>621</sup> Similarly, Principle No. 4 of the Declaration of Principles states that “access to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right.” In compliance with the duty of access to information, the State must adopt all the measures necessary for the adequate implementation of access to public information.<sup>622</sup> It is important that these state obligations be met in good faith – in other words, the State must ensure the strict enforcement of this right by providing applicants with assistance, promoting a culture of transparency, and acting with diligence, professionalism, and institutional fidelity.<sup>623</sup>

443. The right of access to information is particularly important for the consolidation, functioning, and preservation of democratic systems, and as such it has received a high level of attention from both OAS member states<sup>624</sup> and from international doctrine and case law. The Inter-American Democratic Charter makes explicit reference to “transparency” as one of the “essential components of the exercise of democracy”<sup>625</sup>, and the OAS General Assembly has likewise stated that “access to public information is a requisite for the very exercise of democracy”<sup>626</sup>. Indeed, in its *Claude Reyes* decision, the Inter-American Court recalled the “close relationship between democracy and freedom of expression”, and noted the OAS General Assembly’s repeated emphasis on the importance of access to public information for the exercise of representative and participative democracy<sup>627</sup>. Similarly, the European Court of Human Rights has “recently advanced towards a

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<sup>619</sup> I/A Court H. R., *Case of Claude Reyes et al. v. Chile*, Merits, Reparations, and Costs, Judgment of September 19, 2006, Series C No. 151, paras. 76 and 78.

<sup>620</sup> I/A Court H. R., *Case of Claude Reyes et al. v. Chile*, Merits, Reparations, and Costs, Judgment of September 19, 2006, Series C No. 151, para. 58 (a) and (b).

<sup>621</sup> IACHR, *Annual Report 2009*, OEA/Ser.L/V/II.Doc.51, December 30, 2009, Annual Report of the Special Rapporteur for Freedom of Expression, Ch. IV, paras. 83-89.

<sup>622</sup> IACHR, *Annual Report 2009*, OEA/Ser.L/V/II.Doc.51, December 30, 2009, Annual Report of the Special Rapporteur for Freedom of Expression, Ch. IV, para. 15.

<sup>623</sup> IACHR, *Annual Report 2009*, OEA/Ser.L/V/II.Doc.51, December 30, 2009, Annual Report of the Special Rapporteur for Freedom of Expression, Ch. IV, paras. 32 *et seq.*

<sup>624</sup> OAS General Assembly, Resolution 1932 (XXXIII-O/03), “Access to Public Information: Strengthening Democracy,” June 10, 2003. See also: OAS General Assembly Resolutions 2057 (XXXIV-O/04), 2121 (XXXV-O/05), 2252 (XXXV-O/06), 2288 (XXXVII-O/07), and 2418 (XXXVIII-O/08).

<sup>625</sup> Inter-American Democratic Charter, art. 4.

<sup>626</sup> OAS General Assembly, Resolution 2514 (XXXIX-O/09).

<sup>627</sup> I/A Court H. R., *Case of Claude Reyes et al. v. Chile*, Merits, Reparations, and Costs, Judgment of September 19, 2006, Series C No. 151, paras. 84-85.

broader interpretation of the notion of ‘freedom to receive information’<sup>628</sup> under Article 10 of the European Convention on Human Rights, especially when the information in question is of interest to the public and sought by groups or individuals that serve the “watchdog” function essential in democracies<sup>629</sup>.

444. In light of these considerations, the Commission considers that the right of access to information enshrined in Article 13 of the Convention encounters additional support in Article 23’s protection of the right to participate in government<sup>630</sup>. As the Court has observed, Article 23 of the Convention not only establishes that its titleholders must enjoy rights, but adds the word “opportunities.” The latter implies the obligation to guarantee with positive measures that every person who is formally the titleholder of political rights has the real opportunity to exercise them. It is essential that the State create optimum conditions and mechanisms to ensure that political rights can be exercised effectively<sup>631</sup>. Given the aforementioned centrality of access to information to the exercise of democracy, the Commission considers that the “optimum conditions and mechanisms” for the exercise of political rights necessarily include access to the public information required for citizens to participate meaningfully in the conduct of public affairs. Participation in democratic governance is a responsibility of citizens<sup>632</sup>, but States have a corresponding obligation to facilitate such participation by providing access to the information that allows citizens to express informed preferences about their own development. As discussed below, this includes information regarding government abuses of power such as violations of human rights.

445. Notwithstanding its importance, the right of access to information is not an absolute right, since limitations may be placed on it.<sup>633</sup> On this point, the Inter-American Court has ruled that the principle of maximum disclosure “establishes the presumption that all information is accessible, subject to a limited system of exceptions,”<sup>634</sup> which must be previously “established by law,”<sup>635</sup>

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<sup>628</sup> Eur. Ct. H.R., *Case of Társaság A Szabadságjogokért v. Hungary*, Application no. 37374/05, Judgment of April 14, 2009, párr. 35, citing *Sdružení Jihoceské Matky v. Czech Republic*, Application no. 19101/03, Admissibility decision of July 10, 2006.

<sup>629</sup> See Eur. Ct. H.R., *Case of Társaság A Szabadságjogokért v. Hungary*, Application no. 37374/05, Judgment of April 14, 2009, párrs. 26-29.

<sup>630</sup> Article 23.1 of the Convention provides as follows:

1. Every citizen shall enjoy the following rights and opportunities:
  - a. to take part in the conduct of public affairs, directly or through freely chosen representatives;
  - b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
  - c. to have access, under general conditions of equality, to the public service of his country.

<sup>631</sup> I/A Court H.R., *Case of Castañeda-Gutman v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 6, 2008. Series C No. 184, párr. 145.

<sup>632</sup> Inter-American Democratic Charter, art. 6.

<sup>633</sup> I/A Court H. R., *Case of Claude Reyes et al. v. Chile*, Merits, Reparations, and Costs, Judgment of September 19, 2006, Series C No. 151, para. 77.

<sup>634</sup> I/A Court H. R., *Case of Claude Reyes et al. v. Chile*, Merits, Reparations, and Costs, Judgment of September 19, 2006, Series C No. 151, para. 92. Similarly, in their 2004 Joint Declaration, the rapporteurs for freedom of expression of the UN, the OAS, and OSCE explained that principle establishes “a presumption that all information is accessible subject only to a narrow system of exceptions.”

“respond to a purpose allowed by the American Convention,”<sup>636</sup> and “be necessary in a democratic society; consequently, they must be intended to satisfy a compelling public interest.”<sup>637</sup> This creates legal certainty in exercising the right of access to information: since the information is in the hands of the State, every effort must be made to keep it from discretionary and arbitrary actions in imposing restrictions on the right.<sup>638</sup>

446. The restrictions placed on the right of access to information – like any limitation placed on any derivative of the right to freedom of thought and expression – must be suitable for attaining the compelling objective sought and strictly proportional to that purpose.<sup>639</sup> If there are various options to achieve this objective, preference must be given to that which least restricts the protected right.<sup>640</sup> With specific regard to the requirement of proportionality, the IACHR has asserted that any restriction on access to state-held information, in order to be compatible with the American Convention, must demonstrate that the disclosure of the information effectively threatens to cause substantial harm to the legitimate goal sought and that it must demonstrate that the harm to the objective is greater than the public’s interest in having the information.<sup>641</sup>

447. The jurisprudence of the Inter-American Court has established that when a reason allowed by the American Convention for a restriction to be placed on access to state-held information exists, individuals requesting such access must be afforded a grounded response explaining the reasons why such access is not possible,<sup>642</sup> and they must have the right to judicial review of the administrative decision through a remedy that is simple, effective, swift, and not burdensome, and that allows the decisions of public officials who deny the right of access or who simply fail to respond to their requests to be challenged.<sup>643</sup> Obviously, and although it might appear unnecessary to expressly say so, the State is obliged to seek out the information requested and to reconstruct it in the event that it has been destroyed. A denial of the existence of information that

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...continuation

<sup>635</sup> I/A Court H. R., *Case of Claude Reyes et al. v. Chile*, Merits, Reparations, and Costs, Judgment of September 19, 2006, Series C No. 151, para. 89.

<sup>636</sup> I/A Court H. R., *Case of Claude Reyes et al. v. Chile*, Merits, Reparations, and Costs, Judgment of September 19, 2006, Series C No. 151, para. 90.

<sup>637</sup> I/A Court H. R., *Case of Claude Reyes et al. v. Chile*, Merits, Reparations, and Costs, Judgment of September 19, 2006, Series C No. 151, para. 91. See also: I/A Court H. R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135, para. 85; I/A Court H. R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111, para. 96; I/A Court H. R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107, paras. 121 and 123; and I/A Court H. R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29, American Convention on Human Rights), Advisory Opinion OC-5/85, November 13, 1985, Series A No. 5, para. 46. Similarly, the Inter-American Juridical Committee’s Resolution CJI/RES.147 (LXXIII-O/08), “Principles on the Right of Access to Information,” states in its first principle that “In principle, all information is accessible. Access to information is a fundamental human right which establishes that everyone can access information from public bodies, subject only to a limited regime of exceptions in keeping with a democratic society and proportionate to the interest that justifies them. States should ensure full respect for the right to access to information through adopting appropriate legislation and putting in place the necessary implementation measures.” In addition, Principle 7 establishes that “the burden of proof in justifying any denial of access to information lies with the body from which the information was requested.”

<sup>638</sup> I/A Court H. R., *Case of Claude Reyes et al. v. Chile*, Merits, Reparations, and Costs, Judgment of September 19, 2006, Series C No. 151, para. 98.

<sup>639</sup> I/A Court H. R., *Case of Claude Reyes et al.*, Judgment of September 19, 2006, Series C No. 151, para. 91.

<sup>640</sup> I/A Court H. R., *Case of Claude Reyes et al.*, Judgment of September 19, 2006, Series C No. 151, para. 91.

<sup>641</sup> IACHR, *Annual Report 2009*, OEA/Ser.L/V/II.Doc.51, December 30, 2009, Annual Report of the Special Rapporteur for Freedom of Expression, Ch. IV, para. 53.

<sup>642</sup> I/A Court H. R., *Case of Claude Reyes et al.*, Judgment of September 19, 2006, Series C No. 151, para. 77.

<sup>643</sup> I/A Court H. R., *Case of Claude Reyes et al.*, Judgment of September 19, 2006, Series C No. 151, para. 137.

should be public without reasonable justification entails the concealing of information and, consequently, a violation of the right of access.

## **2. Jurisprudence on access to information regarding human rights violations held in state archives**

448. Given the circumstances of the case at hand, the Commission believes it is appropriate to analyze the scope of the right of access to information held in state archives – particularly, in the files of intelligence services or security forces – when it deals with possible human rights violations.

449. As will be explained in the following paragraphs, the bodies of the inter-American system have ruled that the right of access to information is disproportionately affected when an agency of the State, under the pretext of national security, refuses access to information on human rights abuses to the state authorities charged with investigating such violations.

