



**ORGANIZATION OF AMERICAN STATES**  
**Inter-American Commission on Human Rights**

Application filed with the Inter-American Court of Human Rights  
in the case of  
María Tiu Tojín and Josefa Tiu Tojín  
(Case 10,686)  
against the Republic of Guatemala

**DELEGATES:**

Víctor Abramovich, Commissioner  
Santiago A. Canton, Executive Secretary

**ADVISORS:**

Elizabeth Abi-Mershed  
Isabel Madariaga  
Juan Pablo Albán

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1889 F Street, N.W.  
Washington, D.C., 20006

## TABLE OF CONTENTS

	Page
I. INTRODUCTION .....	1
II. PURPOSE OF THE APPLICATION .....	2
III. REPRESENTATION .....	3
IV. JURISDICTION OF THE COURT .....	3
V. PROCESSING WITH THE INTER-AMERICAN COMMISSION .....	3
VI. ACKNOWLEDGEMENT OF RESPONSIBILITY, PARTIAL FULFILLMENT OF THE COMMISSION'S RECOMMENDATIONS AND PARTIAL REPARATION OF THE DAMAGES CAUSED BY THE HUMAN RIGHTS VIOLATIONS THAT ARE THE SUBJECT MATTER OF THE PRESENT CASE .....	8
VII. THE FACTS .....	11
A. Assessing the evidence .....	11
B. General context .....	13
1. Internal armed conflict .....	13
2. The practice of forced disappearance in Guatemala at the time the events in this case occurred .....	14
3. The victims .....	16
C. The detention and forced disappearance of María Tiu Tojín and her infant daughter Josefa Tiu Tojín .....	18
D. Involvement of State agents in the events in question .....	19
E. Subsequent events: The failure to investigate the facts .....	20
VIII. THE LAW .....	21
A. General considerations .....	21
B. Violation of the right to personal liberty .....	23
C. Violation of the right to humane treatment .....	27
D. Violation of the right to life .....	31
E. Violation of the rights to a fair trial and to judicial protection .....	33
F. Violation of the rights of the child .....	40
G. Failure to comply with the general obligation to respect and ensure the human rights recognized in the Convention .....	42
IX. REPARATIONS AND COSTS .....	44
A. Obligation to make reparations .....	44
B. Measures of reparation .....	45
1. Measures for cessation, satisfaction and guarantees of non-repetition. ....	47
2. Measures of compensation .....	49

	Page
C.    The beneficiaries .....	50
D.    Costs and expenses .....	50
X.    CONCLUSION .....	50
XI.   OBJECT OF THE APPLICATION .....	51
XII.  EVIDENTIARY SUPPORTS .....	52
A.    Documentary evidence .....	52
B.    Testimonial and expert evidence .....	53
1.    Witnesses.....	53
2.    Experts.....	53
XIII. PARTICULARS ON THE ORIGINAL COMPLAINANTS, THE VICTIMS AND THEIR NEXT OF KIN.....	53

**APPLICATION FILED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS WITH THE  
INTER-AMERICAN COURT OF HUMAN RIGHTS AGAINST THE REPUBLIC OF GUATEMALA**

**CASE 10,686  
MARÍA TIU TOJÍN AND JOSEFA TIU TOJÍN**

**I. INTRODUCTION**

1. The Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) is hereby submitting an application to the Inter-American Court of Human Rights (“the Inter-American Court” or “the Court”) in case No. 10,686, María Tiu Tojín and Josefa Tiu Tojín. The case is brought against the Republic of Guatemala (hereinafter “the State,” “the Guatemalan State” or “Guatemala”) for its responsibility in the unlawful arrest and forced disappearance of María Tiu Tojín and her infant daughter Josefa Tiu Tojín (hereinafter “the victims”),<sup>1</sup> in events that began in Nebaj, in the department of El Quiché, on August 29, 1990; for its subsequent lack of due diligence in investigating the facts, and for having denied justice to the victims’ next of kin.

2. The Inter-American Commission is requesting that it may please the Court to adjudge and declare the international responsibility of the Guatemalan State, which has failed to comply with its international obligations by the following:

a) Violations of articles 4, 5, 7, 8 and 25 of the American Convention on Human Rights (“the American Convention” or “the Convention”), in relation to the general obligation established in Article 1(1) thereof, which is to respect and ensure the human rights recognized in the Convention; and Article I of the Inter-American Convention on Forced Disappearance of Persons, all to the detriment of María Tiu Tojín and Josefa Tiu Tojín;

b) Violation of Article 19 of the American Convention, in relation to the general obligation contained in Article 1(1) thereof, to the detriment of the infant Josefa Tiu Tojín; and

c) Violation of articles 5, 8 and 25 of the American Convention, in relation to the general obligation contained in Article 1(1) thereof, which is to respect and ensure the human rights recognized in the American Convention, to the detriment of the victims’ next of kin.

3. The procedure required under the American Convention has been followed in processing the instant case, which is filed with the Inter-American Court in accordance with Article 33 of the Court’s Rules of Procedure. A copy of Report 71/04, prepared in accordance with Article 50 of the Convention, is affixed as an appendix to this application.<sup>2</sup>

4. The Commission appreciates the positive attitude taken by the Guatemalan State, which has acknowledged the facts and has recognized the international responsibility it has incurred by virtue of them. The Commission also appreciates the efforts made to try to redress, at least in part, the human rights violations that the victims in this case suffered, all of which have full effect for purposes of the legal action now being brought.

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<sup>1</sup> As will be detailed below, Victoria Tiu Tojín, sister and aunt of the disappeared, is also a victim in this case. However, the term “victims” will be reserved for María Tiu Tojín and her daughter Josefa Tiu Tojín; the expression “the victims’ next of kin” will be used to refer to members of their family, among them Victoria Tiu Tojín.

<sup>2</sup> See Appendix 1, IACHR, Report No. 71/04 (Admissibility and Merits), Case 10,686, *María Tiu Tojín and Josefa Tiu Tojín*, Guatemala, October 18, 2004.

5. Nevertheless, the disappearance of María Tiu Tojín and her infant daughter Josefa is still an unsolved and unpunished crime, which merely prolongs the suffering that violations of basic rights cause; it is the Guatemalan State's duty to provide an adequate judicial response, to establish the identity of the responsible parties, and to locate the victims' remains so that next of kin may receive proper redress.

6. The present case reflects the abuses committed during the internal conflict by members of the military forces, against the indigenous Mayan people, members of organizations dedicated to advancing indigenous peoples' rights and the rights of communities of people in resistance (henceforth the "CPR").<sup>3</sup>

## II. PURPOSE OF THE APPLICATION

7. The purpose of the present application is to respectfully request the Court to adjudge and declare that:

- a) the Guatemalan State is responsible for violation of articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention, in relation to the general obligation to respect and ensure the Convention-recognized right, established in Article 1(1) thereof; and Article I of the Inter-American Convention on Forced Disappearance of Persons (hereinafter "Convention on Forced Disappearance"), to the detriment of María Tiu Tojín and Josefa Tiu Tojín;
- b) the Guatemalan State is responsible for violation of Article 19 (rights of the child) of the American Convention, in relation to the general obligation to respect and ensure the rights recognized in the Convention, as stipulated in Article 1(1) thereof, to the detriment of the infant Josefa Tiu Tojín; and
- c) the Guatemalan State is responsible for violation of articles 5 (right to humane treatment), 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention, in relation to the general obligation to respect and ensure the Convention-protected rights, contained in Article 1(1) thereof, to the detriment of Victoria Tiu Tojín, sister and aunt of the victims.

8. As a consequence of the above, and taking into consideration Guatemala's already considerable efforts with its acknowledgement of responsibility in the agreement it signed with the victims' next of kin on August 8, 2005 (*infra*, paragraph 34), the Inter-American Commission is requesting the Court to order the State:

- a) to conduct, through the civilian courts, a rigorous, impartial and effective special investigation for prosecution and punishment of the material and intellectual authors of the forced disappearance of María Tiu Tojín and baby Josefa Tiu Tojín;

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<sup>3</sup> Communities of Peoples in Resistance (CPR) were groups of uprooted families who resisted the tactics that the Guatemalan Army used against the displaced population as regards recovery and resettlement and establishment of control mechanisms. These communities decided to live in the mountains and jungles in the areas where the armed conflict was more intense. See Commission for Historical Clarification, *Guatemala, Memoria del Silencio*. Volume III, p. 242, available at <http://shr.aaas.org/guatemala/ceh/gmds/pdf/>.

- c) to take the necessary measures to locate the remains of María Tiu Tojín and Josefa Tiu Tojín and hand them over to their next of kin;
- d) to pay the legal costs and expenses that the victims' next of kin have incurred in bringing the case to the Inter-American Court, and
- e) to adopt all legislative, administrative and other measures necessary to avoid a recurrence of similar events, in furtherance of the duties to prevent and guarantee the fundamental rights recognized in the American Convention.

### III. REPRESENTATION

9. Pursuant to articles 22 and 33 of the Court's Rules of Procedure, the Commission has designated Commissioner Víctor Abramovich and its Executive Secretary, Santiago A. Canton, as delegates in the present case. Attorneys Elizabeth Abi-Mershed, Isabel Madariaga and Juan Pablo Albán, specialists with the IACHR's Executive Secretariat, have been designated to serve as legal advisors.

### IV. JURISDICTION OF THE COURT

10. Under Article 62(3) of the American Convention, the Inter-American Court has jurisdiction vis-à-vis any case submitted to it concerning the interpretation and application of the provisions of the Convention, provided that the States Parties to the case recognize or have recognized such jurisdiction.

11. The Court has jurisdiction to take up the present case. The State ratified the American Convention on May 25, 1978 and accepted its contentious jurisdiction on March 9, 1987.

12. The Court also has jurisdiction to take up the present case by virtue of the fact that the Guatemalan State deposited the instrument ratifying the Convention on Forced Disappearance of Persons on February 25, 2000. Under Articles III and VII of that instrument, the crime of forced disappearance "shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined" and "[c]riminal prosecution for the forced disappearance of persons and the penalty judicially imposed on its perpetrator shall not be subject to statutes of limitations." In its own interpretation of the continuous nature of the phenomenon of forced disappearance, the Inter-American Court wrote that

forced disappearance implies the violation of various human rights recognized in international human rights treaties, including the American Convention, and that the effects of such infringements -even though some may have been completed, as in the instant case- may be prolonged continuously or permanently until such time as the victim's fate or whereabouts are established.<sup>4</sup>

### V. PROCESSING WITH THE INTER-AMERICAN COMMISSION<sup>5</sup>

13. On October 17, 1990, the Commission received a complaint lodged by the Guatemalan Human Rights Commission, a non-governmental organization, in connection with the detention and disappearance of María Tiu Tojín and her infant daughter Josefa Tiu Tojín, perpetrated by agents of the Guatemalan State.

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<sup>4</sup> I/A Court H.R.; *Blake Case, Preliminary Objections*. Judgment of July 2, 1996. Series C No. 27; par. 39.

<sup>5</sup> This section recounts the history of the case in the IACHR. Appendix 2.

14. In keeping with the Regulations in force at that time, the Commission registered the case as number 10,686. On October 22, 1990, the Swiss-based nongovernmental organization "Christian Solidarity Worldwide" sent the Commission a copy of the complaint concerning these events. That complaint had been submitted to the Chief Justice of Guatemala's Supreme Court.

15. On October 24, 1990, the Commission forwarded the relevant parts of the complaint to the Guatemalan State, and invited it to present information on the matter within 90 days.

16. By a communication received at the Commission's Executive Secretariat on June 25, 1991, the State sent its response to the complaint and reported that judicial proceedings into the victims' abduction would be instituted in the Office of Judge Advocate No. 20 of the Department of El Quiché. That information was forwarded to the complainant organization -the Guatemalan Human Rights Commission- on July 12, 1991, which was given 30 days in which to present its observations.

17. On June 17, 1992, the IACHR asked the complainant organization to present, within 45 days, any additional information it might have in connection with the case. On August 5, 1993, the Commission asked the State about the progress made in the proceedings instituted into the detention and disappearance of María Tiu Tojín and her daughter Josefa Tiu Tojín, which it had mentioned in its note of June 25, 1991.

18. On August 24, 1993, the organization *Centro para la Acción Legal en Derechos Humanos* [Center for Human Rights Legal Action] (hereinafter "CALDH" or the "representatives of the victims and their next of kin") became a petitioner in the case and forwarded additional case-related information to the Commission, which the latter then forwarded to the State on August 31, 1993, giving it 30 days in which to present its observations.

19. On September 23, 1993, the CLADH provided additional information, which was also brought to the State's attention. The latter was given 30 days in which to forward its observations. The State did not file a response.

20. On January 31, 1994, the Inter-American Commission reiterated its request that the State supply information. It also advised the State that if the information was not forthcoming within 30 days, the Commission would consider application of Article 42 of the Regulations in force at the time.<sup>6</sup> On February 28, 1994, the State requested a 30-day extension of the time period for presenting its response to the complaint and to the additional information supplied by the representatives of the victims and their next of kin. Although the extension was granted, the State did not submit any response or supply any information.

21. On October 10, 1996, the IACHR requested updated information of the CALDH. It repeated its request on July 3, 1997. On July 8, 1997, the CALDH responded to the Commission's request for current information by stating that it was no longer representing the case.<sup>7</sup> On November 6, 2000, the IACHR again requested up-to-date information from the CALDH and the Guatemalan Human Rights Commission, the original complainant.

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<sup>6</sup> The provision in question read as follows:

The facts reported in the petition whose pertinent parts have been transmitted to the government of the State in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 34, paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

<sup>7</sup> Later, in a note received at the Commission's Executive Secretariat on May 12, 2004, the CALDH reported that it would continue to represent the victims' next of kin. IACHR case file.

22. On November 7, 2000, the IACHR requested information from the State and placed itself at the disposition of the State, the CALDH and the Guatemalan Human Rights Commission with a view to arriving at a friendly settlement. The parties were given 30 days in which to present their replies. On December 13, 2000, the State requested a 60-day extension. Despite the extension granted, the State never submitted its response.

23. On February 19, 2002, the IACHR informed the State and the CALDH of its decision to proceed in accordance with Article 37(3) of its Rules of Procedure. Accordingly, it asked them to formulate their final observations on the merits within a period of two months.

24. On December 8, 2003, the Commission asked that the State present its observations on the merits within no more than two months, in keeping with the terms of Article 38(1) of the Commission's Rules of Procedure. On February 11, 2004, the State requested a 30-day extension on the time period for presenting its observations. The Commission granted the extension.

25. On March 22, 2004, the State presented information to the Commission, which was forwarded to the CALDH on April 13, 2004. The latter was given one month in which to submit its observations. On May 12, 2004, the representatives of the victims and their next of kin requested a one-month extension, which was granted. On June 6, 2004, the representatives of the victims and their next of kin submitted their observations on the merits. The Commission forwarded those observations to the State on July 19, 2004, giving it one month in which to respond. On August 20, 2004, the State submitted its final observations.

26. On October 18, 2004, during its 121<sup>st</sup> session, the Commission approved the report on the admissibility and merits of the instant case, No. 71/04, prepared pursuant to Article 50 of the Convention. In that report the Commission concluded that:

- a. the Guatemalan State violated the right to personal liberty protected under Article 7 of the American Convention by arbitrarily detaining and then forcibly disappearing María Tiu Tojín and Josefa Tiu Tojín. The Guatemalan State also violated Article I of the Inter-American Convention on Forced Disappearance of Persons;
- b. the Guatemalan State violated the right to humane treatment protected under Article 5 of the American Convention, to the detriment of María Tiu Tojín, Josefa Tiu Tojín and Victoria Tiu, by having subjected the first two to cruel, inhuman and degrading punishment, and the third to the suffering caused to her by the victims' forced disappearance;
- c. the Guatemalan State violated the right to life protected under Article 4 of the American Convention, to the detriment of María Tiu Tojín and infant Josefa Tiu Tojín;
- d. the Guatemalan State violated, to the detriment of the infant Josefa Tiu Tojín, the right to the special measures of protection to which children are entitled under Article 19 of the American Convention;
- e. the Guatemalan State did not effectively resolve the petitions of *habeas corpus* filed by the victims' next of kin, nor did it conduct a serious and thorough investigation into the arbitrary detention and subsequent forced disappearance of María Tiu Tojín and the infant Josefa Tiu Tojín. The Guatemalan State thus failed to comply with its obligation to investigate and establish the facts and identify and punish those responsible and, by so doing, ensured that the crimes and those responsible would go unpunished. The Guatemalan State thus violated articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof; it also violated Article I(b) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of María Tiu Tojín and the infant Josefa Tiu Tojín, their family and Guatemalan society as a whole; and

f. through all of the above, the Guatemalan State violated its obligation under Article 1(1) of the American Convention, to respect the rights recognized therein and to ensure their free and full exercise to all persons subject to its jurisdiction.

27. In that report, the Commission made the following recommendations to the Guatemalan State:

1. publicly acknowledge its international responsibility for all the human rights violations established by the IACHR in the present report. Accordingly, with its highest ranking authorities in attendance, the State must stage an event at which it publicly acknowledges its international responsibility for the facts in this case, whose victims were María Tiu Tojín and Josefa Tiu Tojín.
2. conduct a rigorous, impartial and effective special investigation with a view to prosecuting and punishing, through the civilian court system, the material and intellectual authors of the forced disappearance of María Tiu Tojín and her infant daughter Josefa Tiu Tojín.
3. take the measures necessary to locate the remains of María Tiu Tojín and Josefa Tiu Tojín and return them to their next of kin. Take steps so that the victims' next of kin obtain adequate and prompt reparation for the violations herein established, which shall include compensation, public acknowledgement of the facts and a public apology to the victims' next of kin on the State's part.
4. pay to the victims' next of kin the reasonable costs and fees that they have incurred in the domestic proceedings and in the present international proceeding before the inter-American system for the protection of human rights.

28. The report on the merits was sent to the State on November 10, 2004, which was given two months in which to implement the recommendations contained therein. On that same date and pursuant to Article 43(3) of the Commission's Rules of Procedure, the Commission also notified the representatives of the victims and their next of kin that the report on the merits had been adopted and forwarded to the State; it also asked them to indicate their position as to whether the case should be submitted to the Inter-American Court.

29. On January 4, 2005, the State submitted a brief in which it expressed an interest in negotiating with the representatives of the victims and their next of kin for an eventual acknowledgement of its responsibility and a reparations agreement. The State's proposal was forwarded to the representatives of the victims and their next of kin on January 18, 2005. The representatives were given five days in which to present their comments.