450. Thus, in the case of *Myrna Mack Chang v. Guatemala*,<sup>644</sup> the Inter-American Court found that the Ministry of National Defense had refused to hand over certain documents related to the functioning and structure of the Presidential General Staff that were necessary to investigate an extrajudicial killing. The Public Prosecution Service and the country's judges had made repeated requests for that information, but the Ministry of National Defense refused to hand it over by invoking state secrecy as provided for in Article 30 of the Guatemalan Constitution<sup>645</sup> and by allegedly incinerating the documents in question.<sup>646</sup> In the view of the Inter-American Court:

In cases of human rights violations, the State's authorities cannot resort to mechanisms such as official secret or confidentiality of the information, or reasons of public interest or national security, to refuse to supply the information required by the judicial or administrative authorities in charge of the ongoing investigation or proceeding.<sup>647</sup>

451. On this point, the Inter-American Court incorporated the following considerations expressed before it by the IACHR:

In the framework of a criminal proceeding, especially when it involves the investigation and prosecution of illegal actions attributable to the security forces of the State, there is a possible conflict of interests between the need to protect official secret, on the one hand, and the obligations of the State to protect individual persons from the illegal acts committed by their public agents and to investigate, try, and punish those responsible for said acts, on the other

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<sup>644</sup> I/A Court H. R., *Case of Myrna Mack Chang v. Guatemala*, Merits, Reparations, and Costs, Judgment of November 25, 2003, Series C No. 101, paras. 180 to 182.

<sup>645</sup> I/A Court H. R., *Case of Myrna Mack Chang v. Guatemala*, Merits, Reparations, and Costs, Judgment of November 25, 2003, Series C No. 101, para. 175. Article 30 of the Constitution of the Republic Guatemala states: "Article 30: Making Administrative Actions Public. All acts of the administration are considered public. Interested parties have the right to obtain reports, copies, reproductions or certifications upon request, and to access any records they may wish to consult, except when military or diplomatic matters related to national security or information provided by individuals under a guarantee of confidentiality are involved."

<sup>646</sup> I/A Court H. R., *Case of Myrna Mack Chang v. Guatemala*, Merits, Reparations, and Costs, Judgment of November 25, 2003, Series C No. 101, para. 176. It should be noted that claiming that the documents sought do not exist is not an uncommon practice in states that are not committed to access to information. Thus, the Supreme Court of Moldova ruled in the case of *Tasca v. SIS* that the authorities claiming the alleged nonexistence of certain documents were obliged to: (a) hand over to the applicant an inventory of the authority's complete archive and (b) allow the applicant personal access to the archive.

<sup>647</sup> I/A Court H. R., *Case of Myrna Mack Chang v. Guatemala*, Merits, Reparations, and Costs, Judgment of November 25, 2003, Series C No. 101, para. 180.

hand. [...] Public authorities cannot shield themselves behind the protective cloak of official secret to avoid or obstruct the investigation of illegal acts ascribed to the members of its own bodies. In cases of human rights violations, when the judicial bodies are attempting to elucidate the facts and to try and to punish those responsible for said violations, resorting to official secret with respect to submission of the information required by the judiciary may be considered an attempt to privilege the “clandestinity of the executive branch” and to perpetuate impunity. Likewise, when a punishable fact is being investigated, the decision to define the information as secret and to refuse to submit it can never depend exclusively on a State body whose members are deemed responsible for committing the illegal act. [...] Thus, what is incompatible with the Rule of Law and effective judicial protection “is not that there are secrets, but rather that these secrets are outside legal control, that is to say, that the authority has areas in which it is not responsible because they are not juridically regulated and are therefore outside any control system.”<sup>648</sup>

452. In the view of the Inter-American Court, the Ministry of National Defense’s refusal to supply the documents requested by the courts and the Public Prosecution Service on the grounds of state secrecy was unjustifiable and constituted an obstruction of justice.<sup>649</sup> Similarly, several countries in the hemisphere have adopted provisions establishing that information on human rights violations must not only be handed over to the authorities charged with investigating those crimes, but that in no circumstance may they be reserved from the public.<sup>650</sup> In addition, some countries have established specific regimes for access to information regarding their authoritarian pasts.<sup>651</sup> As will be discussed below, Guatemala’s own Law on Access to Public Information, which came into force in 2009, includes such a provision.<sup>652</sup>

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<sup>648</sup> I/A Court H. R., *Case of Myrna Mack Chang v. Guatemala*, Merits, Reparations, and Costs, Judgment of November 25, 2003, Series C No. 101, para. 181.

<sup>649</sup> I/A Court H. R., *Case of Myrna Mack Chang v. Guatemala*, Merits, Reparations, and Costs, Judgment of November 25, 2003, Series C No. 101, para. 182.

<sup>650</sup> See: Decree No. 4/2010 of the President of the Argentine Nation, stipulating, *inter alia*, that “the secrecy and confidentiality of information that could encourage full knowledge of the facts relating to human rights violations is to be lifted”; United Mexican States, Federal Law on Transparency and Access to Governmental Public Information, Art. 14, establishing that “confidentiality may not be invoked when gross violations of basic rights or crimes against humanity are being investigated”; Republic of Peru, Law No. 27806, Law on Transparency and Access to Public Information, Art. 15-C, providing that “information related to violations of human rights or of the Geneva Conventions of 1949 committed by any person in any circumstances shall not be considered classified”; Republic of Uruguay, Law No. 18.381, Right of Access to Public Information, Art. 12, stipulating that “the entities subject to this law may not invoke any of the reservations listed in the preceding articles when the information sought deals with human rights violations or is of relevance in investigating, preventing, or avoiding such violations.” See also: IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, February 26, 1999, Ch. VII, paras. 59-60, stating that “independent authorities must have the ability to access intelligence information and to decide whether it may be held in confidentiality” and noting the “utmost importance” of the announcement made by President Ernesto Samper of Colombia that “the Procurator General of the Nation would review the military’s intelligence files.” See also: United Nations High Commissioner for Human Rights, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, E/CN.4/2006/9, January 20, 2006, recommendation number 6: “The High Commissioner encourages the Government to promote legislation that adequately regulates the use of military intelligence records, including a procedure for annual review by the Office of the Procurator-General.”

<sup>651</sup> The enactment of special laws on access to archives and documents produced by the intelligence services was common during the transitions to democracy of those nations of Eastern Europe that had complex systems for public surveillance and espionage. For example: Germany’s Stasi Records Act of 1990; Hungary’s Law No. III of 2003, known as the Disclosure Act; the Czech Republic’s Law No. 140 of 1996, known as the STB Files Access Act; Romania’s Law No. 187 of 1999, known as the Access to Personal Files Law; Moldova’s Law on the Rehabilitation of Victims of Political Persecution; and Bulgaria’s 2006 Law for Access and Disclosure of Documents. Those statutes establish legal frameworks for ensuring the citizens access to the files of the agencies responsible for repression and surveillance under the former regimes.

<sup>652</sup> Law on Access to Public Information, Decree 57-2008, Art. 24: “In no case may information related to investigation of violations of basic human rights or crimes against humanity be classified as confidential or reserved.”



453. In particular, it is clear that information on the forced disappearance of persons cannot, under any circumstance, be kept from those responsible for investigating such crimes, from the victims, or from the next-of-kin of the direct victims.<sup>653</sup> Thus, as the Court has ruled, the denial of information that would serve to determine the whereabouts of a disappeared person or to clarify the circumstances in which the crime was committed constitutes a form of cruel and inhuman treatment.<sup>654</sup> Consequently, no reason can be argued to elude the State's duty to hand over such information.<sup>655</sup> To do otherwise would be to support the sustained and continued commission of cruel and inhuman forms of treatment that are absolutely prohibited by the Convention.

454. So, when the protection of national security is argued to try and keep information on human rights violations held in state archives from the general public, the State must demonstrate, to an impartial authority, that disclosing the information could have a serious, real, objective, and immediate impact on the defense of a democratic state.<sup>656</sup> Thus, notions such as "national defense" and "national security" must be interpreted in accordance with the parameters of a democratic society.<sup>657</sup> It would therefore be unacceptable, for example, to take as a legitimate state goal the protection of "national security" under the parameters of the "national security doctrine" used to justify the repressive policies adopted by various authoritarian Latin American regimes – Guatemala's among them – during the 1970s and 1980s.

### 3. Right of access to information on human rights violations in transitional contexts

455. The Commission believes that the facts under review must be analyzed in the context of the transition that began in Guatemala with the formal end of the internal armed conflict in 1996. The IACHR has said that during a transition from a period of authoritarianism or systematic human rights violations to one characterized by the rule of law, freedom of expression and access to information regarding the events of the past are of heightened importance.<sup>658</sup> Indeed, it is through these rights that the past can be reconstructed, the errors committed recognized, the victims provided with redress, measures of nonrepetition adopted, and a vigorous public debate developed to assist with the recuperation of democracy and the reconstruction of the rule of law.<sup>659</sup> In particular, the right of access to information is a tool that facilitates public oversight and promotes the past and future responsibility of public officials,<sup>660</sup> thus empowering the victims and

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<sup>653</sup> IACHR, Final Written Arguments in Case 11.552, *Julia Gomes Lund and others (Guerrilha do Araguaia) v. Brazil*, June 21, 2010, para. 71.

<sup>654</sup> I/A Court H. R., *Case of Radilla Pacheco v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 23, 2009, Series C No. 209, para. 166; *Case of Trujillo Oroza v. Bolivia*, Reparations and Costs, Judgment of February 27, 2002, Series C No. 92, para. 114.

<sup>655</sup> IACHR, Final Written Arguments in Case 11.552, *Julia Gomes Lund and others (Guerrilha do Araguaia) v. Brazil*, June 21, 2010, para. 71.

<sup>656</sup> See: IACHR, Final Written Arguments in Case 11.552, *Julia Gomes Lund and others (Guerrilha do Araguaia) v. Brazil*, June 21, 2010, para. 66.

<sup>657</sup> See: IACHR, Final Written Arguments in Case 11.552, *Julia Gomes Lund and others (Guerrilha do Araguaia) v. Brazil*, June 21, 2010, para. 67.

<sup>658</sup> IACHR, Final Written Arguments in Case 11.552, *Julia Gomes Lund and others (Guerrilha do Araguaia) v. Brazil*, June 21, 2010, para. 75.

<sup>659</sup> IACHR, Final Written Arguments in Case 11.552, *Julia Gomes Lund and others (Guerrilha do Araguaia) v. Brazil*, June 21, 2010, para. 75. See also: IACHR, Application to the Inter-American Court of Human Rights in Case 11.324, *Narciso González Medina v. Dominican Republic*, May 2, 2010, para. 159.

<sup>660</sup> IACHR, Final Written Arguments in Case 11.552, *Julia Gomes Lund and others (Guerrilha do Araguaia) v. Brazil*, June 21, 2010, para. 75. See also: I/A Court H. R., *Case of Claude Reyes et al.*, Judgment of September 19, 2006, Series C No. 151, paras. 86-87.

helping break down the complicities within the state apparatus that perpetuate the culture of impunity.<sup>661</sup>

456. For the reasons set out above, the Commission has already stated that during transitional processes, full respect for the right of free expression and access to information makes a fundamental contribution to ensuring the victims' rights to truth, justice, and redress.<sup>662</sup> In particular, the right to know the truth about what happened as regards forced disappearances can only be satisfied if appropriate mechanisms for access to the relevant information are adopted. In addition, the right of access to information is an essential guarantee for ensuring the implementation of measures of nonrepetition so that the events of the past do not reoccur. It is self-evident that awareness of atrocities committed in the past is a necessary condition for avoiding the repetition of abuses, promoting accountability and transparency in the state administration, and preventing corruption and authoritarianism.<sup>663</sup>

457. As the Commission has said, to offer true guarantees of nonrepetition, transitional processes must break with the culture of authoritarian regimes characterized by secrecy in the government's dealings and, in particular, regarding human rights violations.<sup>664</sup> This opacity covering state actions is a fertile ground for the emergence of systematic human rights violations, as shown by the history of our hemisphere and the facts in the case at hand. Maintaining pockets of secrecy in the institutions accused of committing violations hampers transitional processes and hinders the full consolidation of a democratic system by creating the conditions for enclaves of the authoritarian past to survive. For that reason, transitional processes invariably must incorporate special guarantees to protect the right of access to information on human rights violations.<sup>665</sup>

458. One of those special guarantees is the heightened scrutiny that must be applied to arguments of "national security" used to reject requests for access to information about past abuses.<sup>666</sup> Rulings in this regard have been issued, for example, by the European Court of Human Rights in dealing with the transitional processes of "lustration" in Eastern Europe at the end of the Cold War. The European Court ruled that in such processes, the protection of national security loses importance vis-à-vis the right to access the authoritarian period's military archives. This is because an essential condition for the transition to democracy and the rule of law—public knowledge and evaluation of the actions of the security forces—depends on guaranteeing the right of access to

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<sup>661</sup> IACHR, Final Written Arguments in Case 11.552, *Julia Gomes Lund and others (Guerrilha do Araguaia) v. Brazil*, June 21, 2010, para. 75. See also, in this regard: Federal Commissioner for the Records of the State Security Service of the former German Democratic Republic, activity reports for 1999, 2001, 2009, describing the contribution made by the Federal Commissioner's office to the convictions of guards and other individuals involved in killings committed on the borders of the former GDR. The office has also assisted with securing redress for victims of arbitrary arrest, political persecution, workplace discrimination, illegal property confiscations, etc. Between 1991 and 2009, more than 2.6 million people consulted the files held by the Federal Commissioner. Information available at: [www.bstu.bund.de](http://www.bstu.bund.de).

<sup>662</sup> See, in this regard: United Nations, Commission on Human Rights, *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, E/CN.4/2005/102/Add.1, February 8, 2005, principle 5.

<sup>663</sup> IACHR, *Annual Report 2009*, OEA/Ser.L/V/II.Doc.51, December 30, 2009, Annual Report of the Special Rapporteur for Freedom of Expression, Ch. IV, para. 5.

<sup>664</sup> IACHR, *Annual Report 2009*, OEA/Ser.L/V/II.Doc.51, December 30, 2009, Annual Report of the Special Rapporteur for Freedom of Expression, Ch. IV, para. 3.

<sup>665</sup> IACHR, Final Written Arguments in Case 11.552, *Julia Gomes Lund and others (Guerrilha do Araguaia) v. Brazil*, June 21, 2010, para. 77.

<sup>666</sup> IACHR, Final Written Arguments in Case 11.552, *Julia Gomes Lund and others (Guerrilha do Araguaia) v. Brazil*, June 21, 2010, para. 64.

information.<sup>667</sup> In light of its importance, it is useful to cite extensively from the European Court's ruling in *Turek v. Slovakia*:

In proceedings related to the operations of state security agencies, there may be legitimate grounds to limit access to certain documents and other materials. However, in respect of lustration proceedings, this consideration loses much of its validity. In the first place, lustration proceedings are, by their very nature, oriented towards the establishment of facts dating back to the communist era and are not directly linked to the current functions and operations of the security services. Thus, unless the contrary is shown on the facts of a specific case, it cannot be assumed that there remains a continuing and actual public interest in imposing limitations on access to materials classified as confidential under former regimes. Secondly, lustration proceedings inevitably depend on the examination of documents relating to the operations of the former communist security agencies. If the party to whom the classified materials relate is denied access to all or most of the materials in question, his or her possibilities to contradict the security agency's version of the facts would be severely curtailed.<sup>668</sup>

459. For the reasons given, in transitional processes there is a strong presumption in favor of the right of access to all information on the security forces' activities under the previous regime. This presumption can only be overcome if an independent entity finds, in a specific case, that confidentiality is strictly necessary, useful, and proportionate to protect a vital state interest from a real, immediate, and serious danger. In all cases the decision on the disclosure of certain information must be approved by an autonomous and independent authority in the terms described, and such information can never be denied to judicial authorities that are investigating human rights violations.<sup>669</sup>

#### **4. Right of access to information and truth commissions**

460. As narrated in the facts of this case, the Commission for Historical Clarification set up in Guatemala attempted to access the information on crimes committed during the internal armed conflict held at military facilities. However, the state agencies holding that information denied it access to such relevant documents as the *Diario Militar*, which had a significant impact on the CEH's ability to perform its functions. The question that the IACHR must answer is whether the right of access to information of the victims of mass, systematic human rights violations is undermined by refusing the nonjudicial body charged with examining past crimes access to the corresponding information.

461. The IACHR believes that the aforesaid obligation to allow judicial and administrative authorities access to information<sup>670</sup> – including that which is secret or confidential – on human rights violations also applies to the nonjudicial mechanisms set up within transitional processes to

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<sup>667</sup> European Court of Human Rights, *Case of Turek v. Slovakia (Application No. 57986/00)*, Judgment, February 14, 2006, para. 115.

<sup>668</sup> European Court of Human Rights, *Case of Turek v. Slovakia (Application No. 57986/00)*, Judgment, February 14, 2006, para. 115.

<sup>669</sup> IACHR, Final Written Arguments in Case 11.552, *Julia Gomes Lund and others (Guerrilha do Araguaia) v. Brazil*, June 21, 2010, para. 66.

<sup>670</sup> I/A Court H. R., *Case of Myrna Mack Chang v. Guatemala*, Merits, Reparations, and Costs, Judgment of November 25, 2003, Series C No. 101, para. 180.

investigate and document those violations.<sup>671</sup> The mechanism most commonly used for those purposes has been the creation of “truth commissions.”<sup>672</sup>

462. Both the IACHR and the Inter-American Court have determined that the Convention requires its signatory states to ensure the right to truth of the victims of serious human rights violations through judicial processes; at the same time, the organs of the system have recognized the contribution made by nonjudicial mechanisms, such as truth commissions.<sup>673</sup>

463. When a state decides to create an extrajudicial investigation commission as a mechanism for upholding the right to truth of the victims of human rights violations and of society as a whole, it must guarantee the commission’s access to all the information necessary to ensure the due fulfillment of its mandate. In particular, such a commission must have full access to the archives covering the period it is to investigate, including access to “secret” or “confidential” information on the human rights violations committed during that time. In principle, access to that information must be governed by the same conditions that ensure access by members of the judiciary investigating human rights violations. In other words, state authorities cannot take refuge behind generic arguments such as “state secrets” or the defense of the “public interest” or “national security” to avoid handing over information requested by truth commissions dealing with serious human rights violations committed during the period those commissions have been instructed to investigate. In addition to following from the aforementioned jurisprudence of the Inter-American Court and of the IACHR, this principle is set out in the United Nations’ *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*.<sup>674</sup>

464. Notwithstanding the above, on an exceptional basis, the State may indicate to an independent and impartial body the existence of exceptional circumstances in which it can be clearly shown that the truth commission’s access to certain information would have a real, immediate, and objective impact of such a magnitude on the State’s security interests that

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<sup>671</sup> See: IACHR, Final Written Arguments in Case 11.552, *Julia Gomes Lund and others (Guerrilha do Araguaia) v. Brazil*, June 21, 2010, para. 72. IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124, March 7, 2006, para. 190.

<sup>672</sup> “Truth commissions” are nonjudicial, independent panels of inquiry typically set up to establish the facts and context of serious violations of human rights or of international humanitarian law in a country’s past (definition from the International Center for Transitional Justice, available at: <http://www.ictj.org>). The countries that have used such mechanisms to cast light on crimes committed in the past include Argentina, Haiti, Guatemala, South Africa, Peru, Timor-Leste, Ghana, and Sierra Leone. See, in this regard: “Truth Commissions,” entry in the *Encyclopedia of Genocide and Crimes Against Humanity*. Available at: <http://www.ictj.org/static/TJApproaches/Truthseeking/macmillan.TC.eng.pdf>

<sup>673</sup> In the case of *Almonacid Arellano*, the Court stressed “the important role played by the different Chilean Commissions in trying to collectively build the truth of the events which occurred” during the military dictatorship in that country. I/A Court H. R., *Case of Almonacid Arellano et al. v. Chile*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 26, 2006, Series C No. 154, para. 149. At the same time, the Court explained that “the ‘historical truth’ included in the reports of the above mentioned Commissions is no substitute for the duty of the State to reach the truth through judicial proceedings.” I/A Court H. R., *Case of Almonacid Arellano et al. v. Chile*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 26, 2006, Series C No. 154, para. 150. The IACHR offered similar conclusions in the case of Msgr. Óscar Arnulfo Romero y Galdámez against El Salvador, stating that “despite the important role the Truth Commission played in establishing the facts related to the most serious violations [...] the functions it performed do not take the place of the judicial process as a method for arriving at the truth.” IACHR, Report No. 37/00, Case: 11.481, Msgr. Óscar Arnulfo Romero y Galdámez, El Salvador, April 13, 2000, para. 149.

<sup>674</sup> United Nations, Commission on Human Rights, *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, E/CN.4/2005/102/Add.1, February 8, 2005. Principle 16 provides:

Non-judicial commissions of inquiry [...] must have access to relevant archives. [...] Access may not be denied on grounds of national security unless, in exceptional circumstances, the restriction has been prescribed by law; the Government has demonstrated that the restriction is necessary in a democratic society to protect a legitimate national security interest; and the denial is subject to independent judicial review.

confidentiality is justified. In assessing the situation, it must be borne in mind that confidentiality compromises the right to truth of the victims and of society in general and that, in any event, it may only be maintained for such a reasonable time as is necessary for the State to avert the risks in question.

465. In all such cases, the State has the duty to take the steps necessary to hand over the information sought or allow on-site access to the archives so that the existence of the information can be verified.<sup>675</sup> In addition, when the information sought has been destroyed, the State must take every possible step to recreate it and, when it has been illegitimately removed from the official files, it must adopt the measures necessary to locate it. In cases of human rights violations, this duty to produce or recover information that has been destroyed or illegally removed is consubstantial to the right of access to relevant information.<sup>676</sup>

## **5. The right of access to personal information on human rights violations held in public files (*habeas data*)**

466. As already stated, the case at hand involves not only the possible violation of the right of the general public and, in particular, the authorities to access information on massive and systematic human rights violations held in state files. It also raises the issue of the right of the persons affected by those crimes, and their next-of-kin, to access personal information about them held in the State's archives.