30. On January 18, 2005, the representatives of the victims and their next of kin expressed their interest in bringing the case to the Court. Then, on January 21, 2005, they expressed an interest in instituting negotiations with the State, under the following conditions:

That a one-time extension on the time period stipulated in Article 51(1) of the Convention be requested; that within four months of the date on which the extension is granted: a public ceremony will be held at which the State will acknowledge its international responsibility and apologize publicly to the victims' next of kin; that a special investigation into the facts of this case will be instituted and that the agreement on economic reparations will be signed.

31. On January 24, 2005, the Secretariat advised the State of the response received from the representatives of the victims and their next of kin. It gave the State 5 days in which to present its comments.

32. In the belief that it might reach a friendly settlement agreement with the representatives of the victims and their next of kin, by note number M12-OEA-D.1.3 040-05 of

January 28, 2005 the Guatemalan State requested an extension of the time period allowed under Article 51(1) of the Convention. By note number M12-OEA-D.1.3 048-05, dated February 1, 2005, the State expressly and irrevocably acknowledged that the grant of an extension would have the effect of suspending the time period for submitting the case to the Court. On February 8, 2005, the Commission granted the State a three-month extension, effective February 8, 2005; in other words, the extension would expire on May 8, 2005.

33. On May 4, 2005, the Guatemalan State requested that the Commission agree to another extension of the period allowed under Article 51(1) of the Convention. Once again, the State expressly and irrevocably acknowledged that the effect of the extension would be to suspend the period for submitting the case to the Court. After examining the progress made in the negotiations, the Commission agreed to a second extension on May 6, 2005.

34. On August 4, 2005, the State and the representatives of the victims and their next of kin concluded the negotiation of an agreement on reparations and on fulfillment of the Commission's recommendations. The agreement was signed in a formal ceremony held in Guatemala City on Monday, August 8, 2005, with the victims' next of kin present.

35. By a communication of August 5, 2005, the Guatemalan State asked the Commission for a third extension on the time period allowed under Article 51(1) of the Convention, this one until September 30, 2006, in order to enable it to fully comply with the commitments undertaken in the aforementioned agreement on reparations and fulfillment of recommendations. In this latest communication, the State once again expressly and irrevocably recognizes that the effect of the extension would be to suspend the time period for submitting the case to the Court.

36. For their part, the representatives of the victims and their next of kin sent the Commission's Secretariat an e-mail on August 4, 2005, in which they announced the successful conclusion of the negotiations and reported that the agreement on reparations and fulfillment of the Commission's recommendations was set to be signed early the following week.

37. On August 9, 2005, the IACHR granted the State another extension in order to carry out the recommendations. The new deadline would be September 30, 2006.

38. At the Commission's request, on September 21, 2006, the petitioners reported on the fulfillment of the agreement, with specific reference to the progress made on a number of the agreed-upon points.

39. On September 26, 2006, the State presented to the Commission its report on compliance and another request for an extension, this one for six months, to enable it to comply fully with the agreement signed with the representatives of the victims and their next of kin on August 8, 2005. In that communication, the State again acknowledged that the effect of an extension would be to suspend the time period established in Article 51(1) of the Convention. It expressly waived any right to file preliminary objections asserting that the prescription period had expired.

40. Having seen the information supplied by the parties and the progress expected to have been made by then in carrying out its recommendations, on September 29, 2006, the Commission agreed to the requested six-month extension.

41. On March 18 and 19, 2007, the representatives of the victims and their next of kin and the Guatemalan State, respectively, informed the Commission of the progress made with implementation of the recommendations contained in the report on the merits and on execution of the agreements concluded on August 8, 2005. Again, the State requested another extension, this

one for three months, in order to complete execution of the agreement signed with the representatives on August 8, 2005. For a fifth time, the State expressly and irrevocably acknowledged that the extension, if granted, would have the effect of suspending the time period for submitting the case to the Court; it also waived any right to bring preliminary objections in this regard in the event of a case with the Court.

42. On March 28, 2007, the IACHR agreed to grant the State a three-month extension.

43. On June 22, 2007, the State requested another three-month extension in order to fully carry out the recommendations contained in the Commission's Report No. 71/04 on the merits of the case presented. It again acknowledged that the effect of any extension would be to suspend the period provided in Article 51(1) of the Convention.

44. By note of June 25, 2007, the representatives of the victims and their next of kin stated that "[...] while the Friendly Settlement Agreement was signed ten months ago, three of the commitments undertaken by the State pledging to comply with the recommendations made by the Commission in its Report on Admissibility and Merits are still pending. One of these commitments goes directly to the very reason why this case was brought to the inter-American system's attention, i.e., the failure to investigate, prosecute and punish the material and intellectual authors of the disappearance of María and Josefa Tiu Tojín."

45. On June 28, 2007, the Commission decided to give the Guatemalan State a one-month extension.

46. On July 23, 2007, the Guatemalan State submitted another communication, repeating information previously reported as regards the progress made on implementation of the recommendations contained in report 71/04 and the agreements reached in the document signed on August 8, 2005. It also requested another extension, this time for three months.

47. On July 26, 2007, during its 128<sup>th</sup> regular session, the Inter-American Commission assessed the reports submitted by the two parties, whereupon it decided to submit the case to the Inter-American Court pursuant to Article 51(1) of the Convention and Article 44 of the Commission's Rules of Procedure.

## **VI. ACKNOWLEDGEMENT OF RESPONSIBILITY, PARTIAL FULFILLMENT OF THE COMMISSION'S RECOMMENDATIONS AND PARTIAL REPARATION OF THE DAMAGES CAUSED BY THE HUMAN RIGHTS VIOLATIONS THAT ARE THE SUBJECT MATTER OF THE PRESENT CASE**

48. As mentioned in the preceding section (*supra* 34), on Monday, August 8, 2005 the Guatemalan State and the victims' next of kin signed an agreement on reparations and fulfillment of the Commission's recommendations.

49. Under the terms of that agreement, the Guatemalan State pledged to carry out certain compliance measures and/or measures of reparation by the second quarter of 2006:

- Stage a public apology ceremony and deliver a letter of apology from the State to the victims' next of kin;
- Conduct an immediate, impartial and effective investigation that establishes the identity of the authors of the human rights violations committed against the victims and, where appropriate, institute criminal proceedings against them;

- Report to the petitioners and to the Commission every two months, on the progress made in the investigation that the Public Prosecutor's Office is to conduct to find the material and intellectual authors of the forced disappearance of Maria Tiu Tojín and Josefa Tiu Tojín;
- Pay the victims' next of kin compensation of Q.2,000.000.00 (two million) quetzals, which is to be paid out in two equal tranches of Q.1,000,000.00 (one million) quetzals, disbursed in the first and second quarter of 2006;
- Coordinate with the Guatemalan Forensic Anthropology Foundation to locate and identify the remains of Maria Tiu Tojín and Josefa Tiu Tojín and then hand their remains over to the family. This commitment will be deemed to have been satisfied when the State has demonstrated to the petitioners that it exhausted every possible avenue to locate the remains;
- Include the present case in the National Search Plan for disappeared persons once it is implemented;
- Build a monument depicting a mother with an infant in her arms, and place on it a commemorative plaque whose text shall be negotiated between the parties. Further, both parties shall agree on the place where this monument is to be erected and on the placement of the plaque;
- With the National Compensation Program, work up a proposal to declare August 25 to be "National Day to Honor Child Victims of the Internal Armed Conflict," and
- Pay the expenses and costs that the family of Maria Tiu Tojín and Josefa Tiu Tojín has incurred, including the expenses that their representatives incurred.

50. As of the date of presentation of this application, the following actions and measures have been taken to honor the agreement and comply with the recommendations contained in the Commission's report 71/04:

51. **Public ceremony to apologize to the victims' next of kin.** The victims' next of kin requested that the ceremony for the apology be private. Therefore, on September 28, 2006, a private ceremony was held at the presidential palace, with the next of kin of María and Josefa Tiu Tojín and the Vice President of the Republic, Eduardo Stein, in attendance. At the ceremony, the victims' next of kin told the Guatemalan Vice President of the relentless struggle to find María and Josefa, who were detained and forcibly disappeared by members of the Guatemalan Army. After listening to the victims' next of kin, the Vice President acknowledged the State's responsibility for the events that occurred during the armed conflict, handed them a letter containing the State's apologies, and told them of the State's willingness to comply with the Commission's recommendations.

52. In the Commission's view, that acknowledgement has consequences, particularly evidentiary consequences. The Commission is therefore petitioning the Court to make note of the Guatemalan Government's acknowledgement of the facts and admission of responsibility for the violation of articles 4, 5, 7, 8, 19 and 25 of the Convention and failure to comply with Article 1(1) thereof, and that the ramifications of that acknowledgment be echoed in the judgment delivered on the case.

53. **Economic compensation.** In December 2005, the State handed over to the victims' next of kin financial compensation in the amount of Q.2,000,000.00 quetzals (equal to 260,000 US dollars), distributed as follows:

<b>Name of family member</b>	<b>Kinship relationship</b>	<b>Amount received</b>
Josefa Tojín Imul	María's mother, Josefa's grandmother	Q. 500,000.00
Victoriana Tiu Tojín	María's sister, Josefa's aunt	Q. 300,000.00
Rosa Tiu Tojín	María's sister, Josefa's aunt	Q. 300,000.00
Pedro Tiu Tojín	María's brother, Josefa's uncle	Q. 300,000.00
Manuel Tiu Tojín	María's brother, Josefa's uncle	Q. 300,000.00
Juana Tiu Tojín	María's sister, Josefa's aunt	Q. 300,000.00
<b>TOTAL.</b>		<b>Q. 2,000,000.00</b>

54. The Commission has received information from the parties concerning a payment of US\$1,219.82 that the State made to the representatives of the victims and their next of kin, under the heading of costs.

55. **Construction of a monument.** On November 9, 2006, a solemn ceremony took place in the cemetery of the village of Parraxtut, municipality of Sacapulas, department of El Quiché. The ceremony was held in memory of María and Josefa Tiu Tojín and was led by the Chairman of the Presidential Steering Committee for the Executive's Human Rights Policy (hereinafter "COPREDEH"), with the victims' next of kin and one of their attorneys participating. During the course of the ceremony, a monument was presented depicting a mother with an infant in her arms, bearing a commemorative plaque whose message was decided by mutual agreement of the parties.

56. However, the following commitments undertaken by the Guatemalan State in 2005 have still not been honored:

57. **Investigation, trial and punishment of those responsible and presentation of bimonthly reports to the IACHR and to the victims' next of kin on the progress made in this process.** In their March 18, 2007 note the petitioners stated that this was "one of the most disturbing aspects of this and other cases that have been brought to the inter-American system for the protection of human rights. In such a large percentage of these cases, no one is ever punished for the crime, with the result that surviving victims and their next of kin are denied justice. As a consequence, surviving victims and their next of kin have been compelled to take these cases to the Commission in the hope that by so doing they can force the process of investigation, trial and punishment into action." The State made no mention of this point in its March 19, 2007 note.

58. Later, in a note dated June 25, 2007, the petitioners alleged that the Human Rights Prosecutor with the Public Prosecutor's Office had told them off the record that "the case was at the time in the hands of the Military Judge Advocate" and that as a result "there was nothing the Office of the Human Rights Prosecutor could do to investigate the case." In notes dated June 22 and July 23, 2007, the State said that it was requesting additional extensions so that the Public Prosecutor's Office could "conduct an investigation into the case and examine the case file."

59. **Coordinate with the Guatemalan Forensic Anthropology Foundation (hereinafter the "FAFG") on the mission of locating and identifying the remains of Maria Tiu Tojín and Josefa Tiu Tojín and then deliver those remains to the family.** The victims' remains have thus far not been located. In its notes of December 22, 2006 and March 19, 2007, the State reported that on December 4, 2006, two forensic anthropologists from the FAFG, the petitioners' representatives

and representatives from COPREDEH held a meeting and established what the FAFG would need to be able to help locate the victims' remains. The State also reported that the FAFG is waiting for the victims' next of kin and possible witnesses to come to the Foundation to provide details on the events that transpired, so that the process of locating the victims' remains can begin.

60. On March 19, 2007, the petitioners reported that "as the State observed in its most recent report, the Forensic Anthropology Foundation (FAFG) has offered to collaborate in the search to find the victims' remains. To that end, possible dates are being arranged when the representatives of the petitioners, the State and representatives of the FAFG might visit the victims' next of kin to obtain information about the two victims that might be useful in the search for their remains."

61. The State and the petitioners subsequently informed the Commission that a FAFG researcher met with the victims' next of kin on May 15, 2007.

62. **Include the present case in the National Plan to Search for Disappeared Persons once that Plan is implemented.** The purpose of the plan is to facilitate the search for disappeared persons so that they can be fully identified and the truth and historical memory of the facts recovered, which will impact the criminal investigations and proceedings that the Guatemalan justice system is conducting. However, the National Plan to Search for Disappeared Persons has not yet been implemented.

63. **With the National Compensation Program, work up a proposal to have August 25 declared the "National Day to Honor Child Victims of the Internal Armed Conflict."** On March 19, 2007, the State reported that it continues to coordinate activities with a view to honoring this commitment. The petitioners, for their part, reported on March 18, 2007 that they were still waiting for the State to inform them of the measures taken toward declaring August 25 as the "National Day to Honor Child Victims of the Internal Armed Conflict."

64. The Commission appreciates the importance of the efforts that the Guatemalan State has made to implement the recommendations that the Commission made in its report 71/04 and to honor the commitments made to the victims in the August 8, 2005 agreement. It nonetheless observes that thus far, despite the extensions the State was given time and time again, various measures of reparation in this case, particularly those related to the investigation of the facts and discovery of the victims' remains have not been carried out in practice.

## VII. THE FACTS

### A. Assessing the evidence

65. In its earliest case law, the Court established that its standards of proof are less formal than those required under domestic laws to weigh the various types of evidence. It has consistently emphasized that a rigorous determination of the *quantum* of evidence needed to support a judgment is not called for, since international courts have the authority to assess and weigh the evidence based on the rules of sound judicial discretion. International human rights courts have greater flexibility and latitude when assessing evidence, based on principles of logic and their own experience.<sup>8</sup>

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<sup>8</sup> I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 184, citing I/A Court H.R., *Case of Almonacid Arellano*. Preliminary Objections, Merits, Reparations and Costs, Judgment of September 26, 2006. Series C No. 154, par. 69. See, also, I/A Court H.R., *Case of Juan Humberto Sánchez*. *Interpretation of the Judgment on Preliminary Objections, Merits and Reparations* (Art. 67 of the American Convention on Human Rights). Judgment of November 26, 2003. Series C No. 102, par. 42.

66. Of particular importance to the present case is the assessment and scope of the body of presumptive evidence drawn from the facts and that, based on experience, are valid and logical evidence to consider when direct evidence is lacking. In cases of forced disappearance, whose purpose is to erase all material trace of the crime, the Court has recognized the high evidentiary value that circumstantial or indirect evidence, or both, and the pertinent logical inferences have in establishing the violation.<sup>9</sup> It is reasonable to presume that persons who disappeared amid violent circumstances and after years have still not reappeared, are deceased.<sup>10</sup> Furthermore, as far back as the *Velásquez Rodríguez* and *Godínez Cruz* cases, the Court held that in cases prolonged detentions without any kind of court supervision, it is reasonable to presume that the victims were tortured before death.<sup>11</sup>

67. Furthermore, if it is found that a case fits into a pattern of human rights violations, that, too, has evidentiary consequences. The Court has held that if it is established that a specific case fits within the pattern of human rights violations alleged, then "it is reasonable to assume and conclude that there is an international responsibility of the State."<sup>12</sup> Hence, "if it has been proved that the State promotes or tolerates the practice of forced disappearance of persons, and the case of a specific person can be linked to this practice, either by circumstantial or indirect evidence, or both, or by pertinent logical inference, then this specific disappearance may be considered to have been proven."<sup>13</sup>

68. The Court's case law has attached significant evidentiary weight to "newspaper articles,"<sup>14</sup> especially in cases of forced disappearance<sup>15</sup> given that one of the characteristics of this crime is to leave no trail or evidence behind, thereby complicating the investigation.

69. The Final Report of the Commission for Historical Clarification (hereinafter "the CEH"),<sup>16</sup> titled *Guatemala, Memoria del Silencio [Guatemala: Memory of Silence]*,<sup>17</sup> published in

<sup>9</sup> See I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 1008; and I/A Court H.R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988. Series C No. 4, par. 131, on the importance of circumstantial or presumptive evidence.

<sup>10</sup> I/A Court H.R., *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C No. 70, par. 173 *citing* I/A Court H.R., *Castillo Páez Case*, Judgment of November 3, 1997. Series C No. 34, paragraphs 71-72; I/A Court H.R., *Neira Alegria et al. Case*, Judgment of January 19, 1995. Series C No. 20, par. 76; I/A Court H.R., *Godínez Cruz Case*, Judgment of January 20, 1989. Series C No. 5; par. 198; and I/A Court H.R., *Velásquez Rodríguez Case*, Merits, Judgment of July 29, 1988, Series C No. 4, par. 188.

<sup>11</sup> I/A Court H.R., *Velásquez Rodríguez Case*, Merits, Judgment of July 29, 1988, Series C No. 4, par. 156; I/A Court H.R., *Godínez Cruz Case*. Judgment of January 20, 1989. Series C No. 5, par. 164.

<sup>12</sup> I/A Court H.R., *Case of Juan Humberto Sánchez. Interpretation of the Judgment on Preliminary Objections, Merits and Reparations (Art. 67 of the American Convention on Human Rights)*. Judgment of November 26, 2003. Series C No. 102, par. 108. I/A Court H.R., *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C No. 70, paragraphs 130-131; I/A Court H.R., *Case of Cantoral Benavides*, Judgment of August 18, 2000. Series C No. 69, paragraphs 47-48; I/A Court H.R., *Blake Case*, Judgment of January 24, 1998. Series C No. 36, paragraphs 47, 49, 51.

<sup>13</sup> I/A Court H.R., *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C No. 70, par. 130.

<sup>14</sup> I/A Court H.R., *Case of Bueno Alves*. Merits, Reparations and Costs, Judgment of May 11, 2007. Series C No. 164, par. 46; I/A Court H.R., *Case of La Cantuta*. Merits, Reparations and Costs. Judgment of November 29, 2006 Series C No. 162, par. 62; I/A Court H.R., *Case of Dismissed Congressional Employees (Aguado - Alfaro et al.)*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, par. 86.