467. As the Commission has indicated, "Every person has the right to access to information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it."<sup>677</sup> As the Commission has explained, this right of *habeas data* is based on three premises: (1) the right of any individual to not have his privacy disturbed, (2) the right of any individual to access information referring to him or her in public or private databases, and to modify, remove, or correct information if it is sensitive, false, biased, or discriminatory, (3) the right of any individual to use *habeas data* action as a mechanism for obtaining access to evidence required in judicial proceedings, and (4) and the right of any individual to use the action of *habeas data* as an oversight mechanism.<sup>678</sup>

468. In principle, the Commission has already noted that that there may be certain specific cases in which state security forces would not have to reveal personal information requested through a *habeas data* action – for instance, when the release of such information could seriously, objectively, and immediately jeopardize national security.<sup>679</sup> However, independent authorities must be able to access confidential information and to decide whether it may or may not be kept secret.<sup>680</sup> Thus, as both the Commission and the Inter-American Court have already

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<sup>675</sup> See: IACHR, Final Written Arguments in Case 11.552, *Julia Gomes Lund and others (Guerrilha do Araguaia) v. Brazil*, June 21, 2010, para. 80.

<sup>676</sup> See: IACHR, Final Written Arguments in Case 11.552, *Julia Gomes Lund and others (Guerrilha do Araguaia) v. Brazil*, June 21, 2010, para. 81. See also: IACHR, *The Inter-American Legal Framework Regarding the Right to Access to Information*, OEA/Ser.L/V/II CIDH/RELE/INF. 1/09, December 30, 2009, paras. 82-87.

<sup>677</sup> IACHR, *Declaration of Principles on Freedom of Expression*, Principle 3.

<sup>678</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124, March 7, 2006, para. 89.

<sup>679</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124, March 7, 2006, para. 90.

<sup>680</sup> IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, 26 February 1999, Ch. VII, para. 59.

stated,<sup>681</sup> and as the European Court of Human Rights has also ruled, this decision cannot depend exclusively on the agency accused of committing the past violations. As the ECHR has indicated:

Finally, under the relevant laws, it is typically the security agency itself that has the power to decide what materials should remain classified and for how long. Since it is the legality of the agency's actions which is in question in lustration proceedings, the existence of this power is not consistent with the fairness of the proceedings, including the principle of equality of arms. Thus, if a State is to adopt lustration measures, it must ensure that the persons affected thereby enjoy all procedural guarantees under the [European] Convention in respect of any proceedings relating to the application of such measures.<sup>682</sup>

469. When the "national security" defense argument is used in transitional processes not to protect the current, legitimate interests of the democratic state but to preserve the secrecy of past atrocities perpetrated by state officials, that national security defense is superseded by the affected individuals' right of access to personal information.<sup>683</sup> Indeed, it is incomprehensible to argue that it is necessary to maintain the confidentiality of information on human rights violations committed during a historical period that the state seeks to overcome in order to protect the current national security interests of a democratic state. In addition, as has already been stated, it is clear that denying the victims of human rights violations access to state files or offices that could hold relevant information for casting light on those violations equates to impeding the victims' full access to justice.

470. For all the reasons given in the preceding paragraphs, the IACHR has established that the right of *habeas data* assumes a particular importance when the personal information held in state archives would be of use in casting light on gross human rights violations during transition processes.<sup>684</sup> In other words, in such contexts, when state secrecy is essentially used to conceal the evidence of grave human rights violations, the right of *habeas data* cannot be restricted for reasons allegedly related to "national security." Personal details held in state files and relating to serious human rights violations committed during periods when democracy is suspended cannot be kept confidential against the interests of the person to whom those details belong – the victims or, in their absence, their next-of-kin – on the grounds of a misconceived defense of "national security."<sup>685</sup> In this regard, as the IACHR has noted, the *habeas data* action has become an essential tool for investigating human rights violations committed during past military dictatorships in the Americas.<sup>686</sup>

471. From this perspective and in the context of transitional processes, access to raw data and on-site visits to archives through *habeas data* assume a particular importance, particularly

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<sup>681</sup> I/A Court H. R., *Case of Myrna Mack Chang v. Guatemala*, Merits, Reparations, and Costs, Judgment of November 25, 2003, Series C No. 101, para. 181. See also: IACHR, Final Written Arguments in Case 11.552, *Julia Gomes Lund and others (Guerrilha do Araguaia) v. Brazil*, June 21, 2010, para. 80.

<sup>682</sup> European Court of Human Rights, *Case of Turek v. Slovakia (Application No. 57986/00)*, Judgment, February 14, 2006, para. 115.

<sup>683</sup> European Court of Human Rights, *Case of Turek v. Slovakia (Application No. 57986/00)*, Judgment, February 14, 2006, para. 115.

<sup>684</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124, March 7, 2006, para. 89.

<sup>685</sup> Similarly, the IACHR has also said that when there is evidence that the intelligence services have carried out arbitrary or illicit activities, the people affected must be afforded access to the information obtained through those activities. IACHR, Request for provisional measures, Inter-Ecclesiastic Justice and Peace Commission, Colombia, April 8, 2010, para. 51. See also: Constitutional Court of Colombia, Judgment T-1037/08, section II, para. 31.

<sup>686</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124, March 7, 2006, para. 89.

if the agency suspected of the past violations denies holding the information sought.<sup>687</sup> In such cases, innovative solutions must be adopted that can dismantle those authoritarian enclaves that seek to preserve secrecy about past atrocities and that can satisfy the victims' minimum rights which, like the right to guarantees of nonrepetition, are a necessary condition for a genuine transition.<sup>688</sup>

## 6. Summary

472. For the reasons set out in the foregoing paragraphs, the Commission believes that in transitional contexts – understood, again, as those that mark the transition from a period of authoritarianism or systematic human rights violations to one of democratic rule of law – the State's positive obligations in guaranteeing the right of access to information are heightened. The IACHR understands that the State's obligation to prove information in such contexts implies the duty of diligently and exhaustively seeking out the information requested, preserving it, organizing it, guarding it, and creating archives and records systems so that it can effectively satisfy, *inter alia*, the right of victims to comprehensive reparation.<sup>689</sup> In addition, States must ensure that their courts and nonjudicial commissions of inquiry can access the information requested, either by handing all the information over or through direct consultations of the state archives,<sup>690</sup> which must include the ability to conduct on-site visits<sup>691</sup> or the adoption of measures for reconstructing or recovering lost information. In addition, personal details held in state archives or databases relating to serious human rights violations committed during the period with which closure is sought must be handed over to individuals to whom that information belongs. In any event, exceptional decisions to prevent public access to information about the actions of the security forces during the previous regime must be subjected to the strictest test of proportionality by an independent and impartial judicial authority.

## 7. The right of access to information and the facts of this case

473. According to the established facts, the document known as the *Diario Militar* was made public by the National Security Archive, a nongovernmental organization, in May 1999.

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<sup>687</sup> See: IACHR, Final Written Arguments in Case 11.552, *Julia Gomes Lund and others (Guerrilha do Araguaia) v. Brazil*, June 21, 2010, para. 80. See also: IACHR, *The Inter-American Legal Framework Regarding the Right to Access to Information*, OEA/Ser.L/V/II CIDH/RELE/INF. 1/09, December 30, 2009, para. 81.

<sup>688</sup> See: IACHR, Final Written Arguments in Case 11.552, *Julia Gomes Lund and others (Guerrilha do Araguaia) v. Brazil*, June 21, 2010, para. 77.

<sup>689</sup> IACHR, *Annual Report 2008*, Vol. II, Annual Report of the Special Rapporteur for Freedom of Expression, Ch. III, Inter-American Legal Framework for the Right of Free Expression, paras. 162-165. Available at: <http://www.cidh.oas.org/annualrep/2008sp/INFORME%20ANUAL%20RELE%202008.pdf>. Cf: IACHR, Application to the Inter-American Court of Human Rights in Case 11.324, *Narciso González Medina v. Dominican Republic*, May 2, 2010, para. 173. See also: United Nations, Commission on Human Rights, *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, E/CN.4/2005/102/Add.1, February 8, 2005, Principles 3, 14 and 15. It is worth noting that following the end of the Cold War, several Eastern European countries established state agencies charged with locating, keeping, and organizing information from the secret files of the former regimes, as well as with allowing the public – particularly those who had been victims – access to that information. Thus, for example, Germany created the Federal Commissioner for the Records of the State Security Service of the former German Democratic Republic in 1990, Hungary set up its Historical Office in 1994, the Czech Republic established the Institute for the Study of Totalitarian Regimes in 2007, Romania created the National Council for the Study of the Securitate Archives in 1999, and Poland established the Institute of National Remembrance in 2000.

<sup>690</sup> United Nations, Commission on Human Rights, *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, E/CN.4/2005/102/Add.1, February 8, 2005, Principle 16.

<sup>691</sup> With regard to on-site visits, see: IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116. October 22, 2002, para. 288, citing the Johannesburg Principles on National Security, Freedom of Expression, and Access to Information. See also: South Africa Promotion of National Unity and Reconciliation Act, 1995, Art. 32, available at: <http://www.justice.gov.za/legislation/acts/1995-034.pdf>.

According to NSA expert Katharine Doyle, the document was taken from the Army's archives by an employee of the military and handed over to two Guatemalan citizens who, in turn, passed in on to Ms. Doyle.<sup>692</sup> In other words, the *Diario Militar* was stored at a military facility and was made public through the unauthorized actions of an Army employee and not as a result of any initiative on the part of the Guatemalan State.

474. The Commission has established that the *Diario Militar* is an authentic document that records acts of repression committed by the Guatemalan State's security forces between August 1983 and March 1985, including the abductions and forced disappearances described in the case at hand. In that it provides indications on the fate of the victims and evidence of the security forces' responsibility in illicit acts of the greatest severity, the *Diario Militar* is an essential element in clarifying those events and in the potential identification and punishment of the individuals responsible. The concealment of the document for more than a decade – and its subsequent disclosure solely as a result of its unauthorized removal from the Army's archives – requires that the Commission analyze the State's actions regarding the right of access to information in the terms set out above.

475. The petitioners in the case claimed that historically Guatemala has not had legislation establishing a procedure for requesting information held by the State, nor any practical mechanism for exercising that right. As a result, and given the ineffectiveness and inefficiency of judicial remedies,<sup>693</sup> the victims' families went to the National Police, the courts, and even the dictator Mejía Victores in search of information on their missing relatives, but to no effect. The information, however, was being held in the installations of the security forces.

476. In the petitioners' view, the concealment of the *Diario Militar* typifies a pattern whereby official documents proving the involvement of state agents in serious human rights violations were suppressed, a pattern that also entailed the concealment of the National Police Historical Archive. In particular, the petitioners highlight the fact that the *Diario Militar* was not handed over to the Commission for Historical Clarification.<sup>694</sup>

477. At a hearing held at IACHR Headquarters on October 22, 2008, the State of Guatemala acknowledged that historically the right of access to information was not guaranteed in Guatemala. The State's representative said that:

With reference to the topic of mechanisms and procedures for access to information, Guatemala has in fact lacked procedures for access to information [...] we indeed recognize this weakness of the State of Guatemala as regards the right to the truth and the right to information of the victims.<sup>695</sup>

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<sup>692</sup> Original petition, received on December 9, 2005: Annex V, Analysis of the *Diario Militar* prepared by Katharine Doyle, dated May 26, 2005.

<sup>693</sup> Article 31 of the Constitution of the Republic of Guatemala, enacted on June 3, 1985, recognized that: "All individuals have the right to know what is said about them in archives, files, or any other form of state records, and the use made of that information, together with the right to correct, rectify, and update it." However, the available information indicates that as with habeas corpus remedies, which at the time of the abductions and disappearances described in this case were ineffective (see section V.B.2., *supra*), the right of access to state files and records was in practice nonexistent given that "the various agencies of the country's judicial system were not operational" vis-à-vis the demands of victims of human rights violations. CEH, *Guatemala: Memory of Silence*, Vol. IV, Ch. 3, Title VI: Confronting the Violence, p. 245; see also pp. 228-237.

<sup>694</sup> See: Petitioners' submission, received on December 22, 2008.

<sup>695</sup> IACHR, Public Hearing of October 22, 2008, on Case 12.590, José Miguel Gudiel Álvarez and others (*Diario Militar*), Guatemala, 133rd regular session, Address by Ruth del Valle, President of COPREDEH. See hearing at: <http://www.cidh.org>.



478. At the same time, the State asked that consideration be given to a series of concrete steps to help guarantee the right of access to information in the case at hand, including the fact that the criminal case file and documents held in the National Police Historical Archive were made available to the IACHR and, through it, to the petitioners. The State also pointed to the Law on Access to Public Information, which came into force on April 21, 2009.<sup>696</sup> Guatemala noted that Article 24 of that law provides that “in no case may information related to the investigation of violations of basic human rights or crimes against humanity be considered confidential or reserved.”<sup>697</sup> The State reported that on February 25, 2008, the President of the Republic Álvaro Colom Caballeros announced the decision “to release all army files so the truth can be known and, once and for all, we can build on the basis of truth and justice.”<sup>698</sup>

479. As claimed by the petitioners and acknowledged by the State, the Commission believes that in the case at hand, the State of Guatemala did violate the right of access to information of the next-of-kin of the victims who were disappeared and killed by state agents. In the face of repeated requests by the victims’ families, agents of the Guatemalan State concealed official documents – including the *Diario Militar* and the National Police Historical Archives – that contained essential information on the fates of the victims, the violations they suffered, and the individuals responsible for those violations.

480. In the Commission’s view, it is particularly serious that even after the end of the internal armed conflict in Guatemala and following the establishment of the Commission for Historical Clarification (CEH) pursuant to the Peace Accords of December 29, 1996, documents such as the *Diario Militar* and National Police Historical Archives remained hidden in state facilities. In the agreement whereby the CEH was created, the government of Guatemala assumed a commitment to “collaborate with the Commission in all matters that may be necessary for the fulfillment of its mandate,”<sup>699</sup> and that commitment became a legal obligation without exceptions with the enactment of the National Reconciliation Law.<sup>700</sup> As has already been stated, however, the CEH was repeatedly denied relevant information from state archives, particularly the files of the intelligence services, on some occasions based on the argument that the documents were covered by constitutional confidentiality<sup>701</sup> and on others based on the argument that the information sought

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<sup>696</sup> State’s comments submission, received on April 16, 2009.

<sup>697</sup> Law on Access to Public Information, Decree 57-2008, Art. 24.

<sup>698</sup> See: State’s comments submission, received on April 16, 2009, citing the declaration made by President of the Republic Álvaro Colom Caballeros on February 25, 2008, during the commemoration of the Day of the Victims of the Internal Armed Conflict.

<sup>699</sup> Oslo Accords of June 23, 1994. See: CEH, *Guatemala: Memory of Silence*, Vol. I, Working Mandate and Procedure, p. 48.

<sup>700</sup> Article 10 of the National Reconciliation Law, Decree No. 145-96, provides:

The Commission for Historical Clarification of the human rights violations and acts of violence that have caused the Guatemalan population to suffer, created by the Oslo Accords of June 23, 1994, is instructed to design methods intended to make it possible to know and acknowledge the historical truth about the period of the internal armed conflict in order to avoid the future repetition of such incidents. To that end, the agencies and entities of the State are to provide the Commission with the support that it requests.

<sup>701</sup> CEH, *Guatemala: Memory of Silence*, Vol. I, Mandate and Working Procedure, Ch. III: Collaboration of the Parties, p. 50. The Constitution in force at the time, as amended by Legislative Agreement No. 18-93 of November 17, 1993, provided, in Article 30, that: “All acts of the administration are considered public. Interested parties have the right to obtain reports, copies, reproductions or certifications upon request, and to access any records they may wish to consult, except when military or diplomatic matters related to national security or information provided by individuals under a guarantee of confidentiality are involved.”

did not exist because of the irregular nature of the counterinsurgency war.<sup>702</sup> However, early on its mandate the CEH was able to review operations plans and intelligence reports at some Army facilities, the existence of which was later denied.<sup>703</sup> Because of this situation, the CEH requested the personal intervention of the President of the Republic;<sup>704</sup> that request was fruitless, however, and in its final report the CEH stated that “the collaboration provided by the National Army [was] precarious and unsatisfactory” and it reported that “nor was the CEH able to review any official documents related to the Presidential General Staff.”<sup>705</sup>

481. As already noted, the State’s refusal to afford the CEH access to the requested information had serious repercussions for its ability to fulfill its mandate. In particular, “with regard to the forced disappearances [...] the CEH was unable to fully identify the decision-making center that issued the orders for the bloodiest actions and operations.”<sup>706</sup> Among the “emblematic cases” that the CEH attempted to clear up were those of Sergio Saúl Linares Morales and Rubén Amílcar Farfán,<sup>707</sup> both of whom are victims in the case at hand.

482. The later revelation of the *Diario Militar* (in May 1999) and of the National Police Historical Archives (in July 2005), both with valuable information on the human rights violations that the CEH was tasked with investigating, indicates that the State of Guatemala concealed information on those violations from the CEH and, consequently, from Guatemalan society and the families of the disappeared victims in this case.

483. The Commission notes that although the Guatemalan government’s legal obligation to cooperate with the CEH did not allow exceptions on the grounds of state secrecy or confidentiality, on occasions the Guatemalan authorities referred to exceptions of this nature to justify their refusal to hand over information requested by the CEH. In connection with this, the Commission again notes that states have the duty to effectively uphold the right of access to information by guaranteeing that the decision to define the information as secret and to refuse to present it never depends exclusively on a state body whose members are alleged to be responsible for committing the illegal act.<sup>708</sup> Instead, independent authorities must have the ability to access the withheld information and to decide whether it may be kept confidential.<sup>709</sup> Such oversight must be particularly stringent in examining restrictions on access to information regarding serious human

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<sup>702</sup> See, for example: Letter from the Minister of National Defense, Héctor Mario Barrios Celada, to the Chairman of the CEH, Christian Tomuschat, dated January 5, 1998. CEH, *Guatemala: Memory of Silence*, Vol. XII, Annex III, Title 2: Selected correspondence between the CEH and the institutions of the Republic of Guatemala, pp. 102-107.

<sup>703</sup> CEH, *Guatemala: Memory of Silence*, Vol. I, Mandate and Working Procedure, Ch. III: Collaboration of the Parties, p. 50.

<sup>704</sup> See, for example: Letter addressed to President of Guatemala Álvaro Arzú Irigoyen, dated October 28, 1997. CEH, *Guatemala: Memory of Silence*, Vol. XII, Annex III, Title 2: Selected correspondence between the CEH and the institutions of the Republic of Guatemala, p. 70.

<sup>705</sup> CEH, *Guatemala: Memory of Silence*, Vol. I, Mandate and Working Procedure, Ch. III: Collaboration of the Parties, pp. 49, 50.

<sup>706</sup> CEH, *Guatemala: Memory of Silence*, Vol. II, Ch. 2, Title I: Introduction, p. 14; see also, in the same chapter: Title XI: Forced Disappearances, p. 459.

<sup>707</sup> CEH, *Guatemala: Memory of Silence*, Vol. VI, Annex I, Typical Case No. 48, pp. 145-153.

<sup>708</sup> See: I/A Court H. R., *Case of Myrna Mack Chang v. Guatemala*, Merits, Reparations, and Costs, Judgment of November 25, 2003, Series C No. 101, para. 181.

<sup>709</sup> IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, February 26, 1999, Ch. VII, para. 59.

rights violations, which may not be refused on the grounds of such vague or generic reasons as “state secrecy,” “confidentiality,” the “public interest,” or “national security.”<sup>710</sup>

484. In the case at hand, if the State thought it necessary to keep certain information confidential, it had to demonstrate that such confidentiality was in pursuit of an imperative objective under the Convention, that confidentiality was the least costly mechanism – in terms of basic rights – for attaining that imperative objective, and that the benefit or advantages obtained with the confidentiality were substantially greater than the costs to the victims’ families and to Guatemalan society in general of keeping the information secret. In addition, such a demonstration had to be made before an impartial, autonomous, and independent judicial authority. Thus, in transitional contexts such as Guatemala’s, and as has already been noted, secrecy about serious, systematic human rights violations committed or abetted by state officials must be subject to the strictest test of necessity. It cannot therefore be based on the simple generic invocation of the protection of abstract concepts such as “national security” and, above all, it cannot be decided on by officials who are allegedly complicit in the violations.<sup>711</sup> As such, when a request for access is essentially intended to cast light on the actions of an authoritarian regime or on systematic human rights violations, the right of the victims to comprehensive reparation and the right of society to collective memory regarding past atrocities and to the nonrepetition of such events takes *prima facie* precedence over any other right and, consequently, the State must justify, in the most rigorous fashion possible, its failure to satisfy those rights.

485. In the instant case, as has been established, the State denied the CEH access to relevant files; it denied the existence of information that did in fact exist; and it merely offered a generic justification for its refusal, protected by a legal system that offered no effective recourse for challenging that decision.

486. In addition, the Commission believes that the obligation to produce or recover information on mass human rights violations held in state files was not met in good faith by the State. As already noted, the criminal case file in this case indicates the Defense Ministry’s clear failure to cooperate, its responses to requests for information made by the Public Prosecution Service were, in several cases, either totally or partially obstructive.<sup>712</sup>

487. For the reasons given, the IACHR finds that in the case at hand, the State’s concealment of information on serious human rights violations committed in the past violated the

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<sup>710</sup> I/A Court H. R., *Case of Myrna Mack Chang v. Guatemala*, Merits, Reparations, and Costs, Judgment of November 25, 2003, Series C No. 101, para. 180

<sup>711</sup> See: European Court of Human Rights, *Case of Turek v. Slovakia (Application No. 57986/00)*, Judgment, February 14, 2006, para. 115.