<sup>15</sup> I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 56 *citing* the *Cantos Case*. Judgment of November 28, 2002. Series C No. 97, par. 39; *Baena Ricardo et al. Case*. Judgment of February 2, 2001. Series C No. 72, par. 78; *Case of the Mayagna (Sumo) Awaj T'ingni Community*. Judgment of August 31, 2001, Series C No. 66, par. 94.

<sup>16</sup> The CEH was established as part of the Guatemalan peace process, under the Oslo Accords signed on June 23, 1994. Composed of Professor Christian Tomuschat, Lic. Otilia Lux de Cotí and Lic. Alfredo Balsells Tojo, the Commission's

1999, and the Report of the Inter-diocesan Project on the Recovery of the Historical Memory,<sup>18</sup> titled *Guatemala, Nunca Más [Guatemala: Never Again]*,<sup>19</sup> prepared by the Human Rights Office of the Archdiocese of Guatemala (hereinafter the “ODHAG”), are particularly instructive as they bring to light the serious human rights violations committed in Guatemala. The method used to investigate the facts, establish patterns of human rights violations, identify the victims, quantify their numbers, and ultimately put together a map of violence, *inter alia*, necessitated data and evidence collection that would enable victims and Guatemalan society as a whole to learn what happened, uncover the past and get at the truth.

## B. General context

70. The facts in the present case occurred during a period of heavy militarization and repression against the Mayan indigenous people<sup>20</sup> in many areas of Guatemala, among them Nebaj, the Department of El Quiché. Thousands from the various Mayan linguistic communities were impressed into the Self-Defense Patrols. If one refused to go on patrol or was suspected of being part of or assisting the guerrilla movement, retaliation was frequently in the form of threats and harassment, forced displacements, extrajudicial executions, forced disappearance, massacres and genocide.<sup>21</sup>

### 1. Internal armed conflict

71. The internal armed conflict in Guatemala from 1962 to 1996 exacted a terrible human, material, institutional and moral toll. Estimates are that more than two hundred thousand people became the victims of arbitrary executions and forced disappearance as a consequence of the political violence during this period.<sup>22</sup> In ethnic terms, the Mayan indigenous people accounted for 83% of these victims.

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...continuation

mandate was to clarify the facts, enable an understanding of what happened during that period in history, and prepare recommendations ultimately aimed at avoiding a recurrence of what happened.

<sup>17</sup> CEH, *Guatemala, Memoria del Silencio [Guatemala: Memory of Silence]*, Volume V, Conclusions and Recommendations, p. 24, available at [http://shr.aas.org/guatemala/ceh/gmds\\_pdf/](http://shr.aas.org/guatemala/ceh/gmds_pdf/).

<sup>18</sup> The work of the REMHI project has special resonance as the opportunity created for the victims to give their testimony in their own words. The project was carried out over several years by people in the communities, working directly with those most brutalized by the conflict, with few resources except the will to speak the truth. As the Coordinator of the Human Rights Office of the Archdiocese, Auxiliary Bishop of Guatemala Juan José Gerardi, indicated in his presentation of the report: “As a church, we collectively and responsibly took on the task of breaking the silence that thousands of war victims have kept for years. We opened up the possibility for them to speak and have their say, to tell their stories of suffering and pain, so they might feel liberated from the burden that has weighed them down for so many years.” IACHR, *Fifth report on the situation of human rights in Guatemala* 2001, Chapter I, Section D, par. 73.

<sup>19</sup> Report of the Inter-diocesan Project on Recovery of the Historical Memory, prepared by the Human Rights Office of the Archdiocese of Guatemala: *Guatemala: Nunca Más [Guatemala: Never Again]*, available at <http://www.odhag.org.gt/INFREMHI/INDICE.HTM>.

<sup>20</sup> The Guatemalan population is multiethnic, multilingual and multicultural. Approximately half the population is indigenous. The Mayan people, the largest group in terms of numbers, include the following linguistic communities: Achi’, Akateco, Awakateco, Ch’orti’, Chuj, Itza, Ixil, Popti’, Q’anjob’al, Kaqchikel, K’iche’, Mam, Mopan, Poqomam, Pocomchi’, Q’eqchi’, Sakapulteko, Sipakapense, Tektiteko, Tz’utujil, and Uspanteco. IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, 2001.

<sup>21</sup> The armed conflict saw a sharp rise in the incidence of exclusion and discrimination against indigenous peoples in Guatemala. Some 83% of the victims were members of the Mayan people and acts of genocide were committed. In IACHR, JUSTICE AND SOCIAL INCLUSION: THE CHALLENGES OF DEMOCRACY IN GUATEMALA, OEA/Ser.L/V/II.118, Doc. 5 rev. 1, December 29, 2003, par. 216.

<sup>22</sup> In documenting cases, the CEH found 42,275 victims of arbitrary execution and forced disappearance: 23,671 were victims of arbitrary execution and 6,159 were the victims of forced disappearance. CEH, *Memoria del Silencio*, Volume V, Conclusions and Recommendations, p. 21, available at [http://shr.aas.org/guatemala/ceh/gmds\\_pdf/](http://shr.aas.org/guatemala/ceh/gmds_pdf/).

72. The factors causing the armed conflict were many. The Commission for Historical Clarification found that:

other parallel phenomena, such as structural injustice, the closing of political spaces, racism, the increasing exclusionary and anti-democratic nature of institutions, as well as the reluctance to promote substantive reforms that could have reduced structural conflicts, are the underlying factors which determined the origin and subsequent outbreak of the armed confrontation.<sup>23</sup>

73. The CEH concluded that State forces and related paramilitary groups were responsible for 93% of the violations documented by the CEH, including 92% of the arbitrary executions and 91% of forced disappearances. The CEH blamed armed insurgent groups<sup>24</sup> for 3% of the human rights violations and acts of violence; it was unable to compile the information needed to conclude which sector was responsible for the remaining 4%.

74. In military operations during the armed conflict, the air force was routinely used against the CPR –more than against the displaced population- to harass settlements by bombing and shelling them. The Army attacked overland, coordinating with the bombers. Elements of the Civilian Self-Defense Patrols (hereinafter the “PAC”)<sup>25</sup> were usually along for these incursions. At times, persons seized in previous combat operations were used as guides. The joint patrols were out to destroy housing and sources of supplies to communities in flight.<sup>26</sup> In a number of reports produced since 1983, the Commission discussed the CPRs that went into hiding in the jungles of Ixcán and in the highlands starting in the early 1980s and then resurfaced in 1991.<sup>27</sup>

## 2. The practice of forced disappearance in Guatemala at the time the events in this case occurred

75. At the time of the unlawful detention of María Tiu Tojín and Josefa Tiu, forced disappearance was State practice in Guatemala and was mainly the work of State security forces. In the Molina Theissen case against Guatemala, the Court found that:

[I] 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

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<sup>23</sup> CEH, *Guatemala, Memoria del Silencio*, Volume V, Conclusions and Recommendations, p. 24, available at <http://shr.aaas.org/guatemala/ceh/gmds.pdf/>.

<sup>24</sup> The CEH assessed the violent acts committed by the guerrilla movement by common principles of international human rights law and international humanitarian law, so that the parties were treated equally. CEH, *Guatemala, Memoria del Silencio*, Volume I, p. 47, available at <http://shr.aaas.org/guatemala/ceh/gmds.pdf/>.

<sup>25</sup> The Voluntary Civilian Self-Defense Committees --better known by their previous name, Civilian Self-defense Patrols (PAC) -- were the creation of the *de facto* military regime headed by General Efraín Ríos Montt in late 1981. They were part of his plan to exterminate the guerrilla movement by relocating the indigenous population and “wiping out any community or killing any person that his government was suspicious of, using methods that violated human rights.” The PAC began in the department of El Quiché, and expanded to other departments. IACHR, Fourth Report on the Situation of Human Rights in Guatemala, 1993.

<sup>26</sup> See CEH, *Guatemala, Memoria del Silencio*, Volume III, P. 244, available at <http://shr.aaas.org/guatemala/ceh/gmds.pdf/>.

<sup>27</sup> See reports of the IACHR on the situation of human rights in Guatemala: 1983 report available at <http://www.cidh.org/countryrep/Guatemala83eng/TOC.htm>; the 1993 report available at <http://www.cidh.org/countryrep/Guatemala93eng/toc.htm>; and the Special Report on the human rights situation in the so-called “Communities of Peoples in Resistance” in Guatemala, 1994, available at <http://www.cidh.org/countryrep/CPR.94eng/Table.of.Contents.htm>.

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 grass-roots or opposition organizations, workers, peasants, teachers, student leaders, members of religious orders or their lay helpers;

This practice was implemented by the army, the civil self-defense patrols (hereinafter “the PAC”), the military commissioners, the military foot-police, the national police, the judicial police and the “death squadrons”.

The detention, abduction, torture and subsequent assassination of those who were “disappeared” was carried out by heavily armed groups of individuals, who introduced and identified themselves as belonging to one of the State’s different investigation or security units. During these operations, they did not provide information on the motives for the alleged detention or the centers to which those detained would be transferred. These groups acted with total impunity and traveled in cars similar to those used by the police forces or identified as belonging to security units, with deteriorated license plates or without the road use permit;

Violence was inevitably used in the forced disappearance of persons carried out by members of State security units. These acts of violence were directed against the victims, their next of kin, and any witnesses to the events. The threats and intimidation of the victims’ next of kin continued for some time after the detention, so as to curb their initiatives to locate the persons detained and to heighten their fear.<sup>28</sup>

76. The CEH report states that “the disappearances were mainly targeting members of social organizations, unions, student groups, religious organizations and political parties.”<sup>29</sup>

77. The report *Guatemala, Memory of Silence*, states the following:

Numerous cases investigated by the CEH revealed that the practice of forced disappearance was also used to punish, not just the victim but also the political or social organization to which he or she belonged, the community and the victim’s family [...] precisely to punish the group of which the victim was part.<sup>30</sup>

78. As for the forced disappearance of children, the political and military *modus operandi* of armed confrontation created a climate in which children were exposed to multiple violations. In an investigation done into the children disappeared in the armed conflict, the ODHAG found that as the policies of extermination played themselves out in the theater of operations, thousands of children were murdered and/or disappeared.<sup>31</sup>

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<sup>28</sup> I/A Court H.R., *Molina Theissen*. Judgment of May 4, 2004. Series C No. 106, par. 40.

<sup>29</sup> See CEH, *Guatemala, Memoria del Silencio*, Volume II, Chapter XI: Forced Disappearances, p. 426, available at <http://shr.aaas.org/guatemala/ceh/gmnds.pdf/>.

<sup>30</sup> See CEH, *Guatemala, Memoria del Silencio*, Volume II, Chapter XI: Forced Disappearances, p. 428, available at <http://shr.aaas.org/guatemala/ceh/gmnds.pdf/>.

<sup>31</sup> ODHAG, Report *Hasta Encontrarte: Niñez Desaparecida por el conflicto armado interno en Guatemala*, 2000, [“Until We Find You: Children Disappeared by the Internal Armed Conflict in Guatemala”], 2000 p. 29, available at <http://www.odhag.org.gt/Informe%20Ninez%20Desaparecida/hasta%20encontrarte%20contenido.pdf>.

### 3. The victims

79. The political violence engendered more than terror, passiveness and silence. As the various phases of armed confrontation ebbed and waned, organizations emerged that, against great odds, went to the defense of the individual's basic rights. Most members of these organizations were victims' relatives. The organizations themselves were dedicated to defending life, even when their cause meant living under an ever-present threat of death.<sup>32</sup>

80. In the transition period that began in 1986 during the government of Vinicio Cerezo, the human rights debate regained momentum and expanded as new organizations emerged representing the indigenous victims of the armed conflict. Among them was the National Committee of Guatemalan Widows (CONAVIGUA), an organization of indigenous widows from the Western Altiplano. Their demands focused mainly on necessities for survival, opposition to the civilian patrols and to the recruitment of their sons; another organization was the "Runujel Junam" Council of Ethnic Communities (hereinafter "CERJ"), which urged nonparticipation in the Civilian Self-Defense Patrols. Both organizations were opposed to what they regarded as the militarized nature of society.<sup>33</sup>

81. María Tiu Tojín, a Mayan woman, was a member of the CERJ. She was the sister of María Mejía, also a member of that organization and killed by members of the Civilian Self-Defense Patrols on March 17, 1990, precisely for her work with CERJ and CONAVIGUA.<sup>34</sup> In September 1989, María Mejía decided to do something to protest the compulsory service in patrols. At the Runujel Junam Council of Ethnic Communities (CERJ) they told her that no one was required to patrol and that minors were of course exempt from service of this type. When they learned the news, Mejía's family members and two neighbors decided to quit their patrol activities for good. It was then that the military commissioners and most Parraxtut patrollers embarked upon a campaign of harassment and public threats against the family and various neighbors accused of being guerrillas.<sup>35</sup>

82. The Report of the Inter-diocesan Project's Report on Recovery of the Historical Memory, *Guatemala: Nunca Más*, states the following:

Women's contribution toward building new social groups advocating respect for human rights was the most significant showing of women's active involvement in the processes of social change during and after the latest period of political violence in Guatemala. That violence left many women as heads of household. Out of the strength of their conviction, many others bravely opposed the violence and opened up new areas of social participation.<sup>36</sup>

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<sup>32</sup> See CEH, *Guatemala, Memoria del Silencio*, Chapter III: Consequences and Effects of the Violence, p. 229, available at [http://shr.aaas.org/guatemala/ceh/gmnds\\_pdf/](http://shr.aaas.org/guatemala/ceh/gmnds_pdf/).

<sup>33</sup> See CEH, *Guatemala, Memoria del Silencio*, Volume I, Chapter I, Section VII: The Political Transition, p. 217, available at [http://shr.aaas.org/guatemala/ceh/gmnds\\_pdf/](http://shr.aaas.org/guatemala/ceh/gmnds_pdf/).

<sup>34</sup> See CEH, *Guatemala, Memoria del Silencio*, Volume VII, Annex I: Case Studies, pp. 175 *et seq.*, available at [http://shr.aaas.org/guatemala/ceh/gmnds\\_pdf/](http://shr.aaas.org/guatemala/ceh/gmnds_pdf/); IACHR, Report 32/96, Case 10,553; María Mejía (Guatemala); October 16, 1996, available at <http://www.cidh.org/annualrep/96span/Guatemala10553.htm>. See, also, Urgent Action letter, *Amnesty International*, dated January 29, 1991, IACHR case file, Appendix 2.

<sup>35</sup> See CEH, *Guatemala, Memoria del Silencio*, Volume II, Chapter X: Arbitrary Executions, pp. 377 and 378, available at [http://shr.aaas.org/guatemala/ceh/gmnds\\_pdf/](http://shr.aaas.org/guatemala/ceh/gmnds_pdf/).

<sup>36</sup> Report of the Inter-diocesan Project for Recovery of the Historical Memory, *Guatemala: Nunca Más*, prepared by the Office of the Archbishop of Guatemala, available at <http://www.odhag.org.gt/INFREMHI/INDICE.HTM>.

83. The CEH report described women's participation as follows:

Guatemalan women played a decisive role, leading efforts to protest impunity and militarization and advocating on behalf of the victims and in favor of human rights in Guatemala, especially since the mid eighties.<sup>37</sup>

[...]

Women were victims as well [...] for a variety of reasons and circumstances [...], their participation in organizations like *Acción Católica*, CUC, GAM or CONAVIGUA. Because of their participation and leadership in these and other activities, many women were accused of ties with the guerrilla movement and were executed.<sup>38</sup>

84. The activities of the CERJ elicited threats, intimidation, assassinations and forced disappearances, perpetrated by members of the armed forces, military commissioners and members of the PACs. The Commission found that crimes against CERJ members "were not met with the measures of prevention or the response required of the State."<sup>39</sup>

85. This finding is confirmed in some of the reports that the Commission prepared in connection with serious human rights violations committed against CERJ members. In merits report No. 11/98,<sup>40</sup> the Commission finds that on July 12, 1990, Mr. Samuel de la Cruz Gómez, a member of the CERJ, was the victim of an abduction and forced disappearance perpetrated by men in civilian dress who were linked to the Guatemalan State security forces, in the Chimatzaz district, municipality of Zacualpa, Department of El Quiché.

86. In a number of reports, the Commission has also established that María Mejía Tojín and another eight members of the CERJ were the victims of extrajudicial executions perpetrated by the PAC.<sup>41</sup>

87. The Commission must underscore the fact that Josefa Tiu Tojín, María Tiu Tojín's daughter, was only one month old at the time of her disappearance.<sup>42</sup>

88. Children figure into the bulk of the testimonials, either as indirect victims of the violence perpetrated against their next of kin, as witnesses to many traumatic events, or as direct victims of their own experiences with violence and death. The violence and political repression in Guatemala have taken a very heavy toll on Guatemalan children.<sup>43</sup>

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<sup>37</sup> See CEH, *Guatemala, Memoria del Silencio*, Chapter III: Consequences and Effects of the Violence, p. 230, available at [http://shr.aaas.org/guatemala/ceh/gmds\\_pdf/](http://shr.aaas.org/guatemala/ceh/gmds_pdf/).

<sup>38</sup> See CEH, *Guatemala, Memoria del Silencio*, Volume II, Chapter X: Arbitrary Executions, p. 377, available at [http://shr.aaas.org/guatemala/ceh/gmds\\_pdf/](http://shr.aaas.org/guatemala/ceh/gmds_pdf/).

<sup>39</sup> See in IACHR, Report No.11/98, CASE 10,606; SAMUEL DE LA CRUZ GÓMEZ, GUATEMALA; April 7, 1998, par. 41.

<sup>40</sup> See in IACHR, Report No.11/98; CASE 10,606, SAMUEL DE LA CRUZ GÓMEZ, GUATEMALA; April 7, 1998.

<sup>41</sup> See IACHR, Report No. 59/01, Cases 10,626, Remigio Domingo Morales and Rafael Sánchez, 10,627 Pedro Tau Cac, 11,198(A) José María Ixcaya Pixtay *et al.*, 10,799 Catalino Chochoy *et al.*, 10,751 Juan Galicia Hernández *et al.* and Case 10,901 Antulio Delgado, Guatemala, April 7, 201; and IACHR, Report No. 39/00, Case 10,586 Joaquin Ortega *et al.*, Extrajudicial Executions, April 13, 2000.