<sup>712</sup> For example, on June 2, 1999, the Public Prosecution Service asked the Ministry of Defense for the information held in the files of the Directorate of Military Intelligence on the victims Lesbia Lucrecia García Escobar and Felix Estrada Mejía, in addition to another three people named in the *Diario Militar*, and it also asked for the names and addresses of the people who held certain positions in the Ministry of Defense and the Military Intelligence Directorate between 1983 and 1985. See: State’s submission, received on October 13, 2008: Criminal case file in the case of Lesbia Lucrecia García Escobar, Communication MP 6168-99 OAP from the Public Prosecution Service to the Ministry of Defense, dated June 2, 1999. In its reply, the Ministry of Defense declined to provide the information requested, allegedly because the application “did not meet the requirements set out in Article 245 of the Code of Criminal Procedure.” See: State’s submission, received on October 13, 2008: Criminal case file in the case of Lesbia Lucrecia García Escobar, Communication from the Minister of Defense to the Public Prosecution Service, dated June 15, 1999. Article 245 of the Guatemalan Code of Criminal Procedure, Decree Number 51-92, provides that: “The courts and the Public Prosecution Service may request reports on data held in records kept in accordance with the law. Such reports will be requested with an indication of the proceedings in which they are required, the name of the defendant, the place where the report is to be presented, the deadline for its presentation, and the consequences applicable to a failure to comply.” See also: State’s submission, received on October 13, 2008: Criminal case file in the case of Óscar Eduardo Barillas Barrientos, Communication from the Minister of Defense to the Public Prosecution Service, dated March 13, 2007.

right of access to information enshrined in Articles 13 and 23 of the Convention, with respect to the next-of-kin of the disappeared victims and of Rudy Gustavo Figueroa Muñoz. The Commission applauds the State of Guatemala's recent initiatives aimed at ensuring the right of access to information, both in framework of the instant case and in general. In particular, the enactment of a law on access to information that explicitly prohibits the withholding of information of interest to investigations of human rights violations and the announced decision to open the National Army archives are initiatives of great importance that must be implemented in full to ensure compliance with the State's international obligations. That notwithstanding, the Commission again notes that the *Diario Militar* and the documents in the National Police Historical Archives related to the victims in this case were concealed by the State of Guatemala for years, and they were kept in concealment even after the end of the armed conflict and throughout the entire mandate of the Commission for Historical Clarification that Guatemalan government itself agreed to create.

488. In light of the established facts, the arguments set out, and the acknowledgment made by the State of Guatemala, the Commission concludes that the State violated Articles 13 and 23 of the Convention, in conjunction with Articles 1.1 and 2 thereof, by failing to hand over available information to the victims in this case and to the authorities tasked with examining human rights violations, such as the Commission for Historical Clarification and the Public Prosecution Service; by failing to adopt the administrative or any other measures necessary to afford interested individuals and institutions effective access to information held by state agencies; and by not providing, at the time the events took place, the legal framework necessary to uphold the right of access to information and the right of *habeas data* of the victims of human rights violations.

**I. Freedom of expression and the right of association: Articles 13 and 16<sup>713</sup> of the Convention, in conjunction with Article 1.1 thereof**

489. In connection with the right to freedom of thought and expression, the Inter-American Court has stated that "the American Convention guarantees this right to every individual, irrespective of any other consideration; so, such guarantee should not be limited to a given profession or group of individuals."<sup>714</sup> The Court has also spoken of the "essential role played by freedom of expression in the consolidation and dynamics of a democratic society."<sup>715</sup> As the Court has said, freedom of expression is "one of the essential pillars of democratic society,"<sup>716</sup> and that it is also a "*conditio sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public."<sup>717</sup> Article 13 of the

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<sup>713</sup> Article 16 of the Convention provides:

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.

2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.

3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

<sup>714</sup> I/A Court H. R., *Case of Tristán Donoso v. Panama*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of January 27, 2009, Series C No. 193, para. 114.

<sup>715</sup> I/A Court H. R., *Case of Ricardo Canese v. Paraguay*, Merits, Reparations, and Costs, Judgment of August 31, 2004, Series C No. 111, para. 86.

<sup>716</sup> I/A Court H. R., *Case of Ricardo Canese v. Paraguay*, Merits, Reparations, and Costs, Judgment of August 31, 2004, Series C No. 111, para. 83.

<sup>717</sup> I/A Court H. R., *Case of Ricardo Canese v. Paraguay*, Merits, Reparations, and Costs, Judgment of August 31, 2004, Series C No. 111, para. 82.

Convention guarantees not only the right and freedom to express thoughts, but also the right and freedom to seek, receive, and disseminate information and ideas of all kinds.<sup>718</sup> In particular, the Inter-American Court has said that it is “essential that the exercise of freedom of expression [...] be protected and guaranteed in [...] political debate.”<sup>719</sup>

490. Full exercise of the right to express one’s ideas and opinions, to distribute available information, and to deliberate openly and uninhibitedly about matters of general concern is an indispensable condition for the consolidation, operation, and preservation of democratic regimes. The creation of a public opinion that is informed and aware of its rights, citizen control of the public administration, and the accountability of state officials would not be possible if this right were not guaranteed. Moreover, the legal precedents have stressed that the democratic function of freedom of expression makes it a necessary condition for preventing the establishment of authoritarian systems and for facilitating individual and collective self-determination<sup>720</sup> and making “mechanisms of citizen control and complaint” operational.<sup>721</sup>

491. The Court has ruled that freedom of expression has both an individual and a social dimension. The first dimension of freedom of expression goes further than the theoretical recognition of the right to speak or to write; it also includes – and cannot be separated from – the right to use whatever medium deemed appropriate to impart ideas and to have them reach as wide an audience as possible.<sup>722</sup> In connection with the second element of the right of free expression, its social dimension, the Court has ruled that freedom of expression is a way of exchanging ideas and information between persons; it includes the right to try to communicate one’s point of view to others, but it also implies everyone’s right to receive other people’s opinions, information, and news.<sup>723</sup>

492. At the same time, freedom of association, enshrined in Article 16 of the Convention, protects the right and freedom to associate freely with other people, without any interference by the public authorities that could limit or impair the exercise of that right. It relates, therefore, to the right to join with others in lawful common pursuits, without pressure or interference that may alter or impair the nature of such a purpose.<sup>724</sup> According to the text of Article 16 itself, those “lawful pursuits” are not restricted to any particular area: the article refers to “ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.” The Court has analyzed Article

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<sup>718</sup> I/A Court H. R., *Case of Ricardo Canese v. Paraguay*, Merits, Reparations, and Costs, Judgment of August 31, 2004, Series C No. 111, para. 77.

<sup>719</sup> I/A Court H. R., *Case of Ricardo Canese v. Paraguay*, Merits, Reparations, and Costs, Judgment of August 31, 2004, Series C No. 111, paras. 89 and 90.

<sup>720</sup> I/A Court H. R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29, American Convention on Human Rights), Advisory Opinion OC-5/85, November 13, 1985, Series A No. 5, para. 70; *Case of Claude Reyes et al. v. Chile*, Merits, Reparations, and Costs, Judgment of September 19, 2006, Series C No. 151, para. 85.

<sup>721</sup> I/A Court H. R., *Case of Ríos et al. v. Venezuela*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of January 28, 2009, Series C No. 194, para. 105; I/A Court H. R., *Case of Perozo et al. v. Venezuela*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of January 28, 2009, Series C No. 195, para. 116.

<sup>722</sup> I/A Court H. R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29, American Convention on Human Rights), Advisory Opinion OC-5/85, November 13, 1985, Series A No. 5, para. 31.

<sup>723</sup> I/A Court H. R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107, para. 110; I/A Court H. R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111, para. 79; I/A Court H. R., *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile*, Judgment of February 5, 2001, Series C No. 73, para. 66.

<sup>724</sup> I/A Court H. R., *Case of Kawas Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, para. 143.

16 both with respect to trade-unionism<sup>725</sup> and in the context of association for other “lawful pursuits,” such as participation in political parties<sup>726</sup> and the defense of the environment and human rights.<sup>727</sup>

493. As with freedom of expression, the Court has spoken of the dual dimension of the right of association: an individual dimension that is breached when the individual exercise of the right is interfered with, and a social dimension that is breached by the “intimidating effect” of incidents that affect “the right and the freedom of a specific group to associate freely without fear.”<sup>728</sup> The Court has acknowledged that freedom of association can only be fully enjoyed in a context in which fundamental human rights are respected and guaranteed, in particular the right to life and personal security.<sup>729</sup> Consequently, an impairment of the right to life or to humane treatment attributable to the State may, in turn, give rise to a violation of Article 16.1 of the Convention when that violation arises from the victim’s legitimate exercise of the right to freedom of association.<sup>730</sup>

494. The Inter-American Court has established that the murder of an individual because of his pursuit of a given activity has an inhibiting effect on its pursuit by other people. For example, in connection with the right of association and the freedom to organize unions, in the *Huilca Tecse* case the Court found that the killing of a trade-union leader because of his union activities and his criticisms of the government violated the victim’s own freedom of association and, at the same time, restricted the right of certain people to associate freely without fear.<sup>731</sup>

495. Similarly, the IACHR has considered that Article 13 of the Convention is also violated when a victim is executed, disappeared, or tortured on account of his or her ideas or opinions or to keep him from spreading them. In addition, when the State violates the right to life or humane treatment of a journalist in the pursuit of his or her profession and as a consequence of his or her work, both the individual and social dimensions of freedom of expression are breached.<sup>732</sup> The IACHR has made it clear that the authorities have the duty to ensure the protection of journalists so they can fully exercise their right of free expression<sup>733</sup> and so they can protect their rights, and those of their next-of-kin, to life, security, and humane treatment. It has also said that in

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<sup>725</sup> I/A Court H. R., *Case of Huilca Tecse v. Peru*, Merits, Reparations, and Costs, Judgment of March 3, 2005, Series C No. 121; I/A Court H. R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 10, 2007, Series C No. 167

<sup>726</sup> I/A Court H. R., *Case of Manuel Cepeda Vargas v. Colombia*, Preliminary Objections, Merits, and Reparations, Judgment of May 26, 2010, Series C No. 213, para. 172.

<sup>727</sup> I/A Court H. R., *Case of Kawas Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, paras. 145-149.

<sup>728</sup> I/A Court H. R., *Case of Huilca Tecse v. Peru*, Merits, Reparations, and Costs, Judgment of March 3, 2005, Series C No. 121, paras. 70-72; I/A Court H. R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 10, 2007, Series C No. 167, para. 148.

<sup>729</sup> I/A Court H. R., *Case of Huilca Tecse v. Peru*, Merits, Reparations, and Costs, Judgment of March 3, 2005, Series C No. 121, para. 75; I/A Court H. R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 10, 2007, Series C No. 167, para. 146.

<sup>730</sup> I/A Court H. R., *Case of Kawas Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, para. 150.

<sup>731</sup> I/A Court H. R., *Case of Huilca Tecse v. Peru*, Merits, Reparations, and Costs, Judgment of March 3, 2005, Series C No. 121, para. 66.

<sup>732</sup> IACHR, Report No. 38/97, Case 10.548, Merits, Hugo Bustíos Saavedra, Peru, October 16, 1997, paras. 76-77.

<sup>733</sup> IACHR, Report No. 50/99, Case 11.739, Admissibility and Merits, Héctor Félix Miranda, Mexico, April 13, 1999; Report No. 130/99, Case 11.740, Admissibility and Merits, Víctor Manuel Oropeza, Mexico, November 19, 1999.

cases of attacks on people for their ideas or statements, the State's failure to conduct an investigation and enforce the law triggers its international responsibility. Freedom of expression must be protected by effective judicial guarantees that allow the investigation, punishment, and reparation of abuses and crimes committed against people as a result of their professional work.<sup>734</sup>

496. Of course, not every murder, intimidation or act of aggression against a person or group that seeks to influence the community results in a violation of the right to freedom of thought and expression or the right of association. In order for a violation of said rights to occur, it must be demonstrated or be reasonable to infer that the murder, intimidation or act of aggression was motivated by the desire to silence expression or impede the victim's associations.

497. The Commission again points out that the facts of the case at hand took place in the context of a military dictatorship that severely restricted democratic rights, including the right of individuals to freely express themselves and associate with others.

498. In its 1981 *Report on the Situation of Human Rights in the Republic of Guatemala*, the Commission noted that "freedom of thought and expression is constrained by the prevailing climate of fear and threat."<sup>735</sup> It also reported that "both the right of assembly and freedom of association lack sufficient guarantees, and have been abridged by acts in which, according to those documents and information, the military and public security forces are implicated."<sup>736</sup> At the time, the Commission also stated that there were "indications that the police force has undertaken organized actions to break up any activities giving evidence of opposition to government sectors."<sup>737</sup>

499. Similarly, the CEH referred to both legal and practical restrictions on the exercise of free expression, particularly in the political arena. Among the legal constraints, the CEH referred to the Law Defending Democratic Institutions, in force from 1965 to 1985, which criminalized various forms of communist propaganda. With that statute, according to the CEH, "for twenty years, freedom of expression was in practice dependent on the authorities' definition of communist."<sup>738</sup> The CEH also noted that "during this period, the word 'communist' was used indiscriminately to attack and disqualify political opponents."<sup>739</sup>

500. From a practical viewpoint, the CEH stated that "during the period of the armed conflict [...] in Guatemala, the simple act of thinking became dangerous and writing about ideas or facts and events in the country's political and social life meant running the risk of being threatened,

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<sup>734</sup> In the case of the journalist Héctor Félix Miranda, murdered in Mexico, the IACHR clearly indicated that the only way to avoid the consequences of a journalist's death and the State's failure to fully investigate those incidents, such as creation of incentives for the continued commission of such crimes or their silencing effect, is through swift state action in prosecuting and punishing the people responsible. The IACHR adopted a similar stance in the case of the murder of Víctor Manuel Oropeza. In that case, the Commission did not find that the State was directly responsible for the journalist's death. However, after establishing that he had been the target of threats for his articles, that no protective efforts had been made, and that the investigation of his killing had been deficient, the IACHR found that the victim's right of freedom of expression had been violated. IACHR, Report No. 50/99, Case 11.739, Admissibility and Merits, Héctor Félix Miranda, Mexico, April 13, 1999.

<sup>735</sup> IACHR, *Report on the Situation of Human Rights in the Republic of Guatemala*, OEA/Ser.L/V/II.53 Doc. 21 rev. 2, October 13, 1981, Ch. VII, B, para. 1.

<sup>736</sup> IACHR, *Report on the Situation of Human Rights in the Republic of Guatemala*, OEA/Ser.L/V/II.53 Doc. 21 rev. 2, October 13, 1981, Ch. VIII, B, para. 2.

<sup>737</sup> IACHR, *Report on the Situation of Human Rights in the Republic of Guatemala*, OEA/Ser.L/V/II.53 Doc. 21 rev. 2, October 13, 1981, Ch. V, D, para. 3.

<sup>738</sup> CEH, *Guatemala: Memory of Silence*, Vol. III, Ch. 2, Title XVII: Freedom of Expression, pp. 152-53.

<sup>739</sup> CEH, *Guatemala: Memory of Silence*, Vol. III, Ch. 2, Title XVII: Freedom of Expression, p. 153.

tortured, disappeared, or killed.”<sup>740</sup> In connection with this, it should be recalled that the concept of the internal enemy’ used by the Guatemalan security forces was not restricted to the armed insurrectionist groups; instead, it was expanded progressively to cover any opinion or movement that diverged or differed from the government line, including intellectuals, artists, students, teachers, union leaders, and many other varied groups who suffered the consequences of the systematic violence that occurred during the period.<sup>741</sup>

501. As already noted, the *Diario Militar* classified the people taken into custody, including the victims in the instant case, according to their alleged membership in opposition or insurgent groups. The *Diario Militar* contains this sort of explicit classification for all the victims of the instant case, with the exception of Lesbia Lucrecia García Escobar and the minors Juan Pablo and Maria Quirina Armira López; even with regard to these latter cases, the *Diario Militar* includes information that associates the three victims with opposition groups or activities. According to the petitioners, the disappeared victims were “trade unionists, student leaders, scientific researchers, lawyers, professors, teachers, and members or leaders of grassroots movements” who were “selected according to their real or alleged political activities.”<sup>742</sup> The State offered no detailed comments on the alleged violation of the rights of free expression and association; however, in its publication *The Authenticity of the Diario Militar, in Light of the Historical Documents of the National Police*, the Secretariat for Peace noted that “the *Diario Militar* is a document that records information on members of the various guerrilla organizations that the counterinsurgency strategy directly targeted.”<sup>743</sup>

502. According to the evidence presented, the Commission takes it as established that the forced disappearances of the victims in this case occurred as a consequence of the security forces’ belief that political opponents or members of any left-wing organization were, *ipso facto*, enemies of the State and, without any judicial process, were deemed members of guerrilla movements. The evidence submitted to the Commission indicates that the victims were, in general, individuals with some degree of opposition political activity, in some cases clandestine. Nevertheless, whether or not the victims’ alleged activities were “licit” in the terms of Article 16 of the Convention, the Commission believes that the simple fact of forcibly disappearing someone on account of their alleged ideas or their exercise of the right of association represents a violation of the State’s obligations under Articles 13 and 16 of the Convention. Even if those opinions or associations were liable to restriction under the Convention, the State could only penalize them through previously established laws that were compatible with the Convention, guaranteeing at all times the right of due process and in no case resorting to such measures of extreme arbitrariness and violence as forced disappearance.

503. In light of the above considerations, the IACHR holds that in the case at hand the State of Guatemala did violate Articles 13 and 16 of the Convention with respect to the 26 victims who remain disappeared as well as with respect to Rudy Gustavo Figueroa Muñoz.

504. In addition, the Commission finds that following the forced disappearances committed in this case, the victims’ families were restricted in their right to report the incidents because of the climate of repression prevailing in the country. With regard to the conditions that existed for reporting incidents such as those described in this case, the CEH’s report notes that

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<sup>740</sup> CEH, *Guatemala: Memory of Silence*, Vol. III, Ch. 2, Title XVII: Freedom of Expression, p. 153.

<sup>741</sup> CEH, *Guatemala: Memory of Silence*, Vol. II, Ch. 2, Title XI: Forced Disappearances, p. 426.

<sup>742</sup> Petitioners’ merits submission, received on March 15, 2007, p. 133.

<sup>743</sup> Secretariat for Peace of the Office of the President of the Republic of Guatemala, *The Authenticity of the Diario Militar*, Guatemala, May 2009, p. xiii.



between 1982 and 1986, "after the killings and threats that had affected lawyers and judges [...] it was extremely difficult to find an attorney who was willing, for example, to take on a case involving disappeared detainees."<sup>744</sup> Moreover, "because of the persecution, by 1982 no formal organizations for victims or the relatives of the disappeared remained in existence."<sup>745</sup>

505. As described by the IACHR in its *Third Report on the Situation of Human Rights in the Republic of Guatemala*, the association of victims' families known as the GAM was established on June 4, 1984.<sup>746</sup> However, and as the IACHR also reported at the time, the members and leaders of GAM were subject to "continuous threats, pressure, and persecution," including death threats, being tailed by the security forces, extrajudicial killings, and forced disappearances.<sup>747</sup>

506. Similarly, the testimonies given by the relatives of the victims in the case at hand report the threats and intimidation suffered by the members and leaders of GAM and FAMDEGUA on account of their participation in those organizations.<sup>748</sup> In particular, FAMDEGUA founder Aura Elena Farfán said in her testimony that on one occasion, two armed men stopped her vehicle "and took us along the road to Amatitlán; of course, not so peaceably: first they would hold a gun to my head, then to my back, then to my... to my ribs. (...) They asked me to identify myself, didn't they? To hand over my ID card to identify myself. They identified my surname, the region where I was born, and a series of questions (...) and I answered the questions they... that they asked me, right? What were we doing, where were we going, what job it was, why we were doing it, who worked with us, who gave us money, why we made accusations against the army. And, no doubt about it, they were members of the army; and I say that because you can recognize army men by their look, by their haircuts."<sup>749</sup>

507. Similarly, regarding the constant surveillance of GAM members, María Ofelia Salanic Chiguil stated, with reference to her father, that: "Sometimes, he went out alone and he would say that... that men followed him, and they were always following behind him. I went with him a couple of times, and I realized they were being watched (...)." <sup>750</sup> Talking about his mother's case, Miguel Ángel Alvarado Arévalo said: "On one occasion she came and told us that as they were leaving the... the... the headquarters, of the Support Group, which at the time was in Zone 11, some men in a car with tinted windows followed them, slowly, for a good while, and they tried to quicken their step, to get away, and that was the type of intimidation they suffered."<sup>751</sup> The circumstances had an intimidating effect on the relatives of some of the abducted and disappeared victims, who chose to refrain from actively participating in the organizations out of fear of reprisals.<sup>752</sup>

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<sup>744</sup> CEH, *Guatemala: Memory of Silence*, Vol. III, Ch. 2, Title XVI: Denial of Justice, p. 146.

<sup>745</sup> CEH, *Guatemala: Memory of Silence*, Vol. III, Ch. 2, Title XVI: Denial of Justice, p. 146.

<sup>746</sup> IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, OEA/Ser.L/V/II.66, Adopted on October 3, 1985, Ch. 2, para. 71.

<sup>747</sup> IACHR, *Third Report on the Situation of Human Rights in the Republic of Guatemala*, OEA/Ser.L/V/II.66, adopted on October 3, 1985, Ch. 2, paras. 92-97.

<sup>748</sup> See, for example: Petitioners' submission, received on March 26, 2007: Annex XXXIV-N, Testimony of Hugo Leonel Ramírez Gálvez, dated January 28, 2005; Petitioners' submission, received on March 23, 2009: Statement of Makrina Gudiel Álvarez, dated March 24, 2008.

<sup>749</sup> Original petition, received on December 9, 2005: Annex XL-G, Statement of Aura Elena Farfán, dated February 7, 2005.

<sup>750</sup> Original petition, received on December 9, 2005: Annex XXXIII-F, Statement of María Ofelia Salanic Chiguil, dated February 9, 2005.

<sup>751</sup> Original petition, received on December 9, 2005: Joint statement of Miguel Ángel Alvarado Arévalo and Tania Marbella Alvarado Arévalo, dated November 2, 2004.

<sup>752</sup> See, for example: Original petition, received on December 9, 2005: Annex XXVIII-D, Statement of Reyna de Jesús Escobar Rodríguez and Marlyn Carolina Hernández Escobar, dated March 2, 2005; and Annex XXX-G, Statement of  
Continues....