<sup>42</sup> See complaint in the case before the IACHR, Appendix 2, and Annexes 1, 3, and 7 of the application. The Commission argues that the testimony offered in the case will also corroborate the existence and identity of the infant Tiu Tojín.

<sup>43</sup> Report of the Inter-diocesan Project on the Recovery of the Historical Memory, *Guatemala: Nunca Más*, prepared by the Human Rights Office of the Archdiocese of Guatemala, available at <http://www.odhag.org.gt/INFREMHI/INDICE.HTM>.

89. The Report titled *Memory of Silence* singled out women as a group that was particularly vulnerable to human rights violations during the internal armed conflict. This was especially true of Mayan women like María Tiu Tojín, who were routinely the victims of sexual violence; it was common practice for agents of the State to rape Mayan women. The report points out that

[w]omen were victims of all manner of human rights violations committed during the armed conflict. However, they were also the victims of specific types of gender violence. In the case of Mayan women, the armed violence was compounded by gender violence and ethnic discrimination.<sup>44</sup>

90. The CEH observed that “the loathing and debasement of indigenous women in military parlance during the armed confrontation reached such extremes that women came to be regarded as ‘meat’.”<sup>45</sup>

91. It is important to note that the victims in this case fit into groups that the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women “Convention of Belém do Pará” identifies as being particularly vulnerable to violence and discrimination: they are indigenous women, deprived of their freedom, in the midst of an armed conflict (Article 9).<sup>46</sup>

**C. The detention and forced disappearance of María Tiu Tojín and her infant daughter Josefa Tiu Tojín.**

92. On August 29, 1990, Guatemalan Army troops, accompanied by members of the PACs, arrived at the community of Santa Clara, municipality of Chapul, Department of El Quiché. They accused the locals, who were members of a Community of People in Resistance known as “La Sierra,” of being part of the guerrilla movement. They burned cornfields and houses, slaughtered animals and destroyed food supplies. There, the members of the PAC detained 86 people, María Tiu Tojín and her infant daughter Josefa among them.<sup>47</sup>

93. The 86 people detained were taken to the military base at Santa María Nebaj. That was the last place María Tiu Tojín and her infant daughter Josefa were seen.<sup>48</sup> On August 30, 1990, the victims were separated from the other detainees and taken to a military base at Amacchel. The other 84 detainees were taken to a camp run by the Special Commission for

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<sup>44</sup> See CEH, *Guatemala, Memoria del Silencio*, Volume III, Chapter II: Sexual Violence against Women, par. 1, available at [http://shr.aaas.org/guatemala/ceh/gmds\\_pdf/](http://shr.aaas.org/guatemala/ceh/gmds_pdf/).

<sup>45</sup> See CEH, *Guatemala, Memoria del Silencio*, Volume III, Chapter II: Sexual Violence against Women, par. 72, available at [http://shr.aaas.org/guatemala/ceh/gmds\\_pdf/](http://shr.aaas.org/guatemala/ceh/gmds_pdf/).

<sup>46</sup> In this regard, see, also, IACHR, Report: *Violence and Discrimination against Women in the Armed Conflict in Colombia*, par. 140; and IACHR, Report: *Access to Justice for Women Victims of Violence in the Americas*, par. 14.

<sup>47</sup> CEH, *Guatemala, Memoria del Silencio*, Volume X, Annex II: Cases Presented, pp. 1210 and 1211, available [in Spanish] at [http://shr.aaas.org/guatemala/ceh/gmds\\_pdf/](http://shr.aaas.org/guatemala/ceh/gmds_pdf/); see, also, *Report on the Disappearance of María Tiu Tojín and her one-month-old daughter, María Josefa Tiu Tojín*, January 29, 1991, Index [in Spanish] AMR 34/05/91/s, available [in Spanish] at <http://web.amnesty.org/library/print/ESLAMR340051991>.

<sup>48</sup> CEH, *Guatemala, Memoria del Silencio*, Volume X, Annex II: Cases Presented, pp. 1210 and 1211, available at [http://shr.aaas.org/guatemala/ceh/gmds\\_pdf/](http://shr.aaas.org/guatemala/ceh/gmds_pdf/); See, also, *Report on the Disappearance of María Tiu Tojín and her one-month-old daughter, María Josefa Tiu Tojín*, January 29, 1991, Index [in Spanish] AMR 34/05/91/s, available at <http://web.amnesty.org/library/print/ESLAMR340051991>.

Repatriated Persons (hereinafter "CEAR")<sup>49</sup> in Xemamatze. The victims in this case never arrived there.

94. The Army gave CEAR officials a list of the persons being turned over to CEAR's custody for assistance. Although María Tiu Tojín and her daughter were on the list, they never arrived at the CEAR camp and no witness ever saw them there.<sup>50</sup>

#### D. Involvement of State agents in the events in question

95. There is direct evidence of State agents' involvement in the unlawful detention and subsequent forced disappearance of María Tiu Tojín and her infant daughter Josefa Tiu Tojín, as well as sufficient circumstantial evidence to support a presumption that the disappearance fit the pattern described earlier.

96. María Tiu Tojín, her infant daughter and 84 others were detained by State agents. Thereafter, they allegedly forced her to go on patrol with soldiers who wanted her to show them the route used by the guerrilla movement in the area; the presumption is that when she refused to cooperate with them, they accused her of being a member of the guerrilla movement. According to the complaint, eyewitnesses heard a number of Army soldiers say that María Tiu Tojín –who had her daughter with her– had been held as a prisoner of war at the military base, accused of being a member of the guerrilla movement.<sup>51</sup>

97. A brief that Victoria Tiu, sister and aunt of the victims, filed with the Guatemalan Special Prosecutor for Human Rights states that on November 5, 6 and 7, 1990, the Parraxtut Military Commissioners (Juan de León Pérez, Domingo Castro Lux, Julio Us Tiu, Juan Us Castro and Pedro Ixcotyac Tiu) publicly threatened her and told her that they would eliminate her and her sister María Tiu Tojín.<sup>52</sup>

98. At the time of their disappearance, María Tiu Tojín and her infant daughter Josefa Tiu were in the custody of agents of the State. The Commission therefore submits that the violations were perpetrated by agents of the State and that under principles of international law, their actions compromise the international responsibility of the State.<sup>53</sup>

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<sup>49</sup> The Special Commission for the Care of Repatriates, Refugees and Displaced Persons, "CEAR," was created in early 1991 and is part of the executive branch of government. Its purpose is to provide a solution to the problem of refugees, repatriated and displaced persons who were forced to uproot themselves during the country's period of armed conflict from 1960 to 1996. See the IACHR, *Fourth Report on the Situation of Human Rights in Guatemala*, Chapter VII, 1993. Cf. Annex 1.

<sup>50</sup> The partial list of displaced persons under CEAR's care at Xemamateze Nebaj on September 9, 1990: María Tiu Tojín and her daughter Josefa are listed as number 83. Annex 1. Also, a handwritten memorandum, dated October 20, 1990, documenting telephone calls that CEAR's Mr. Jorge Enríquez made to Lic. Carmen Rosa de León, CEAR's director, and to Lic. Lucrecia de Feliz, also with CEAR, which states *verbatim* the following: "Subject María Tiu Tojín and her daughter, 25 days missing from Xemamatze. We only got a list and are still awaiting their arrival." Annex 2.

<sup>51</sup> See, *Report on the Disappearance of María Tiu Tojín and her one-month-old daughter, María Josefa Tiu Tojín*, January 29, 1991, Index [in Spanish] AMR 34/05/91/s, available at <http://web.amnesty.org/library/print/ESLAMR340051991>.

<sup>52</sup> Copy of the case file with the Office of the Special Prosecutor for Human Rights (case instituted in response to complaints filed October 15, 1990, on behalf of María Tiu Tojín and her daughter Josefa Tiu Tojín; and on November 20, 1990, on behalf of María Tojín García and her daughter María Josefa). Annex 6. See, also, Report prepared by the Chief of Police of the Department of El Quiché, based on the complaint filed by Victoria Tiu Tojín on November 20, 1990. Annex 8.

<sup>53</sup> I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4, par. 170.

**E. Subsequent events: The failure to investigate the facts**

99. On October 14, 1990, the CERJ filed a petition with the justice of the peace of Santa Cruz del Quiché seeking a writ of *habeas corpus* on behalf of María Tiu Tojín and Josefa Tiu.<sup>54</sup> The following day, the CERJ filed other writs of *habeas corpus* on their behalf with the Special Prosecutor for Human Rights<sup>55</sup> and the chief justice of the Supreme Court.

100. On November 4, 1990, Victoria Tiu Tojín filed a petition seeking a writ of *habeas corpus* on behalf of her sister María Tiu Tojín and niece Josefa Tiu Tojín. The petition was filed with the Justice of the Peace, Santa Cruz del Quiché, but was declared inadmissible on January 30, 1991.<sup>56</sup>

101. On November 20, 1990, Victoria Tiu presented a brief to the Deputy Special Prosecutor for Human Rights in which she filed a complaint concerning the disappearance of María Tiu Tojín and Josefa Tiu and the threats made by the military commissioners.<sup>57</sup>

102. On February 6, 1991, the Second Judge of First Instance of El Quiché recused himself from continuing to hear the petition of *habeas corpus* filed by the CERJ and referred the case to the military justice system.<sup>58</sup>

103. The Office of the Judge Advocate of Military District No. 20 of the Department of El Quiché initiated an inquiry into the abduction or unlawful deprivation of freedom of María Tiu Tojín and Josefa Tiu,<sup>59</sup> based on the case file referred by the Second Court of First Instance of El Quiché. The person charged in the case was Infantry Reserve Lieutenant Alexander West Quinteros, who was released on May 15, 1991. The military tribunal ordered him released unconditionally, as it found there were insufficient grounds to issue an order of incarceration.<sup>60</sup> On May 24, 1991, the Public Prosecutor's Office asked the CEAR to send the Office of the Judge Advocate a copy of the list of displaced persons received at the CEAR camp on September 9, 1990, and to take oral

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<sup>54</sup> Copy of the main documents from the case file on the *habeas corpus* petition heard by the Second Court of First Instance of Santa Cruz del Quiché (in response to complaints brought on behalf of María Tiu Tojín and her daughter Josefa Tiu Tojín on October 14, 1990, and on behalf of María Tojín García and her daughter María Josefa, dated November 4, 1990). Annex 7.

<sup>55</sup> Copy of the case file with the Office of the Special Prosecutor for Human Rights (case instituted in response to complaints filed October 15, 1990, on behalf of María Tiu Tojín and her daughter Josefa Tiu Tojín; and on November 20, 1990, on behalf of María Tojín García and her daughter María Josefa).. Annex 6.

<sup>56</sup> Copy of the main documents from the case file on the *habeas corpus* petition heard by the Second Court of First Instance of Santa Cruz del Quiché (in response to complaints brought on behalf of María Tiu Tojín and her daughter Josefa Tiu Tojín on October 14, 1990, and on behalf of María Tojín García and her daughter María Josefa, dated November 4, 1990). Annex 7.

<sup>57</sup> Copy of the case file with the Office of the Special Prosecutor for Human Rights (case instituted in response to complaints filed October 15, 1990, on behalf of María Tiu Tojín and her daughter Josefa Tiu Tojín; and on November 20, 1990, on behalf of María Tojín García and her daughter María Josefa). Annex 6.

<sup>58</sup> Copy of the main documents from the case file on the *habeas corpus* petition heard by the Second Court of First Instance of Santa Cruz del Quiché (in response to complaints brought on behalf of María Tiu Tojín and her daughter Josefa Tiu Tojín on October 14, 1990, and on behalf of María Tojín García and her daughter María Josefa, dated November 4, 1990). Annex 7.

<sup>59</sup> Copy of military criminal justice case file No. 2047-90, a case in which the charge was unlawful deprivation of freedom and that was prosecuted by the office of the judge advocate for military district 20 of El Quiché. Annex 5.

<sup>60</sup> Copy of military criminal justice case file No. 2047-90, a case in which the charge is unlawful deprivation of freedom and that is being prosecuted by the office of the judge advocate for military district 20 of El Quiché. Annex 5.

testimony from all of them.<sup>61</sup> Those individuals were not summoned, the Public Prosecutor's Office did not correct the omission, and the proceedings did not go forward.<sup>62</sup> At the present time, the case is still in the military justice system and is still in its preliminary phase, classified as an *inquiry into the unlawful deprivation of freedom or abduction of María Tiu Tojín and Josefa Tiu Tojín.*"

104. By now, 16 years have passed since the case was opened with the Office of the Judge Advocate, yet the Guatemalan justice system has not yet properly investigated the facts in the case. The information that the State submitted to the IACHR confirms that justice has been denied to the victims' next of kin. The State acknowledges that the petitions of *habeas corpus* filed by the victims' next of kin and the CERJ<sup>63</sup> have produced no result and the omissions by the Public Prosecutor's Office have not been corrected.

## VIII. THE LAW

### A. General considerations

105. In its case law, the Court has addressed the practice of forced disappearances and has written that

[f]orced 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>64</sup>

106. In other cases of forced disappearance, the Court has held that forced disappearance of persons is an unlawful act that gives rise to a multiple and continuing violation of a number of rights protected by the Convention. Forced disappearance also presupposes total disregard for the State's obligation to organize the apparatus of State in such a way that the rights recognized in the Convention are guaranteed.<sup>65</sup> The State violates its duty to respect the rights recognized in the American Convention and to ensure their free and full exercise to all persons subject to its jurisdiction when it directly engages in or tolerates actions aimed at effecting forced or involuntary

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<sup>61</sup> Copy of military criminal justice case file No. 2047-90, a case in which the charge is unlawful deprivation of freedom and that is being prosecuted by the office of the judge advocate for military district 20 of El Quiché. Annex 5.

<sup>62</sup> "The case currently being prosecuted by the Office of the Judge Advocate is in the preliminary phase, and classified as 'an inquiry into the unlawful deprivation of freedom or abduction of María Tiu Tojín and her daughter Josefa'. The Public Prosecutor's Office sent the Office of the Judge Advocate a list of persons who would presumably testify to their knowledge of the facts, yet those people have not been summoned because the military justice system does not have their addresses. The Public Prosecutor's Office was notified that as soon as this omission was corrected, the witnesses would be summoned and the pending testimony would be heard." Communication from the State dated August 12, 1994, Case before the IACHR, Appendix 2.

<sup>63</sup> Copy of the main documents from the case file on the *habeas corpus* petition heard by the Second Court of First Instance of Santa Cruz del Quiché (in response to complaints brought on behalf of María Tiu Tojín and her daughter Josefa Tiu Tojín on October 14, 1990, and on behalf of María Tojín García and her daughter María Josefa, dated November 4, 1990). Annex 7.

<sup>64</sup> I/A Court H.R., *Blake Case*. Judgment of January 24, 1998. Series C No. 36, par. 66.

<sup>65</sup> I/A Court H.R., *Case of Goiburú et al.*, Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, par. 82; I/A Court H.R., *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136, par. 92; I/A Court H.R., *Case of the 19 Tradersmen*. Judgment of July 5, 2004. Series C No. 109, par. 142.

disappearances and when it fails to investigate them properly and, where appropriate, punish those responsible.<sup>66</sup>

107. As the Court has held, forced disappearance is a crime against humanity.<sup>67</sup> The Inter-American Convention on Forced Disappearance of Persons, adopted on June 9, 1994, states that when forced disappearance becomes systematic practice it becomes a crime against humanity. This Convention on Forced Disappearance specifies the distinctive features that set forced disappearance apart from other crimes like abduction, unlawful detention or abuse of power. Article II reads as follows:

[...] forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.<sup>68</sup>

108. Under Article I of the Inter-American Convention on Forced Disappearance of Persons, the States parties undertake the international obligation:

b. 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; [...]

d. To take legislative, administrative, judicial, and any other measures necessary to comply with the commitments undertaken in this Convention.<sup>69</sup>

109. These principles are echoed in Guatemala's domestic laws. Article 201 TER of the Penal Code, as amended by Congressional Decree No. 33-96, approved on May 22, 1996, provides that:

Anyone who, by order, with the authorization or with the support of the authorities of the State, in any way deprives one or more persons of liberty for political reasons, concealing their whereabouts, refusing to tell where they were taken or to acknowledge their detention, commits the crime of forced disappearances, as does the public official or employee –whether or not he or she is a member of the State security or law enforcement bodies- who orders, authorizes, supports or gives his or her acquiescence for such actions.

Even when no political motive is present, the act of depriving one or more persons of their freedom shall constitute the crime of forced disappearance when carried out by elements of State security forces who, in the exercise of their functions, act arbitrarily and make abusive or excessive use of force. Members or elements of groups or bands organized for terrorist, insurgent, subversive purposes or for any other criminal intent, commit the crime of forced

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<sup>66</sup> I/A Court H.R., *Paniagua Morales et al. Case*, Judgment of March 8, 1998, Series C No. 37, par. 90; I/A Court H.R., *Fairén Garbi and Solís Corrales Case*, Judgment of March 15, 1989, Series C No. 6, par. 152; I/A Court H.R., *Godínez Cruz Case*, Judgment of January 20, 1989, Series C No. 5, paragraphs 168-191; and I/A Court H.R., *Velásquez Rodríguez Case*, Merits, Judgment of July 29, 1988, Series C No. 4, paragraphs 159-181. See also I/A Court H.R., *Case of the Pueblo Bello Massacre*, Judgment of January 31, 2006, Series C No. 140.

<sup>67</sup> I/A Court H.R., *Case of Goiburú et al.*, Merits, Reparations and Costs, Judgment of September 22, 2006, Series C No. 153, par. 82; I/A Court H.R., *Case of the 19 Tradersmen*, Judgment of July 5, 2004, Series C No. 109, par. 142.

<sup>68</sup> The Inter-American Convention on Forced Disappearance of Persons, adopted at Belém do Pará, Brazil, on June 9, 1994, during the twenty-fourth regular session of the General Assembly, entered into force on March 28, 1996. Article II.

<sup>69</sup> *Id.*, Article I, subparagraphs b and d.

disappearance when they engage in unlawful deprivation of freedom or abduction, whether they are participating as members of or collaborators with those groups or bands.

The crime is deemed to be continuous so long as the victim is not released.