508. In light of the above considerations, the Commission believes that at the time of the events in the case at hand, there were objectively no guarantees for freely denouncing serious human rights violations in Guatemala, or for the relatives of victims to meet free of threats and harassment in the associations they created to help search for their abducted and disappeared family members. The evidence presented by the petitioners and not challenged by the State indicates that the relatives of several of this case's victims were indeed explicitly warned by the security forces not to report that their family members had been taken into custody. Many of them also suffered harassment, threats, and surveillance, and some had to flee the country. In light of the context described and the evidence submitted, the IACHR therefore declares that the State of Guatemala did violate Articles 13 and 16 of the Convention, in conjunction with Article 1.1, with respect to the next-of-kin of the disappeared victims in this case.

**J. Freedom of Movement and Residence: Article 22<sup>753</sup> of the Convention, in conjunction with Article 1.1 thereof**

509. Article 22 of the American Convention protects the right to freedom of movement and residence; thus, all persons lawfully within a state have the right to move freely within that state and to freely choose their place of residence in it, along with the right to enter, remain in, or leave the state's territory without any unlawful interference.<sup>754</sup> In addition, the Court has ruled that the right of free movement and residence:

can be violated when a person suffers threats or harassment and the state does not provide the guarantees for him to move freely and reside in the territory in question, even when those responsible for the threats and harassments are not state agents.<sup>755</sup>

510. Thus, in the *Valle Jaramillo* case, the Court found that Article 22.1 of the Convention had been violated with respect to several individuals who were forced into exile "without being able or wanting to return home owing to a well-founded fear of persecution."<sup>756</sup>

511. In that same case, the Court spoke of the social, family, and economic impact that their exile had on those individuals.<sup>757</sup> In this regard, in the case of *Goiburú et al.*, the Court found that Article 5 of the Convention had been violated, partly on account of the suffering inflicted on a victim and his relatives who were forced to leave their country and go into exile.<sup>758</sup>

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...continuation

Ana Dolores Monroy Peralta de Calvo, dated November 2, 2004. Petitioners' submission, received on March 23, 2009: Statement of Rudy Alberto Figueroa Maldonado, dated March 28, 2008.

<sup>753</sup> Article 22.1 of the Convention provides: "Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law."

<sup>754</sup> I/A Court H. R., *Case of Valle Jaramillo et al. v. Colombia*, Merits, Reparations, and Costs, Judgment of November 27, 2008, Series C No. 192, para. 138.

<sup>755</sup> I/A Court H. R., *Case of Valle Jaramillo et al. v. Colombia*, Merits, Reparations, and Costs, Judgment of November 27, 2008, Series C No. 192, para. 139.

<sup>756</sup> I/A Court H. R., *Case of Valle Jaramillo et al. v. Colombia*, Merits, Reparations, and Costs, Judgment of November 27, 2008, Series C No. 192, paras. 140, 141, 144.

<sup>757</sup> I/A Court H. R., *Case of Valle Jaramillo et al. v. Colombia*, Merits, Reparations, and Costs, Judgment of November 27, 2008, Series C No. 192, para. 141.

<sup>758</sup> I/A Court H. R., *Case of Goiburú et al. v. Paraguay*, Merits, Reparations, and Costs, Judgment of September 22, 2006, Series C No. 153, paras. 99(a)-(c), 101(a).

512. As indicated by the established facts, various family members of several of the disappeared victims in the case at hand had to leave Guatemala, either permanently or semi-permanently, as a consequence of the forced disappearances. Thus, the information furnished by the petitioners and not disputed by the State of Guatemala establishes that relatives of José Miguel Gudiel Álvarez,<sup>759</sup> Orencio Sosa Calderón,<sup>760</sup> Amancio Samuel Villatoro,<sup>761</sup> Luz Haydeé Méndez Calderón,<sup>762</sup> Alfonso Alvarado Palencia,<sup>763</sup> and Crescencio Gómez López<sup>764</sup> went into exile in the aftermath of the forced disappearances. In many cases, their departure was directly caused by the disappearances and other manifestations of violence against the families involved. In other cases, exile was an indirect result of the forced disappearance, such as when the economic sustenance of the family was lost. In all these cases, the Commission believes that the causal relationship with the forced disappearances in question is sufficiently solid to affirm that the State was responsible for these persons being forced to leave Guatemala for extended periods. In light of the aforementioned jurisprudence of the Inter-American Court, the IACHR finds that in the case at hand, the State of Guatemala violated Article 22 of the American Convention, in conjunction with Article 1.1, with respect to the individuals identified above.

## VII. CONCLUSIONS

513. Based on the legal and factual considerations set out in this report, the Commission concludes that the State of Guatemala is responsible for the forced disappearances of the 26 victims identified in this report, for the forced disappearance and extrajudicial killing of Rudy Gustavo Figueroa Muñoz, and for the abduction and torture of the minor child Wendy Santizo Méndez. In addition, the State is responsible for violating the right to humane treatment of the victims' next-of-kin.

514. The State is also responsible for the grave consequences suffered by the victims' next-of-kin, including breaches of the rights of the family and the right to residence, to identity, and to dignity. In addition, the State failed in its special duty of protection toward children.

515. The State is likewise responsible for not having conducted a serious and effective investigation within a reasonable time following the incidents described in the case at hand.

516. The Commission concludes that the State is responsible for concealing information – including, chiefly, the *Diario Militar* itself – about what happened to the disappeared victims, and,

517. In light of those conclusions, the Commission declares that the State of Guatemala violated, in the case at hand:

- Articles 3, 4, 5, and 7 of the American Convention on Human Rights, in conjunction with Article 1.1 thereof, with respect to the victims who remain disappeared: José Miguel Gudiel Álvarez, Orencio Sosa Calderón, Óscar Eduardo Barillas Barrientos, José Porfirio Hernández Bonilla, Octavio René Guzmán Castañeda, Álvaro Zacarías

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<sup>759</sup> Makrina Gudiel Álvarez (sister), María Agripina Álvarez de Gudiel (mother), Florentín Gudiel Ramos (father, murdered in 2004), José Francisco Gudiel Álvarez (brother), Yolanda Gudiel Álvarez (sister), Beatriz Gudiel Álvarez (sister), and Florentín Gudiel Álvarez (brother).

<sup>760</sup> María Consuelo Pérez Arenales (wife).

<sup>761</sup> Sergio Raúl Villatoro (brother).

<sup>762</sup> Wendy Santizo Méndez (daughter).

<sup>763</sup> María Regina Sánchez Morales (wife).

<sup>764</sup> Fredy Anelson Gómez Moreira (son).

Calvo Pérez, Víctor Manuel Calderón Díaz, Amancio Samuel Villatoro, Manuel Ismael Salanic Chiguil, Carlos Guillermo Ramírez Gálvez, Sergio Saúl Linares Morales, Luz Haydeé Méndez Calderón, Juan Pablo Armira López, María Quirina Armira López, Lesbia Lucrecia García Escobar, Otto René Estrada Illescas, Julio Alberto Estrada Illescas, Rubén Amílcar Farfán, Sergio Leonel Alvarado Arévalo, Joaquín Rodas Andrade, Alfonso Alvarado Palencia, Zoilo Canales Salazar, Moisés Canales Godoy, Félix Estrada Mejía, Crescencio Gómez López, and Luis Rolando Peñate Lima.

- Articles 3, 4, 5, and 7 of the American Convention on Human Rights, in conjunction with Article 1.1 thereof, with respect to the victim Rudy Gustavo Figueroa Muñoz.
- Articles 5, 7, 11, and 19 of the American Convention on Human Rights, together with Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, with respect to the victim Wendy Santizo Méndez.
- Article 19 of the American Convention on Human Rights, in conjunction with Article 1.1 thereof, with respect to the disappeared victims Juan Pablo Armira López and María Quirina Armira López.
- Article 5 of the American Convention on Human Rights, in conjunction with Article 1.1 thereof, with respect to the next-of-kin of the 26 victims who were abducted and disappeared, with respect to the next-of-kin of Rudy Gustavo Figueroa Muñoz, and with respect to the next-of-kin of Wendy Santizo Méndez.
- Article 17 of the American Convention on Human Rights, in conjunction with Article 1.1 thereof, with respect to the next-of-kin of the 26 victims who were abducted and disappeared, with respect to the next-of-kin of Rudy Gustavo Figueroa Muñoz, and with respect to the next-of-kin of Wendy Santizo Méndez.
- Articles 8 and 25 of the American Convention on Human Rights, in conjunction with Articles 1.1 and 2 thereof, together with Article I of the Inter-American Convention on Forced Disappearance of Persons and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, with respect to the disappeared victims, with respect to Rudy Gustavo Figueroa Muñoz, and with respect to their next-of-kin. Similarly, Articles 8 and 25 of the American Convention on Human Rights, in conjunction with Articles 1.1 and 2 thereof, together with Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, with respect to the victim Wendy Santizo Méndez and her next-of-kin.
- Articles 13 and 23 of the American Convention on Human Rights, in conjunction with Articles 1.1 and 2 thereof, as regards the right of access to information, with respect to the next-of-kin of the 26 victims who were abducted and disappeared and with respect to the next-of-kin of Rudy Gustavo Figueroa Muñoz.
- Articles 13 and 16 of the American Convention on Human Rights, in conjunction with Article 1.1 thereof, with respect to the 26 victims who were abducted and disappeared, with respect to Rudy Gustavo Figueroa Muñoz, and with respect to their next-of-kin.

- Article 22 of the American Convention on Human Rights, in conjunction with Article 1.1 thereof, with respect to the next-of-kin of the victims who are identified in section VI.J. of this report.

## **VIII. RECOMMENDATIONS**

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

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF GUATEMALA:**

1. Immediately take the appropriate steps to recommence the investigation in order to identify, prosecute, and punish the persons responsible for planning and perpetrating the human rights violations committed against the victims in the instant case and to bring it to an effective conclusion within a reasonable time. In complying with this recommendation, the State should bear in mind that serious human rights violations are not subject to amnesties or statutes of limitations, and it should ensure that the National Reconciliation Law, Decree No. 145-96, does not pose an obstacle to the criminal prosecution of those crimes.

2. Immediately take the relevant steps to search for and identify the disappeared victims. When human remains are found and identified, the State shall hand them over, in accordance with their wishes, to the next-of-kin, and it shall cover the burial expenses.

3. Grant comprehensive redress to Wendy Santizo Méndez and to the next-of-kin of the other victims in this case, including fair compensation, physical and psychological treatment, and the organization of symbolically important ceremonies that contribute to the satisfaction and rehabilitation of the victims and to guaranteeing the non-repetition of such acts.

4. Ensure unrestricted and immediate access by the judicial authorities and, through them, by the victims and their legal representatives, to all information held by the State that could assist in clarifying the human rights violations committed in the case at hand and in identifying the individuals responsible for those violations. The State should also ensure the full enforcement of the Law on Access to Public Information, Decree 57-2008, taking into account the inter-American standards on the right of access to information.

5. As a guarantee of non-repetition, implement training courses on human rights for the state authorities charged with intelligence, defense, and security functions. These courses should make particular reference to the inter-American standards regarding human rights, the obligation of all authorities to cooperate in full with investigations into human rights violations, and the scope and importance of the right of access to information, particularly as regards human rights violations.

6. As a guarantee of non-repetition, strengthen the institutions of the criminal justice system, including by increasing their respective budgets.