Anyone convicted of forced disappearance shall face imprisonment for twenty-five to forty years. The death penalty shall be imposed rather than life imprisonment when because of or in the act of the forced disappearance, the victim suffers grave or very grave injury, permanent psychiatric or psychological trauma, or dies.

110. It is important to recall that the manner of the forced disappearance of the victims in the instant case fits into a systematic pattern of human rights violations in Guatemala at that time (*supra*, paragraphs 75 and 77).

#### **B. Violation of the right to personal liberty**

111. Article 7 of the American Convention on Human Rights recognizes the right to personal liberty and reads as follows:

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.

112. While the State has the duty to guarantee security and maintain public order, its power is not unlimited. To the contrary, the State has the duty to apply procedures that are in accordance with the Law and respectful of the fundamental rights of all individuals under its jurisdiction.<sup>70</sup>

113. In the instant case, it is fully established that agents of the State unlawfully detained María Tiu Tojín and her infant daughter Josefa Tiu Tojín, as well as 84 other people in the community of Santa Clara, accused them of being part of the guerrilla movement and took them away to a military base. María Tiu was forced to go on patrol with the Army. The other 84 in the

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<sup>70</sup> I/A Court H.R., *Case of Servellón García et al.* Judgment of September 21, 2006. Series C No. 152, par. 86; I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003, Series C, No. 99, par. 86.

group were taken to Santa María, Nebaj and then to the model village operated by the Special Commission for the Care of Repatriates, Refugees and Displaced Persons. María Tiu Tojín and her daughter never arrived at the model village and their whereabouts is still unknown.

114. The organs of the inter-American system for the protection of human rights have established clear criteria for determining whether someone has been deprived of his liberty in accordance with subparagraphs 2 and 3 of Article 7 of the American Convention.

115. The Inter-American Court has written that subparagraphs 2 and 3 of Article 7 establish the limits on public power and expressly prohibit detentions that are either illegal or arbitrary. The Court has held that

[a]ccording to the first of these regulatory provisions, no one shall be deprived of his personal liberty except for reasons, cases or circumstances specifically established by law (material aspect) but, also, under strict conditions established beforehand by law (formal aspect). In the second provision, we have a condition according to which no one shall be subject to arrest or imprisonment for causes or methods that – although qualified as legal – may be considered incompatible regarding for the fundamental rights of the individual, because they are, among other matters, unreasonable, unforeseeable or out of proportion.<sup>71</sup>

116. The Commission, for its part, has written that the analysis of the compatibility of the deprivation of liberty with the provisions of paragraphs 2 and 3 of Convention Article 7 should be done in three phases:

The first consists of determining the legality of the detention from a material and formal standpoint. To do so, it must be determined whether this action is compatible with the domestic legislation of the State in question. The second step involves the analysis of these domestic provisions within the context of the guarantees established by the American Convention, in order to determine whether they are arbitrary. Finally, if the detention meets the requirements of a domestic legal provision that is compatible with the American Convention, it should be determined whether the application of this law in this specific case was arbitrary.<sup>72</sup>

117. In the instant case, the Commission considers that the State has violated Article 7(2) of the Convention. As the facts make plain, María Tiu Tojín and Josefa Tiu Tojín were deprived of their liberty illegally, not in keeping with the grounds and conditions established in Guatemalan law. Given the number of persons detained and the circumstances of the detention, it is evident that the authorities were not acting on the basis of an individualized suspicion of a punishable act.

118. In a recent judgment the Inter-American Court held the following in this regard:

Programmed and collective arrests, which are not well-founded on the individualization of punishable acts and that lack judicial control, are contrary to the presumption of innocence, they wrongfully coerce personal liberty and they transform preventive detention into a discriminatory mechanism, reason for which the State may not perform them under any circumstance.<sup>73</sup>

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<sup>71</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, par. 83; I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 78.

<sup>72</sup> IACHR, Report No. 53/01, Case 11,565. *Ana, Beatriz and Celia González Pérez*. Mexico, April 4, 2001, par. 23.

<sup>73</sup> I/A Court H.R., *Case of Servellón García et al.* Judgment of September 21, 2006. Series C No. 152, par. 96.

119. Furthermore, there is nothing to suggest that at the time of her detention, the victim, María Tiu Tojín, was committing criminal acts *in flagrante*. Nothing suggests that an order issued by a competent authority was shown. The soldiers apprehended virtually everyone in the community of Santa Clara, the victims among them, on suspicion of being part of the guerrilla movement.

120. As for the arrest made by military elements, the Commission has repeatedly held that arrests must be ordered by the competent authority prescribed by the domestic laws of the State concerned and that failure to fulfill this requirement and the procedures required under international law for a detention, create a situation in which "the arrests lose their status as such and become mere kidnappings."<sup>74</sup>

121. As for the arbitrary nature of the detention, in previous cases the IACHR has reasoned that the term "arbitrary" is synonymous with the terms "irregular, abusive, contrary to law" and that an arrest is arbitrary when it is done "a) for reasons or according to procedures other than those prescribed by the law, or b) pursuant to a law the basic purpose of which is incompatible with respect for the individual's right to liberty and security."<sup>75</sup>

122. The United Nations Human Rights Committee has held that the "notion of 'arbitrariness' must not be equated with 'against the law' but be interpreted more broadly to include such elements as inappropriateness and injustice." Furthermore, holding a person in custody can be regarded as arbitrary if it is unnecessary given the circumstances of a particular case (necessary would mean to avoid flight or the concealment of evidence).<sup>76</sup>

123. The Commission is of the opinion that the Guatemalan State has violated Article 7(3) of the Convention. Having examined the arrest of María Tiu Tojín and Josefa Tiu Tojín by the principles established in its own case law and the case law of the Inter-American Court, it is evident that both the reasons that the military gave and the methods they used to deprive them of their liberty are incompatible with respect for the individual's fundamental rights. The Guatemalan Army soldiers, accompanied by PAC members, arrived in Santa Clara, accused the townspeople of being in the guerrilla movement, burned the cornfields and houses, slaughtered animals and destroyed food supplies. They took 86 people into custody, including Mrs. María Tiu Tojín and her infant daughter Josefa. These actions are evidence of an obvious act of abuse of power that was unreasonable, unforeseeable and lacking in all proportion. The absence of proportionality becomes even more self-evident if the arrest is examined in combination with other personal details about the victim, such as the fact that she was a mother, with an infant in her arms, and that she was defenseless and unarmed.

124. The Commission believes that the State has also violated Article 7(4) of the Convention. The Inter-American Court has held that this clause of Article 7 "is a mechanism to avoid illegal or arbitrary detentions, from the very moment when a person is deprived of his or her liberty. It also ensures the right to defense of the detainee."<sup>77</sup> In the instant case, neither María Tiu Tojín nor her next of kin was told why they were placed under arrest. Mrs. María Tiu Tojín was never advised of her rights. She was simply taken away by agents of the State, with no explanation or

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<sup>74</sup> See, IACHR, *Report on the Situation of Human Rights in Chile*, 1985, OEA/Ser.L/V/II.66 doc. 17, pp. 127-128.

<sup>75</sup> IACHR, Report 35/96, Case 10,832, *Luis Lizardo Cabrera*, Dominican Republic, April 7, 1998, par. 66

<sup>76</sup> UN Doc CCPR/C/59/D/560/1993, Communication No 560/1993: *A. v. Australia*. 30/04/97. CCPR/C/59/D/560/1993. (Jurisprudence) (3 April 1997) [9.2].

<sup>77</sup> I/A Court H.R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, par. 128; I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 82.

reason given, but with the sense of uncertainty that such practices cause in the victim and their next of kin.

125. Furthermore, in the specific case of forced disappearances, the *jurisprudence constante* of the Inter-American Court has been that forced disappearances represent “a phenomenon of arbitrary deprivation of liberty, an infringement of a detainee's right to be taken without delay before a judge and to invoke the appropriate procedures to review the legality of the arrest, all in violation of Article 7 of the Convention.”<sup>78</sup>

126. The Inter-American Court has held that

Article 7(5) of the Convention states that any person detained is entitled to have a judicial authority revise said arrest, without delay, as a suitable means of control in order to avoid arbitrary and illegal arrests ... A person deprived of his freedom without any type of judicial supervision must be released or immediately brought before a judge.<sup>79</sup>

127. María Tiu Tojín and her infant daughter Josefa Tiu Tojín were unlawfully denied the protection of the authority before whom they should have been brought without delay to decide the lawfulness of their arrest. The arrest of María Tiu Tojín and Josefa Tiu Tojín was not done with the idea of bringing them before a judge or other officer authorized by law to exercise judicial power and decide the lawfulness of their arrest; instead, they were arrested in order to force her to move and leave all their belongings behind, for the sole purpose of extending military hegemony over civilian communities. If the State's agents had any lawful motives for arresting María Tiu Tojín and her daughter Josefa Tiu Tojín, their duty was to bring them before the competent authority, which they did not do. The Commission is therefore alleging that the Guatemalan State failed to proceed in accordance with Article 7(5) of the Convention.

128. Finally, the Commission maintains that the State violated Article 7(6) of the Convention by its failure to provide María Tiu Tojín the opportunity to file a simple and effective recourse in order for a court to decide the lawfulness of her and her daughter's detention, and by holding them in a place other than an official detention facility or a place equipped for that purpose, without any institutional controls like records or blotters that make it possible to determine the date, manner and conditions of the victims' detention.

129. Despite the petitions of *habeas corpus*<sup>80</sup> filed by her sister Victoria Tojín, and the overtures she made to various State authorities,<sup>81</sup> María Tiu Tojín and her infant daughter Josefa Tiu Tojín were not brought before any competent authority, in violation of Article 7, subparagraphs 5 and 6 of the Convention.

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<sup>78</sup> I/A Court H.R., *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C No. 70, par. 142; I/A Court H.R., *Godínez Cruz Case*. Judgment of January 20, 1989. Series C No. 5, paragraphs 163 and 193; I/A Court H.R., *Fairén Garbi and Solís Corrales Case*. Judgment of March 15, 1989. Series C No. 6, paragraphs 155 and 186.

<sup>79</sup> See, I/A Court H.R., *Case of García Asto and Ramírez Rojas*. Judgment of November 25, 2005. Series C No. 137, par. 109; I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 221; I/A Court H.R., *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, paragraphs 76 and 77.

<sup>80</sup> Copy of the main documents from the case file on the *habeas corpus* petition heard by the Second Court of First Instance of Santa Cruz del Quiché (in response to complaints brought on behalf of María Tiu Tojín and her daughter Josefa Tiu Tojín on October 14, 1990, and on behalf of María Tojín García and her daughter María Josefa, dated November 4, 1990). Annex 7.

<sup>81</sup> Copy of the case file with the Office of the Special Prosecutor for Human Rights (case instituted in response to complaints filed October 15, 1990, on behalf of María Tiu Tojín and her daughter Josefa Tiu Tojín; and on November 20, 1990, on behalf of María Tojín García and her daughter María Josefa).. Annex 6.

130. Summarizing, subparagraphs 4, 5 and 6 of Article 7 of the American Convention establish positive obligations that impose specific requirements both on the State and on third parties acting with its tolerance or acquiescence.<sup>82</sup>

131. The Commission considers that the State has not observed those requirements. The absence of this set of minimum legal protections, a fact the State has not contested in the instant case, also fits into the pattern of violence existing at that time, particularly in the department in which the detention and subsequent disappearance of the victims occurred.<sup>83</sup>

132. The Commission has established the presence of this pattern by following the human rights situation in Guatemala in furtherance of its mandate. At the time of its 1989 visit, it expressed serious concern over the fact that the agents of the State did not follow proper procedure when making arrests. Based on the complaints processed with the Commission and the testimony taken, when arrests were made the persons being taken into custody were frequently not informed of the charges, did not know the identity of the persons making the arrest (who sometimes wore masks and were dressed in such a way that they could not be recognized); the place where the party under arrest was taken was frequently not disclosed and the persons under arrest were not advised of their rights. Many of these arrests occurred in remote places and often involved large groups of people. There is a strong correlation between the failure to observe formalities when making arrests on the one hand, and forced disappearance or extrajudicial executions on the other. That failure to observe proper formalities is frequently the prelude to an extrajudicial execution or forced disappearance.

133. For all these reasons, the Commission is petitioning the Court to adjudge and declare that the Guatemalan State violated, to the detriment of María Tiu Tojín and Josefa Tiu Tojín, Article 7(1), 7(2), 7(3), 7(4), 7(5) and 7(6) of the American Convention, read in combination with Article 1(1) thereof.

### **C. Violation of the right to humane treatment**

134. The pertinent parts of Article 5 of the Convention provide the following:

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

135. The State has not contested the fact that Mrs. María Tiu Tojín and her one-month-old daughter Josefa Tiu Tojín, were arrested illegally and arbitrarily in the community of Santa Clara, Nebaj, Department of El Quiché, by military troops from the base at Amacchel, accompanied by members of the PAC.

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<sup>82</sup> I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 81.

<sup>83</sup> See in this regard, Final Report of the CEH: *Guatemala, Memoria del Silencio*, published in 1999, available at [http://shr.aaas.org/guatemala/ceh/gmds\\_pdf/](http://shr.aaas.org/guatemala/ceh/gmds_pdf/); and the Report of the Inter-diocesan Project on Recovery of the Historical Memory, *Guatemala: Nunca Más*, prepared by the Human Rights Office of the Archdiocese of Guatemala, available at <http://www.odhag.org.gt/INFREMHI/INDICE.HTM>.

136. An unlawful and arbitrary detention places its victim in an exacerbated state of vulnerability in which there is a very real risk that his other rights, such as the right to humane treatment and to be treated with dignity, may be violated.<sup>84</sup>

137. The Commission considers that the Guatemalan State has violated Article 5(1) and 5(2) of the Convention by its failure to respect the physical, mental and moral integrity of María Tiu Tojín and her infant daughter Josefa Tiu Tojín and by its failure to treat them with respect for the inherent dignity of the human person.

138. The circumstances of the arrest of María Tiu Tojín and Josefa Tiu Tojín are *per se* a violation of their mental and moral integrity. It has been established that the victims' arrest was done in the course of a military operation involving violence and terror. Army troops arrived in the community of Santa Clara, accused the townspeople of being part of the guerrilla movement, burned the cornfields and houses, slaughtered animals and destroyed food supplies. Amid all this, they arrested 86 members of the community, the victims included.

139. The brutal and forcible removal of Mrs. María Tiu Tojín and her daughter Josefa Tiu Tojín, when their next of kin had no knowledge of their whereabouts, was harmful to their mental and moral integrity, as were their isolation and incommunication in places that were not centers of detention. This was particularly serious in the case of María Tiu Tojín who, as a mother concerned for her infant daughter's protection, would have suffered anguish, fear and uncertainty about her own fate, but most especially that of her one-and-a-half-month-old daughter. In the case of Josefa Tiu Tojín, the violation was even more egregious, as she was utterly defenseless, subjected to isolation and incommunicado detention with her mother María Tiu Tojín.

140. On this last point, in its very first contentious case, the Inter-American Court held that isolation and incommunication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being.<sup>85</sup> It held further that such treatment violates Article 5 of the Convention. The Court has also ruled that even in cases where incarceration is legitimate, "[o]ne of the reasons that incommunicado detention is considered to be an exceptional instrument is the grave effects it has on the detained person. Indeed, isolation from the outside world produces moral and psychological suffering in any person, places him in a particularly vulnerable position..."<sup>86</sup> It is reasonable to suppose that this is the fate that befell María Tiu Tojín.

141. For its part, the Inter-American Commission has also addressed the issue of *incommunicado* detention in previous case. It wrote that "Abuse of this exceptional measure renders the individual unnecessarily vulnerable, and itself may constitute a form of mistreatment."<sup>87</sup>

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<sup>84</sup> I/A Court H.R., *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, par. 119; I/A Court H.R., *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141, par. 104; I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 96. See also, ECHR, *Case of Ireland v. the United Kingdom*, Judgment of 18 January 1978, Series A No. 25. par. 167.

<sup>85</sup> I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 323; I/A Court H.R., *Case of Lori Berenson Mejía*. Judgment of November 25, 2004. Series C No. 119, par. 103.

<sup>86</sup> I/A Court H.R., *Case of Lori Berenson Mejía*. Judgment of November 25, 2004. Series C No. 119, par. 104; I/A Court H.R., *Case of De la Cruz Flores*. Judgment of November 18, 2004. Series C No. 115, par. 129; I/A Court H.R., *Suárez Rosero Case*. Judgment of November 12, 1997. Series C No 35, par. 90.

<sup>87</sup> See, IACHR, *Right to Humane Treatment*, in the *Report on the Situation of Human Rights in Ecuador*, OEA/Ser.L/V/II.96, doc.10, rev.1 1997. Amnesty International has observed that "Torture most often occurs during a detainee's first days in custody. Those vulnerable hours are usually spent incommunicado, when the security forces maintain total control over the fate of the detainee, denying access to relatives, lawyer or independent doctor." Amnesty International, *Torture in the Eighties*, 110 (1984).

In the instant case, the absence of any communication or contact with María Tiu Tojín made it impossible for her next of kin to know what her physical and emotional condition was.

142. Given the circumstances under which María Tiu Tojín and her infant daughter Josefa Tiu Tojín were arrested, moved and held in secret, as recounted here, combined with her sense of vulnerability and uncertainty as to whether the two would be released given the systematic practice of extrajudicial executions at that time, it is reasonable to suppose that the victim María Tiu Tojín experienced fear and anguish while in detention, not just for her own fate but for that of her infant daughter as well.

143. The Inter-American Court has held that “the threats and real danger of submitting a person to physical injuries produces, in certain circumstances, a moral anguish of such degree that it may be considered psychological torture<sup>88</sup> and that “it is inherent in human nature that any persons subjected to violence and ill-treatment, [...] (unlawful detention, cruel, inhuman and degrading treatment, and death), experiences corporal pain and deep suffering and anguish; consequently, this damage does not require proof.”<sup>89</sup>

144. As for the duration of the victims’ detention, while there is no evidence with which to get an exact figure on the number of days that the victims were held in custody before their disappearance, the Commission considers that even a brief period of detention is enough to constitute an infringement of one’s mental and moral integrity.<sup>90</sup>

145. While there is no direct evidence that the victims were subjected to mistreatment, their illegal and arbitrary detention, forced relocation, secret detention, the nature of the crime in question, the presence of a pattern of gross human rights violations at the time of these events: when all these factors are combined it is reasonable to presume that they suggest that María Tiu Tojín and Josefa Tiu Tojín were subjected to physical and moral aggression while they were in the custody of the Guatemalan Army.

146. The Court has also held that the threat to the human rights of women who are “detained or arrested” in the context of an internal armed conflict is particularly serious.<sup>91</sup> It underscored that women in custody are subject to the complete control and power of State agents, absolutely defenseless, and potential victims of those very same State agents.<sup>92</sup>

147. The Court has also written that, as a number of international organizations have warned:

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<sup>88</sup> I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 272; I/A Court H.R., *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, par. 119; I/A Court H.R., *Case of Maritza Urrutia*. Judgment of November 27, 2003. Series C No. 103, par. 92.

<sup>89</sup> I/A Court H.R., *Case of the “19 Tradesmen”*. Judgment of July 5, 2004. Series C No. 109, par. 248.

<sup>90</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, par. 108; and I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 98; I/A Court H.R., *Case of Cantoral Benavides*. Judgment of August 18, 2000. Series C No. 69, paragraphs 83, 84 and 89.

<sup>91</sup> I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 303.

<sup>92</sup> *Ibid*, par. 307.

referring to the violence against women within a context of an armed conflict, [...] sexual aggression is often considered and practiced as a means to humiliate the adversary and that sexual rape is used by both parties as a symbolic act.<sup>93</sup>

148. It is an uncontested fact that the victims were arrested by Guatemalan State security agents and that at the time of their disappearance they were in the custody of those agents, an assertion made by the representatives of the victims and their next of kin and acknowledged by the State in the Commission's proceedings on this case.

149. As for the victims' next of kin, the Inter-American Court has held that they, too, may be considered victims in cases in which such fundamental rights as the right to life and the right to humane treatment are violated. Some of the factors that the Court considers to determine whether the next of kin can be classified as victims are the closeness of the family tie, the particular circumstances of the relationship with the victim, the degree to which the next of kin was a witness to the events surrounding the disappearance, the degree that next of kin were involved in the search to find the disappeared person and the State's response to the efforts made.<sup>94</sup>

150. The Commission's file on this case contains information to substantiate that Victoria Tiu has been actively involved in the search for her disappeared sister María Tiu Tojín and niece Josefa Tiu Tojín. She was also the victim of threats from the military commissioners, which the State authorities did nothing to investigate.<sup>95</sup> The Commission found that Victoria Tiu's mental and moral integrity was harmed as a direct consequence of the illegal and arbitrary detention of María Tiu Tojín and Josefa Tiu Tojín, the fact that their whereabouts is unknown, and the failure to investigate what transpired.

151. The Court has held that in cases involving the forced disappearance of persons, the violation of the right to mental and moral integrity of the victims' next of kin is a direct result precisely of this phenomenon, which causes them severe anguish owing to the act itself. Their suffering is compounded by, among other factors, 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>96</sup>

152. Summarizing, the Inter-American Commission is asking the Court to adjudge and declare that the Guatemalan State violated, to the detriment of María Tiu Tojín and Josefa Tiu Tojín, and their sister and aunt, respectively, Victoria Tiu, Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) thereof.

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<sup>93</sup> I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 313.

<sup>94</sup> I/A Court H.R., *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C No. 70, paragraphs 162 and 163.

<sup>95</sup> Report prepared by the Chief of Police of the Department of El Quiché based on the complaint that Victoria Tiu Tojín filed on November 20, 1990. Annex 8.

<sup>96</sup> I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, par. 97; I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, par. 340; I/A Court H.R., *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140, par. 143.

#### D. Violation of the right to life

153. Article 4(1) of the American Convention on Human Rights provides the following:

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.

154. The Court has written that:

[...] the right to life plays a fundamental role in the American Convention for being the essential prerequisite for the realization of the other rights.<sup>97</sup> When the right to life is not respected, all the other rights are meaningless. The States have the obligation to ensure the creation of the conditions necessary to avoid violations of this inalienable right and, specifically, the duty of impeding violations of this right by its agents.<sup>98</sup> Compliance with Article 4 of the American Convention, in relation to Article 1(1) thereof, not only presupposes that no person shall be deprived of his life arbitrarily (negative obligation), but also that, in the light of its obligation to ensure the full and free enjoyment of human rights, the States shall adopt all appropriate measures to protect and preserve the right to life (positive obligation).<sup>99</sup> This active protection of the right to life by the State not only involves its legislators, but also the entire state institution and those that must protect the security, being these either police forces or armed forces. Based on the aforementioned, the States must adopt the necessary measures not only to prevent and punish the deprivation of life as a consequence of criminal acts, but also to prevent arbitrary executions by their own police.<sup>100</sup>

The practice of disappearances has frequently involved the secret execution of those detained, without trial, followed by concealment of the corpse in order to eliminate any material evidence of the crime and to ensure absolute impunity, which entails a brutal violation of the right to life, established in Article 4 of the Convention.<sup>101</sup>

155. The State has not contested the fact that Mrs. María Tiu Tojín and Josefa Tiu Tojín were last seen on August 30, 1990, at a military base at Amacchel. Although their bodies have not yet been found, their deaths –at least that of María- may be inferred from the evidence presented and the pattern of human rights violations at the time, and based on the principles contained in the jurisprudence and literature of the inter-American system for the protection of human rights.

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<sup>97</sup> I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 237; *Case of the Pueblo Bello Massacre*, Judgment of January 31, 2006. Series C No. 140, par. 120; I/A Court H.R., *Case of Huilca Tecse*. Judgment of March 3, 2005. Series C No. 121, par. 65.

<sup>98</sup> I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia)*. Judgment of July 5, 2006. Series C No. 150, par. 64; I/A Court H.R., *Case of Ximenes Lopes*. Judgment of July 4, 2006. Series C No. 149, par. 125; I/A Court H.R., *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, par. 83; see, also, United Nations Human Rights Committee, General Comment 6/1982, par. 3 in *Compilation of General Recommendations Adopted by Human Rights Treaty Bodies*, U.N.Doc.HRI/GEN/1/Rev 1 at 6 (1994) and also *cf.* with United Nations Human Rights Committee, General Comment 14/1984, par. 1 in *Compilation of General Recommendations Adopted by Human Rights Treaty Bodies*, U.N.Doc.HRI/GEN/1/Rev 1 at 18 (1994).

<sup>99</sup> I/A Court H.R., *Case of Vargas Areco*. Judgment of September 26, 2006. Series C No. 155, par. 75; I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, par. 130; I/A Court H.R., *Case of the Sawhoyamaxa Indigenous Community*. Judgment of March 29, 2006. Series C No. 146, par. 152.

<sup>100</sup> I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 238; I/A Court H.R., *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C No. 134, par. 231; I/A Court H.R., *Case of Huilca Tecse*. Judgment of March 3, 2005. Series C No. 121, par. 66.

<sup>101</sup> I/A Court H.R., *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136, par. 103; I/A Court H.R., *Case of the 19 Tradersmen*. Judgment of July 5, 2004. Series C No. 109, par. 154.

156. While it is reasonable to presume that Josefa Tiu Tojín also died, it is also conceivable, given the practice at the time, that she was handed over to third persons to be placed with a family or to be put up for adoption. She may even have been unlawfully retained by the perpetrators themselves.

157. The Commission has demonstrated a pattern of violations of the right to life in Guatemala at the time the events in this case occurred. The State itself has acknowledged its responsibility for the policy of extermination targeting persons suspected of being associated with the subversive movement or of having ideological differences.

158. Another important consideration is the strong evidentiary value attached to circumstantial evidence or logical inferences in cases of forced disappearance when they occur against the backdrop of a State-driven or tolerated practice of egregious human rights violations.

159. In the present case, as described in the Final Report of the CEH: *Guatemala, Memoria del Silencio*, published in 1999 (chapter II, Volume II) and in the Report of the Interdiocesan Project "*Guatemala, Nunca Más*", at the time of the disappearance of María Tiu Tojín and Josefa Tiu Tojín, forced disappearance was systematic practice and was attributed to agents of the State.

160. The logical inference, then, is that the disappearance of María Tiu Tojín and Josefa Tiu Tojín was not an isolated incident, but rather an act perpetrated by soldiers as part of a pattern of forced disappearances at that time.

161. The IACHR also considers that the Guatemalan State violated Article 4 of the American Convention, read in conjunction with Article 1(1) thereof, by failing to comply with its obligation to create the conditions necessary to ensure the right to life and prevent its violation.

162. The IACHR considers that the pattern of forced disappearances followed by extrajudicial executions that was tolerated and encouraged by the Guatemalan State between 1962 and 1996 created an atmosphere that was incompatible with the effective protection of the right to life.

163. The IACHR therefore asserts that by failing to create the institutions and laws necessary to effectively prevent violations of the right to life, the Guatemalan State violated Article 4 of the American Convention, in relation to Article 1(1) thereof, to the detriment of María Tiu Tojín and Josefa Tiu Tojín.

164. In conclusion, the purpose of domestic proceedings is to establish individual responsibility for violations of fundamental human rights, whether committed by agents of the State or persons acting in that capacity. By contrast, the purpose of international proceedings is to establish whether the State has incurred international responsibility for violation of human rights protected under international treaties and other instruments. Thus, while domestic proceedings are essential to establish the individual authorship of the violation in order then to be able to sentence and convict the person, in international proceedings the identity of the State agent that committed the human rights violations need not be known. To attribute international responsibility to the State, it is sufficient to establish that the violation was committed by an agent of the State, irrespective of whether the identity of the agent is known. Even when the individual authorship of a violation has not been established, the State must compensate the victim or his or her next of kin if the violation was perpetrated by an agent of the State. In its case law, the Court has also found that the State has an obligation to respect the right to life recognized in Article 4 of the American Convention to all persons subject to its jurisdiction. As guarantor of this right, the State must prevent those situations that might lead, by action or omission, to a violation of that right. If an

individual was detained and then disappeared, it is incumbent upon the State to provide a satisfactory and convincing explanation of what happened and disprove the claims of its responsibility by offering valid evidence. In effect, as guarantor the State has the responsibility to ensure the rights of the individual in its custody and to provide information and evidence as to what happened to the detainee.<sup>102</sup> The United Nations' Human Rights Committee has written that "[...] the essential fact remains that the State party by arresting and detaining individuals takes the responsibility to care for their life."<sup>103</sup>

165. In the instant case, given the repression typical of the period in which María Tiu Tojín and her infant daughter Josefa Tiu Tojín and the reason why she was taken to the Amacchel military base, the Commission believes it is reasonable to presume that María Tiu Tojín could have been executed for not cooperating and for not providing the information demanded of her, and that her infant daughter Josefa Tiu Tojín may also have been killed because, given her age and innocence, she was of no value as a source of intelligence. It is also reasonable to presume that the bodies were hidden, so that no one would ever have to answer for this violation of the right to life.

166. To ensure that such crimes never came to light and went unpunished, the bodies of the victims were thrown into rivers or into the sea, buried in secret burial areas, or were disfigured to prevent identification. Features were mutilated by dousing them with acids; bodies or remains were then burned or buried.<sup>104</sup>

167. Based on the evidence described herein, the Commission considers that proper enforcement of the guarantees of the American Convention requires that the Court adjudge and declare that the Guatemalan State violated the right to life of María Tiu Tojín and Josefa Tiu Tojín, recognized in Article 4 of the Convention, in relation to Article 1(1) thereof, by its failure to create the conditions necessary to ensure exercise of that right, by not having prevented violations of this right, and by the forced disappearance of the victims while in the custody of State agents.

#### **E. Violation of the rights to a fair trial and to judicial protection**

168. The Inter-American Commission maintains that the Guatemalan State failed to fulfill its obligation to conduct an adequate and effective investigation into the disappearance of Mrs. María Tiu Tojín and her infant daughter Josefa Tiu Tojín, in violation of articles 8, 25 and 1(1) of the American Convention.

169. Article 8 of the Convention provides the following:

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.

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<sup>102</sup> I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 273; I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 111. See, also, I/A Court H.R., *Case of the Urso Branco Prison*, Provisional Measures, Order of April 22, 2004, *consideranda* 6.

<sup>103</sup> UN doc. CCPR/C/74/D/763/1997, *Lantsov v. Russian Federation*, April 15, 2002, paragraph 9.2.

<sup>104</sup> CEH, *Guatemala: Memoria del Silencio*, Volume II, Human rights violations and incidents of violence, pp. 423, available at [http://shr.aaas.org/guatemala/ceh/gmds\\_pdf/](http://shr.aaas.org/guatemala/ceh/gmds_pdf/).

170. Article 25 of the Convention reads as follows:

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.

171. Article 1(1) of the American Convention provides that

[t]he 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.

172. For its part, Article I of the Inter-American Convention on Forced Disappearance of Persons provides that:

The States Parties to this Convention undertake:

b.. 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;

[...]

d. To take legislative, administrative, judicial, and any other measures necessary to comply with the commitments undertaken in this Convention.

173. Under these provisions, the State is required to ensure access to the justice system within a reasonable period, with guarantees of legality, independence and impartiality, and has the general obligation to provide an effective judicial recourse to violations of basic rights that ensures the efficacy of procedural instruments or mechanisms.

174. The content of Article 25 is closely related to Article 8(1) which recognizes every person's right to a hearing, with due guarantees and within a reasonable period, by a competent, independent, and impartial tribunal. It also gives the victims' next of kin the right to have their loved one's death effectively investigated by the authorities, to have judicial proceedings prosecuted against the responsible parties, the proper penalties enforced and the damages redressed.<sup>105</sup> Thus, the Inter-American Court of Human Rights has held that:

under the American Convention, the States Parties are obliged to provide effective judicial remedies to the victims of human rights violations (Article 25), remedies that must be implemented according to the rules of due process of law (Article 8(1)), all within the general obligation of States to ensure to all persons subject to their jurisdiction free and full exercise of the rights established in the Convention (Article 1(1)).<sup>106</sup>

175. The jurisprudence of the inter-American system for the protection of human rights has established that when an indictable offense is committed, the State has an obligation to set the

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<sup>105</sup> I/A Court H.R., *Durand and Ugarte Case*. Judgment of August 16, 2000. Series C No. 68, par. 130.

<sup>106</sup> I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, par. 287.

criminal justice system in motion and prosecute the crime to its ultimate ends<sup>107</sup> and that in such cases this is the proper means to clarify the facts, prosecute those responsible and establish the corresponding criminal sanctions, and make other means of reparations possible.

176. Therefore, the State has a duty to investigate human rights violations, to prosecute the responsible parties and to ensure that the crimes do not go unpunished. The Court has defined impunity as "the absence of any investigation, pursuit, capture, prosecution and conviction of those responsible for the violations of rights protected by the American Convention"<sup>108</sup> and has written that "the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations, and total defenseless of victims and their relatives."<sup>109</sup>

177. The State must undertake its obligation to investigate and punish human rights violations in a serious manner. The Court has written the following in this regard:

[i]n certain circumstances, it may be difficult to investigate acts that violate an individual's rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.<sup>110</sup>

178. Specifically with regard to the duty to investigate cases of forced disappearance, the Court has stated that "as may be deduced from the preamble to the aforesaid Inter-American Convention,<sup>111</sup> faced with the particular gravity of such offenses and the nature of the rights harmed, the prohibition of the forced disappearance of persons and the corresponding obligation to investigate and punish those responsible has attained the status of *jus cogens*."<sup>112</sup>

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<sup>107</sup> I/A Court H.R., *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147; I/A Court H.R., *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140; See also Report N° 52/97, Case 11,218, *Arges Sequeira Mangas*, Annual Report of the IACHR 1997.

<sup>108</sup> See in this regard, I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, par. 148; I/A Court H.R., *Case of the "19 Tradesmen"*. Judgment of July 5, 2004. Series C No. 109, par. 175; I/A Court H.R., *Bámaca Velásquez Case. Reparations*, (Art. 63(1) American Convention on Human Rights), Judgment of February 22, 2002, Series C No. 91, par. 64

<sup>109</sup> I/A Court H.R., *Loayza Tamayo Case, Reparations*, Judgment of November 27, 1998, par. 169 and 170.

<sup>110</sup> I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4, par.177. For its part, the Colombian Constitutional Court has written that "Under international law, compensation of damages to victims and injured parties will not, by itself, be sufficient to effectively protect human rights; instead, truth and justice are essential in a society to avoid a recurrence of the situations that led to egregious human rights violations and because respect for the inherent dignity and equal and inalienable rights of all persons demands that the juridical remedies crafted by States be geared to full restitution to victims and injured parties. Full restitution includes economic compensation and access to the courts to discover the truth of what happened and to seek, through institutional avenues, just punishment of the guilty parties." Judgment C-228/02 of April 3, 2002.

<sup>111</sup> CONSIDERING that the forced disappearance of persons of persons violates numerous non-derogable and essential human rights enshrined in the American Convention on Human Rights, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights. (Inter-American Convention on Forced Disappearance of Persons, preamble).

<sup>112</sup> I/A Court H.R., *Case of Goiburú et al. Merits, Reparations and Costs*. Judgment of September 22, 2006. Series C No. 153, par. 84.

179. The Court has also written that:

when it implements or tolerates actions tending to execute forced or involuntary disappearances, when it does not investigate them adequately and does not punish those responsible, when applicable, the State violates the obligation to respect the rights protected by the Convention and to guarantee their free and full exercise, of both the victim, and of his next of kin to know his whereabouts.<sup>113</sup>

180. In the instant case, it has been shown that neglect on the part of the Guatemalan judiciary was instrumental in concealing the identity of the responsible parties, even though the international community has censured internal mechanisms that aid impunity and serve to cover up the truth.<sup>114</sup>

181. The obligation to investigate, prosecute and punish any act involving a violation of Convention-protected rights requires that the material authors of the acts constituting violations of human rights be punished, but so too the intellectual authors of those acts.<sup>115</sup>

182. On the matter of the guarantees of due process, the Court has held that

for true guarantees of fair trial to exist in a proceeding, pursuant to the provisions of Article 8 of the Convention, it is necessary to observe all the requirements that "are designed to protect, to ensure or to assert the entitlement to a right or the exercise thereof."<sup>116</sup>

183. In the proceedings on this case before the IACHR, the representatives of the victims and their next of kin claimed, and the State acknowledged, that the forced disappearance of María Tiu and Josefa Tiu Tojín has not been properly investigated and the responsible parties have not been punished.

184. The petitions of *habeas corpus* filed by the victims' next of kin with the judicial authorities<sup>117</sup> were not effective and the State so acknowledged.

185. The Court has written the following regarding the purpose of the petition of *habeas corpus*:

the writ of habeas corpus [...] is a judicial remedy designed to protect personal freedom or physical integrity against arbitrary detentions by means of a judicial decree ordering the appropriate authorities to bring the detained person before a judge so that the lawfulness of

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<sup>113</sup> I/A Court H.R., *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C No. 70, par. 129.

<sup>114</sup> See, Douglas W. Cassel Jr., "International Truth Commissions and Justice" in *Transitional Justice*, Volume I: General Considerations, pp. 326 to 349.

<sup>115</sup> The Court has held, for example, that " the American Convention guarantees everyone access to justice to enforce their rights, and the States Parties have the obligation to prevent, investigate, identify and punish the masterminds and accessories of human rights violations." I/A Court H.R., *Constitutional Court Case*. Judgment of September 29, 1999. Series C No. 71, par. 123. See, also, I/A Court H.R., *Case of Myrna Mack Chang*. Judgment of November 25, 2003. Series C No. 101, par. 275; *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003, Series C No. 99, par. 186; *Blake Case*, Reparations, Judgment of January 22, 1999, Series C No. 48, par. 65.

<sup>116</sup> I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 124.

<sup>117</sup> Copy of the main documents from the case file on the *habeas corpus* petition heard by the Second Court of First Instance of Santa Cruz del Quiché (in response to complaints brought on behalf of María Tiu Tojín and her daughter Josefa Tiu Tojín on October 14, 1990, and on behalf of María Tojín García and her daughter María Josefa, dated November 4, 1990). Annex 7.

the detention may be determined and, if appropriate, the release of the detainee be ordered.<sup>118</sup>

The Court held that the petition of *habeas corpus* is the proper recourse to exhaust in cases of forced disappearance. In effect, the Court asserted that:

*habeas corpus* would be the normal means of finding a person presumably detained by the authorities, of ascertaining whether he is legally detained and, given the case, of obtaining his liberty.<sup>119</sup>

186. The foregoing notwithstanding, 17 years have passed since the first petition of *habeas corpus* was filed on their behalf, yet María Tiu Tojín and her infant daughter Josefa Tiu Tojín are still disappeared. Judicial guarantees were not enforced within a reasonable period, especially given the seriousness of the case. Therefore, the petitions of *habeas corpus* filed on behalf of the victims were ineffective. Reports prepared by the IACHR have addressed the matter of the inefficacy of *habeas corpus* petitions during the period of armed conflict.<sup>120</sup>

187. The Commission concurs with the conclusion that the CEH reached to the following effect:

The failure of the administration of justice to protect human rights during the internal armed conflict has been clearly and fully established, by the thousands of violations ... that were not investigated, tried, or punished by the Guatemalan State.... In general, the Judiciary neglected to address basic procedural remedies to control the authorities, in view of the grave abuses against personal liberty and security... Moreover, on numerous occasions the courts of justice were directly subordinated to the Executive branch.... This whole situation made the population totally defenseless in the face of the abuses of the authorities, and has led the Judiciary to be seen as an instrument for defending and protecting the powerful, that has repressed or refused to protect fundamental rights, especially of those who have been victims of grave human rights violations.<sup>121</sup>

188. Secondly, the Commission observes that a case was instituted in the military justice system for the unlawful deprivation of freedom or abduction of María Tiu Tojín and her infant daughter Josefa Tiu Tojín. The case was with the Office of the Judge Advocate, classified as Special Inquiry No. 2047-90.<sup>122</sup> The defendant was Infantry Reserve Lieutenant William Alexander West Quinteros, who was ordered released for lack of sufficient cause to order his imprisonment.

189. In a previous case, the Commission found that:

Where the state allows investigations to be conducted by the organs potentially implicated, independence and impartiality are clearly compromised. Legal procedures compromised in this way are incapable of affording the investigation, information and remedy purportedly available. The consequence of such compromise is insulation of those presumably responsible

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<sup>118</sup> I/A Court H.R., Advisory Opinions OC-8/87, *Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*, January 30, 1987, paragraphs 33; Advisory Opinion OC-9/87, *Judicial Guarantees in States of Emergency (Arts. 27.2, 25 and 8 American Convention on Human Rights)*, October 6, 1987, par. 31.

<sup>119</sup> I/A Court H.R., *Velásquez Rodríguez Case*, Merits, Judgment of July 29, 1988, Series C No. 4, par. 65.

<sup>120</sup> IACHR, Fourth Report on the Situation of Human Rights in Guatemala, 1993.

<sup>121</sup> IACHR, Fifth Report on the Situation of Human Rights in Guatemala, 2001.

<sup>122</sup> Copy of military criminal justice case file No. 2047-90, a case in which the charge was unlawful deprivation of freedom and that was prosecuted by the office of the judge advocate for military district 20 of El Quiché. Annex 5.

from the normal operation of the legal system. This type of de facto impunity is corrosive of the rule of law and violative of the principles of the American Convention.<sup>123</sup>

190. Equally instructive is the Colombian Constitutional Court's ruling to the effect that:

For a crime to fall within the jurisdiction of the military criminal justice system [...] the punishable offense must be an excess or abuse of power in the performance of an activity that is directly related to a function proper to the military service. [I]f the agent's intent was criminal from the outset and if said agent uses his or her authority to commit a punishable offense, the case comes under the jurisdiction of the regular courts, even if some abstract relationship might exist between the purposes that the military serve and the punishable offense that the actor commits. [T]he nexus between a criminal offense and a service-related function is broken when the offense is unusually egregious, as in the case of crimes against humanity. Under such circumstances, the regular [civilian] courts must have jurisdiction because the crime is completely at variance with the constitutional functions of the armed forces.<sup>124</sup>

191. With respect to the jurisdiction of the military courts, "[t]he Court has already established that, under the democratic rule of law, the military criminal jurisdiction should have a very restricted and exceptional scope and be designed to protect special juridical interests associated with the functions assigned by law to the military forces. Hence, it should only try military personnel for committing crimes or misdemeanors that, due to their nature, harm the juridical interests of the military system."<sup>125</sup>

192. The Court has also held that "[w]hen the military courts assume jurisdiction over a matter that should be heard by the regular courts, the right to the appropriate judge is violated, as is, *a fortiori*, due process, which, in turn, is intimately linked to the right of access to justice."<sup>126</sup> As the Court has previously established, "the judge in charge of hearing a case must be competent, independent and impartial."<sup>127</sup>

193. As for the prolonged delay in the investigations in the instant case, in its "*19 Tradesmen*" Case, the Court wrote that the State must explain and prove why it has required more time that would be reasonable, in principle, to deliver a final judgment in a specific case, according to the said criteria.<sup>128</sup> It is important to note that in cases such as this, the authorities must act on their own initiative and move the investigation forward; this burden must not depend upon the initiative of the victim's next of kin or upon their offer of proof.<sup>129</sup>

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<sup>123</sup> IACHR, Report No. 10/95, Case 10,580, *Manuel Stalin Bolaños*, Ecuador, Annual Report of the IACHR 1995, OEA/Ser.L/V/II.91, Doc. 7, rev. 3, April 3, 1996, par. 48.

<sup>124</sup> Constitutional Court of the Republic of Colombia, Judgment C-358 of August 5, 1997.

<sup>125</sup> I/A Court H.R., *Case of the "Mapiripán Massacre."* Judgment of September 15, 2005. Series C No. 134, par. 202.

<sup>126</sup> I/A Court H.R., *Las Palmeras Case*. Judgment of December 6, 2001. Series C No. 90, par. 52; I/A Court H.R., *Cantoral Benavides Case*. Judgment of August 18, 2000. Series C No. 69, par. 112; and I/A Court H.R., *Castillo Petrucci et al. Case*. Judgment of May 30, 1999. Series C No. 52, par. 128. I/A Court H.R., *Case of the 19 Tradesmen*, Judgment of July 5, 2004. Series C No. 109, par. 167.

<sup>127</sup> I/A Court H.R., *Case of Las Palmeras*. Judgment of December 6, 2001, par. 53; I/A Court H.R., *Ivcher Bronstein Case*. Judgment of February 6, 2001. Series C No. 74, par. 112; I/A Court H.R., *Case of the "19 Tradesmen,"* Judgment of July 5, 2004. Series C No. 109, par. 165.

<sup>128</sup> I/A Court H.R., *Case of the "19 Tradesmen."* Judgment of July 5, 2004. Series C No. 109, par. 191.

<sup>129</sup> I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 132.

194. The investigation conducted was slow and inadequate, as was the information from the State. These constitute a serious violation of the family's right to a swift and efficient judicial recourse. The delay and inadequacy of all the State's efforts to investigate the serious allegations made by the victims' next of kin in the domestic courts prevented them from exercising their right to justice and their right to know the truth of what happened to María Tiu Tojín and Josefa Tiu Tojín.

195. The practical consequence of the Guatemalan State's failure to afford the victims' next of kin a judicial inquiry by an independent and impartial court was to make it materially impossible for them to exercise their right to obtain compensation. Under Guatemalan law, in order to receive civil reparations for damages caused by an illicit act classified as a crime, the existence of the crime must be proved in a criminal proceeding.

196. Therefore, in the instant case the State has failed to take the measures necessary to comply with its obligation to investigate, prosecute and punish the responsible parties and redress the victims and their next of kin.

197. In a number of its judgments, the Court has held that every individual, including the next of kin of victims of serious human rights violations, has the right to the truth. Consequently, the victims' next of kin and society as a whole have to be told everything that transpired in connection with the violations.<sup>130</sup>

198. As for the how the right to the truth in a case of forced disappearance fits into the Convention, the Inter-American Court has written that

the right to the truth is subsumed in the right of the victim or his next of kin to obtain clarification of the facts relating to the violations and the corresponding responsibilities from the competent State organs, through the investigation and prosecution established in Articles 8 and 25 of the Convention.<sup>131</sup>

199. Almost 17 years have passed since the events in this case, and Guatemalan society still has not been told the truth of what happened to María Tiu Tojín and her infant daughter Josefa Tiu Tojín while in the custody of agents of the State. Neither the family nor Guatemalan society knows where the victims' remains are or the names of those responsible for the events. Each and every one of the persons who had a hand in the forced disappearance of María Tiu Tojín and her infant daughter Josefa Tiu Tojín are hidden by the cloak of impunity.

200. The Commission observes that despite the State's acknowledgement of the gravity of the events attending the forced disappearance of María Tiu Tojín and the infant Josefa Tiu Tojín, the proceedings conducted by the Judge Advocate's Office failed to establish its material and intellectual authorship or to impose the punishment required by law.

201. The Commission interprets the negligence on the part of the Guatemalan judicial authorities as obstruction intended to avoid fulfillment of the State's international obligation to investigate, prosecute and punish those responsible. To date, the family of María Tiu Tojín and Josefa Tiu Tojín has received no response from the State as to the victims' whereabouts. The profound harm caused by the forced disappearance has not been redressed and those responsible

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<sup>130</sup> I/A Court H.R., *Case of Carpio Nicolle et al.* Judgment of November 22, 2004. Series C No. 117; par. 128; I/A Court H.R., *Case of the Plan de Sánchez Massacre.* Judgment of November 19, 2004. Series C No. 116, par. 97; I/A Court H.R., *Case of Tibi.* Judgment of September 7, 2004. Series C No. 114, par. 257.

<sup>131</sup> I/A Court H.R., *Bámaca Velásquez Case.* Judgment of November 25, 2000. Series C No. 70. par, 201.

for the crime have not been punished. Quite the contrary, no one at all has answered for the forced disappearance of María Tiu Tojín and her infant daughter Josefa Tiu Tojín. It is therefore obvious that the Guatemalan State deprived the victims' next of kin of their right to a simple and prompt recourse to a competent court and to a hearing, with due guarantees and within a reasonable period of time, by an independent and impartial court, in flagrant violation of articles 25 and 8 of the American Convention, respectively.

202. The Commission also argues that the military courts do not have jurisdiction in cases involving human rights violations, since such violations are not related to military service and the military courts should only be used exceptionally, and then only for service-related crimes committed by members of the armed forces. Processing the case through the military courts had the effect of denying the victims justice, as they cannot seek real protection of their rights.

203. Based on the foregoing considerations, the Commission is asking the Court to adjudge and declare that the State has violated the rights to judicial protection and to a fair trial, with due guarantees, protected under Articles 25 and 8(1) of the American Convention, to the detriment of the victims in the present case and their next of kin, and has thus failed to fulfill its obligations under Article 1(1) of the Convention and Article I of the Convention on Forced Disappearance of Persons.

#### **F. Violation of the rights of the child**

204. Article 19 of the American Convention provides that "[e]very 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."

205. The way in which a society treats its children is deeply reflective of its values. Regional and global human rights systems have accorded special priority and protection to the rights of the child, because the children and youth of our hemisphere represent the potential we have to one day create "a system of personal liberty and social justice based on respect for the essential rights of man." Article 19 thus provides for special mechanisms of protection for children because of their vulnerability as minors, and special importance must be attached to the fulfillment of this obligation.

206. The Court has written that "children have the same rights as all human beings [...] and also special rights derived from their condition, and these are accompanied by specific duties of the family, society, and the State."<sup>132</sup>

207. Article 19 of the American Convention must be understood as an added right which the Convention establishes for those who, because of their physical and emotional development, require special protection.<sup>133</sup> Given the special situation of children, the American Convention demands of its states parties a special obligation of protection vis-à-vis children that transcends the general obligation undertaken in Article 1(1) of the Convention, which is to respect the rights recognized in the Convention. That special protection cannot, under Article 29 of the Convention, be suspended under any circumstance.<sup>134</sup>

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<sup>132</sup> I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, par. 54.

<sup>133</sup> I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, par. 54. See, also, I/A Court H.R., *Case of the "Juvenile Reeducation Institute"*. Judgment of September 2, 2004. Series C No. 112, par. 147.

<sup>134</sup> In General Comment No. 17 on the rights of the child upheld in Article 24 of the International Covenant on Civil and Political Rights recognizes the right of every child, without any discrimination, to receive from his family, society and the

208. When interpreting Article 19 of the American Convention, the Court held that the provisions of the United Nations Convention on the Rights of the Child<sup>135</sup> can be taken into account as well. It observed that:

[b]oth the American Convention and the Convention on the Rights of the Child are part of a broad international *corpus juris* for protection of children that aids this Court in establishing the content and scope of the general provision defined in Article 19 of the American Convention.<sup>136</sup>

209. Summing up, the provisions of the Convention on the Rights of the Child<sup>137</sup> and Article 19 of the American Convention require that special measures are taken to prevent children from becoming the victims of human rights violations.<sup>138</sup>

210. The Inter-American Court has held that cases in which the victims of human rights violations are children are particularly serious, since children have “special rights derived from their condition, and these are accompanied by specific duties of the family, society, and the State.”<sup>139</sup> The regulating principle here is the best interests of the child, which “is based on the very dignity of the human being on the characteristics of children themselves, and on the need to foster their development, making full use of their potential.”<sup>140</sup>

211. The Commission understands that the special duty to protect children involves positive and negative obligations. The Inter-American Court has established that the State has the

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...continuation

State the special measures of protection required by his status as a minor. Consequently, the implementation of this provision entails the adoption of special measures to protect children, in addition to the measures that States are required to take under article 2 to ensure that everyone enjoys the rights provided for in the Covenant. General Comment No. 17: Rights of the child (Art. 24), approved at the thirty-fifth session, in 1989.

<sup>135</sup> Signed by Guatemala on January 26, 1990; its instrument of ratification was received on June 6, 1990, and the Convention entered into force for Guatemala on September 2, 1990.

<sup>136</sup> I/A Court H.R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, par. 138; and I/A Court H.R., *The “Street Children” Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, par. 146 and 194; I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, par. 166; and I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, par. 24.

<sup>137</sup> Principle 2 of the Declaration of the Rights of the Child, which the United Nations General Assembly adopted in resolution 1386 (XIV), November 20, 1959, reads as follows: “The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

<sup>138</sup> In its Third Report on the Situation of Human Rights in Colombia, Chapter XIII, par. 1, the Commission wrote the following:

Respect for the rights of the child is a fundamental value in a society that claims to practice social justice and observe human rights. This respect entails offering the child care and protection, basic parameters that guided in the past the theoretical and legal conception of what such rights should embody. It also means recognizing, respecting, and guaranteeing the individual personality of the child as a holder of rights and obligations.

<sup>139</sup> I/A Court H.R., *Juridical Condition and Human Rights of the Child*, Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, par. 54. See, also, I/A Court H.R., *Case of the “Juvenile Reeducation Institute.”* Judgment of September 2, 2004. Series C No. 112, par. 147.

<sup>140</sup> I/A Court H.R., *Case of the “Mapiripán Massacre.”* Judgment of September 15, 2005. Series C No. 134, par. 152; and I/A Court H.R., *Juridical Condition and Human Rights of the Child*, Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, par. 56.

duty to adopt all positive measures to ensure that a child's rights are fully respected and ensured.<sup>141</sup> However, in the instant case it is self-evident that the infant Josefa Tiu Tojín, who at the time of the events was just over one-and-a-half months old,<sup>142</sup> did not enjoy those special measures of protection that her age and, by extension, her greater vulnerability required.<sup>143</sup> State law enforcement bodies did nothing to prevent these events from happening and did nothing to identify, prosecute and punish those responsible. Worse still, the State agencies specifically charged with child protection in no way intervened either to prevent or in some way solve the case. As for the State's negative obligation, it is obvious that the State, by the conduct of its agents, made the infant Josefa Tiu Tojín the victim of a forced disappearance.

212. The Commission is asking the Court to adjudge and declare that the Guatemalan State violated, to the detriment of Josefa Tiu Tojín, the right to receive special measures of protection, recognized in Article 19 of the American Convention, in relation to Article 1(1) thereof.

**G. Failure to comply with the general obligation to respect and ensure the human rights recognized in the Convention**

213. Article 1(1) of the Convention provides that:

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.

214. The Court has established the following in this regard:

Article 1(1) is essential in determining whether a violation of the human rights recognized by the Convention can be imputed to a State Party. In effect, that article charges the States Parties with the fundamental duty to respect and guarantee the rights recognized in the Convention. Any impairment of those rights that can be attributed, under the rules of international law, to the act or omission of any public authority constitutes an act imputable to the State and which entails its responsibility as established in the Convention.

According to Article 1(1), any exercise of public power that violates the rights recognized by the Convention is illegal. Whenever a State organ or official, or a public entity violates one of those rights, this constitutes a failure in the duty to respect the rights and freedoms set forth in that Article.

This conclusion is independent of whether the organ or official has contravened provisions of internal law or overstepped the limits of his authority. Under international law, a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate domestic law.<sup>144</sup>

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<sup>141</sup> I/A Court H.R., *Juridical Condition and Human Rights of the Child*, Advisory Opinion OC-17/02, August 28, 2002, Series A No. 17, par. 91

<sup>142</sup> Article 19 of the American Convention does not define what is meant by the term "child." Article 1 of the United Nations Convention on the Rights of the Child defines the term as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."

<sup>143</sup> I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, par. 191.

<sup>144</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, par. 72, I/A Court H.R., *Case of the "19 Tradesmen."* Judgment of July 5, 2004. Series C No. 109, par. 181; I/A Court H.R., *Case*

215. The State's responsibility in relation to the violations committed is a serious one. It failed to take measures to prevent the commission of serious human rights violations when it had the information and means necessary to do so. It also bears responsibility for the acts committed by its agents: in collaboration with civilians, the State's agents performed a mass arrest of the community of which the victims were members and then forcibly disappeared the victims.

216. In both cases, almost 17 years since the events occurred, the State has still not effectively fulfilled its duty to prosecute and punish all those responsible for the disappearance of María Tiu Tojín and her infant daughter Josefa.

217. International and regional human rights law has established that with violations of the right to life, the State in question is to undertake a judicial investigation through a court of criminal law in order "to prosecute criminally, try and punish those held responsible for such violations."<sup>145</sup> More specifically, the Inter-American Court has held that "it is essential that States conduct an effective investigation into a deprivation of life case and punish the perpetrators, especially when state officials are involved; otherwise they would be creating, in a climate of impunity, the conditions that will allow these events to continue, which is contrary to the duty to respect and guarantee the right to life."<sup>146</sup>

218. In its judgment in the *Pueblo Bello Massacre Case*, the Inter-American Court determined that:

[e]xecution of an effective investigation is a fundamental and conditioning element for the protection of certain rights that are affected or annulled by these situations, such as, in the instant case, the rights to personal liberty, humane treatment and life.<sup>147</sup>

[...]

[i]n order to determine the violation of Articles 4, 5 and 7 of the Convention, [...] suffice it to say that the Court finds that the investigations [...] in proceedings conducted by the ordinary and the military criminal justice system, and by the disciplinary and administrative justice systems were seriously flawed, and this has undermined the effectiveness of the protection established in the national and international norms applicable in this type of case, and resulted in the impunity of certain criminal acts.<sup>148</sup>

[...]

because it failed in its prevention, protection and investigation obligations, the State is responsible for the violation of the rights to life, humane treatment and personal liberty

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...continuation

of *Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107, par. 144; I/A Court H.R., *Case of the "Five Pensioners."* Judgment of February 28, 2003. Series C No. 98, par. 163; I/A Court H.R., *Case of the Mayagna (Sumo) Awajitjuna Community*. Judgment of August 31, 2001. Series C No. 79, par. 154; I/A Court H.R., *Baena Ricardo et al. Case*. Judgment of February 2, 2001. Series C No. 72, par. 178; and I/A Court H.R., *Caballero Delgado and Santana Case*. Judgment of December 8, 1995. Series C No. 22, par. 56.

<sup>145</sup> United Nations Human Rights Committee, *Bautista de Arrellana v. Colombia*, Decision of October 27, 1995, par. 8.6; See IACHR, Reports 28/92 (Argentina), *Herrera et al.*; and 29/92 (Uruguay), *De los Santos Mendoza et al.*, in *Annual Report of the IACHR 1992-1993*, March 12, 1993, p. 35, 154.

<sup>146</sup> I/A Court H.R., *Case of Vargas Areco*. Judgment of September 26, 2006. Series C No. 155, par. 76; I/A Court H.R., *Case of Servellón García et al.*. Judgment of September 21, 2006. Series C No. 152, par. 123; I/A Court H.R., *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, par. 91.

<sup>147</sup> I/A Court H.R., *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140, par. 145.

<sup>148</sup> I/A Court H.R., *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140, par. 148.

embodied in Articles 4(1), 5(1), 5(2), 7(1) and 7(2) of the Convention, in relation to Article 1(1) thereof, owing to failure to comply with its obligation to ensure these rights.<sup>149</sup>

219. For the foregoing considerations, the Commission is asking the Court to adjudge and declare that the Guatemalan State failed to comply with its obligation under Article 1(1) of the American Convention, i.e., the obligation to respect and ensure the rights recognized in the Convention.

## **IX. REPARATIONS AND COSTS**

220. Given the facts alleged in the present application and based on the *jurisprudence constante* of the Inter-American Court, which holds that “any violation of an international obligation that has caused harm carries with it the obligation to make adequate reparations for that violation,”<sup>150</sup> the IACHR is filing with the Court its claims for the reparations and costs that should be required of the Guatemalan State by virtue of its responsibility for the human rights violations committed against María Tiu Tojín and Josefa Tiu Tojín.

221. Under the Court’s Rules of Procedure, which give the individual standing, and given the reparations already made at the domestic level under the agreement that the Guatemalan State and the victims’ next of kin signed on August 8, 2005, the Inter-American Commission will, in the present application, outline the general criteria for reparations and costs that it believes the Court should apply in the instant case. The Inter-American Commission understands that it is up to the victims and their representatives to spell out their claims, pursuant to Article 63 of the American Convention and Articles 23 and other applicable provisions of the Court’s Rules of Procedure.

### **A. Obligation to make reparations**

222. One of the essential functions of the justice system is to remedy the harm done to the victim. This function materializes in the form of rectification or restitution, and not just through compensation, which does not necessarily restore the moral balance *ex ante* or restore what was taken.

Article 63(1) of the American Convention provides that

[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

223. The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power also recognizes ample guarantees for those who sustain property losses, physical or mental injury, and “substantial impairment of their fundamental rights” through acts or omissions, including abuse of power. The victims or their immediate family and dependants are entitled to seek reparation and to be informed of that right.<sup>151</sup>

<sup>149</sup> I/A Court H.R., *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140, par. 153.

<sup>150</sup> I/A Court H.R. *Case of La Cantuta*. Merits, Reparations and Costs. Judgment of November 29, 2006 Series C No. 162, par. 199; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 413; I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, par. 141.

<sup>151</sup> U.N. A/RES/40/34 of November 29, 1985, paragraphs 1, 4 and 5.

224. The *jurisprudence constante* of the Court is that "Article 63(1) of the American Convention embodies an accepted tenet that is a fundamental principle of the contemporary International Law on the responsibility of States. The occurrence of a wrongful act that is attributable to a State gives rise to the State's international liability, and its resulting duty to make reparation for and remove the consequences of the violation."<sup>152</sup>

225. Reparations are vital to ensuring that justice is done in an individual case and are the vehicle that carries the Court's decision beyond the realm of moral condemnation. Reparations are measures intended to cause the effect of the violations committed to disappear. Reparation of the damage caused by breaching an international obligation requires, whenever feasible, full restitution (*restitutio in integrum*), which involves reestablishment of the situation *ex ante*.

226. If full restitution is not feasible, as in the instant case, the Inter-American Court's function is to define a set of measures such that, in addition to ensuring the enjoyment of the violated rights, the consequences of those breaches may be remedied and compensation, where appropriate, provided for the damage thereby caused.<sup>153</sup>

227. The obligation to make reparations is regulated in all respects (scope, nature, modes and determination of beneficiaries) by international law and cannot be modified by the respondent State by invoking the provisions of its own domestic laws; nor can the latter decline to discharge that obligation by invoking provisions of its own domestic laws,<sup>154</sup> since "[w]henver a violation goes unpunished or a wrong unredressed, the law is in crisis, not just as a means for settling a certain litigation, but as a method for settling any litigation; in other words, as a tool to ensure peace with justice."<sup>155</sup>

## B. Measures of reparation

228. Some experts in international law argue that in situations such as the one being examined here, in order to remedy the situation of the victim and/or his next of kin the State must fulfill certain obligations: the obligation to investigate and report the facts that can be reliably established (truth); the obligation to prosecute and punish those responsible (justice); the obligation to make full reparations for the moral and pecuniary damages caused (reparation) and the obligation to oust from the ranks of the security forces anyone who is known to have committed, ordered and tolerated these abuses (creation of the forces of law and order worthy of a democratic State). No one of these obligations is an alternative for the others, nor is any single one of them optional; a

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<sup>152</sup> I/A Court H.R., *Case of La Cantuta*. Merits, Reparations and Costs. Judgment of November 29, 2006 Series C No. 162, par. 200; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 414; I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia)*. Judgment of July 5, 2006. Series C No. 150, par. 116.

<sup>153</sup> I/A Court H.R., *Case of La Cantuta*. Merits, Reparations and Costs. Judgment of November 29, 2006 Series C No. 162, par. 201; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 415; I/A Court H.R., *Case of Dismissed Congressional Employees (Aguado Alfaro et al.)*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, par. 143.

<sup>154</sup> I/A Court H.R., *Case of La Cantuta*. Merits, Reparations and Costs. Judgment of November 29, 2006 Series C No. 162, par. 200; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 415; I/A Court H.R., *Case of Dismissed Congressional Employees (Aguado Alfaro et al.)*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, par. 143.

<sup>155</sup> SERGIO GARCÍA RAMÍREZ, *LAS REPARACIONES EN EL SISTEMA INTERAMERICANO DE PROTECCIÓN DE LOS DERECHOS HUMANOS* [REPARATIONS IN THE INTER-AMERICAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS], paper presented at the Seminar on "The Inter-American System for the Protection of Human Rights on the Threshold of the Twenty-first Century," San José, Costa Rica, November 1999.

responsible State must comply with each and every one to the extent that it is able and in good faith. "<sup>156</sup>

229. The United Nations Special Rapporteur on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms has classified the components of that right into five general categories: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.<sup>157</sup> In the view of the United Nations Special Rapporteur on the Question of the Impunity of Perpetrators of Violations of Human Rights, these measures include the following: cessation of continuing violations, verification of the facts, full and public disclosure of the truth, an official declaration or a judicial decision restoring the dignity, reputation and legal rights of the victim and/or of persons connected with the victim, an apology that includes a public acknowledgement of the facts and acceptance of responsibility, enforcement of judicial or administrative sanctions against persons responsible for the violations, prevention of further violations, etc.

230. The Court has held that reparations are measures intended to cause the effect of the violations committed to disappear.<sup>158</sup> Measures of reparations are the different ways in which a State can redress the international responsibility it has incurred, and under international law consist of restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.<sup>159</sup>

231. The United Nations Commission on Human Rights has held that

[i]n accordance with international law, States have the duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations. Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>160</sup>

232. Based on the foregoing, the Inter-American Commission would have the Court order measures of full restitution, which in turn send a message condemning the fact that the vast majority of human rights violations in the Member States of the Organization of American States have not been punished. This requires that judicial and administrative mechanisms be established and, where necessary, reinforced so as to enable victims to obtain reparation through *ex officio* proceedings that are swift, fair, inexpensive and accessible.

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<sup>156</sup> JUAN E. MÉNDEZ, *EL DERECHO A LA VERDAD FRENTE A LAS GRAVES VIOLACIONES A LOS DERECHOS HUMANOS*, Article published in *La Aplicación de los Tratados sobre Derechos Humanos por los Tribunales Locales*, CELS, 1997, p. 517.

<sup>157</sup> Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law prepared by Mr. Theo van Boven pursuant to Sub-Commission decision 1995/117. E/CN.4/Sub.2/1996/17.

<sup>158</sup> I/A Court H.R., *Case of La Cantuta*. Merits, Reparations and Costs. Judgment of November 29, 2006 Series C No. 162, par. 202; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 416; I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, par. 144.

<sup>159</sup> See United Nations, *Final Report presented by Theo Van Boven, Special Rapporteur on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms*, E/CN.4/Sub.2/1990/10, July 26, 1990. See also: I/A Court H.R., *Blake Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, par. 31; I/A Court H.R., *Suárez Rosero Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of January 20, 1999, Series C No. 44, par. 41.

<sup>160</sup> United Nations, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17, *The Administration of Justice and the Human Rights of Detainees, Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law*, prepared by Mr. Theo van Boven pursuant to Sub-Commission decision 1995/117, May 24, 1996, par. 7.

233. Based on the evidence presented in the case at bar and the criteria established by the Court in its own case law, the Inter-American Commission is presenting its conclusions with regard to the measures of reparation that are due in the case of María and Josefa Tiu Tojín and their next of kin.

**1. Measures for cessation, satisfaction and guarantees of non-repetition.**

234. Satisfaction is understood as any measure that the perpetrator of a violation is required to take under the provisions of international instruments or customary law, for the purpose of acknowledging the commission of an unlawful act.<sup>161</sup> "The objects of satisfaction are three, which are often cumulative: apologies or other acknowledgment of wrongdoing [...]; the punishment of the individuals concerned; and the taking of measures to prevent a recurrence of the harm."<sup>162</sup>

235. On November 29, 1985, the United Nations approved, by consensus, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,<sup>163</sup> which holds that victims "are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered," allowing "the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system."

236. In Europe, on the other hand, a European Convention on the Compensation of Victims of Violent Crimes, drafted in 1983, basically concerns the situation of victims of intentional crimes of violence who have suffered bodily injury or impairment of health and of dependants of persons who have died as a result of such crimes. Reference is also made to the obligation to protect victims and to grant them certain rights to participate in the criminal justice process.<sup>164</sup>

237. The IACHR will explain its position with regard to the measures of cessation, satisfaction and guarantees of non-repetition required in the instant case, and will later elaborate upon its arguments on this issue.

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<sup>161</sup> Brownlie, *State Responsibility*, Part 1. Clarendon Press, Oxford, 1983, p. 208.

<sup>162</sup> *Idem*.

<sup>163</sup> A/RES/40/34, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. *Access to Justice and Fair Treatment*. "4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered. 5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms. 6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information; (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system; (c) Providing proper assistance to victims throughout the legal process; (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation; (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

<sup>164</sup> Convention on the Compensation of Victims of Violent Crimes of November 24, 1983. The Council of European has also issued norms and recommendations on the rights of victims of crime.

238. Cessation of the wrongful conduct is essential once a State is determined to be responsible for human rights violations, as are guarantees of non-repetition.<sup>165</sup>

239. The *jurisprudence constante* of the Court has been that identification of the responsible parties follows from a State's obligations under conventions and is a precondition to eliminating generalized states of impunity.<sup>166</sup>

240. The Court has held that impunity is a violation of the State's obligation and is harmful to the victim, his next of kin and society as a whole; impunity fosters chronic recidivism of human rights violations. In the Court's words,

[t]he 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 victim adequate compensation.<sup>167</sup>

241. The Commission believes that this is not just a measure of satisfaction; it is also a measure of cessation, since so long as the State is in noncompliance with its obligation to investigate, prosecute and punish the human rights violations committed in the instant case, it is in continuing violation of the right established in Article 25 of the Convention and of its obligation under Article 1 of the Convention.

242. The Court has repeatedly held that every individual and society as a whole have a right to be informed of what happened in connection with human rights violations.<sup>168</sup> Similarly, the United Nations Commission on Human Rights has recognized that for the victims of human rights violations, public knowledge of their suffering and the truth about the perpetrators, including their accomplices, of these violations are essential steps towards rehabilitation and reconciliation. It has urged States to intensify their efforts to provide victims of human rights violations with a fair and equitable process through which these violations can be investigated and made public, and to encourage victims to participate in such a process.<sup>169</sup>

243. The Court has also held that

the State is required to remove all obstacles –both factual and legal– contributing to impunity [...]; grant sufficient guarantees of security to witnesses, judicial authorities, prosecutors, other judicial agents, and the next of kin of the victims, and use all possible measures to advance the proceeding.<sup>170</sup>

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<sup>165</sup> I/A Court H.R., *Castillo Páez Case*. Reparations (art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, par. 52.

<sup>166</sup> The Court has defined impunity as "the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention...". See in this regard, I/A Court H.R. *Case of Blanco Romero et al.* Judgment of November 28, 2005. Series C No. 138, par. 94; I/A Court H.R. *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136, par. 76.

<sup>167</sup> I/A Court H.R., *Velásquez Rodríguez Case*, Judgment on the Merits, July 29, 1988, Series C No. 4, par. 174. I/A Court H.R., *Castillo Páez Case*. Judgment of November 3, 1997. Series C No. 34, par. 90.

<sup>168</sup> I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 347; I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia)*. Judgment of July 5, 2006. Series C No. 150, par. 139; I/A Court H.R., *Case of Ximenes Lopes*. Judgment of July 4, 2006. Series C No. 149, par. 245.

<sup>169</sup> E/CN.4/RES/2001/70.

<sup>170</sup> I/A Court H.R., *Case of La Cantuta*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, par. 226; I/A Court H.R., *Carpio Nicolle et al. Case*. Judgment of November 22, 2004. Series C No. 117, par. 134.

244. Summarizing, the essentials of reparations in this case are: that a serious, thorough and effective investigation be reopened and carried through to completion; and that all those who perpetrated and contributed, by commission or omission, to the cover-up of the forced disappearance of María and Josefa Tiu Tojín be identified and held responsible.

245. The victims' next of kin must have full access to and standing in all phases and forums of the investigations and inquiries, in keeping with the domestic laws and the provisions of the American Convention. In furtherance of its obligation, the State will also have to ensure effective enforcement of the decisions that the domestic courts deliver. The result of the process must be publicly disclosed, so that Guatemalan society knows the truth.<sup>171</sup>

246. One essential measure of satisfaction in this case is that the judgment the Court eventually delivers be broadcast by the local radio stations in the Department of El Quiché, in a Mayan language and in Spanish.

247. The Commission considers further that the State is required to prevent a recurrence of human rights violations such as these. It therefore begs the Court to order the Guatemalan State to adopt, as a matter of priority, a policy of protecting the *campesino* population from the abuses of public authorities and State security forces, and that it make the fight against impunity a central part of public policy.

248. Finally, the Commission considers that the State must adopt all measures necessary to prevent the military justice system from investigating and prosecuting violations of human rights committed by members of the armed forces.

## 2. Measures of compensation

249. The Court has established the basic criteria to be followed in setting the amount that will constitute adequate and effective economic compensation to redress the damages sustained as a result of the violations of a victim's human rights. The Court has written that the indemnity is purely compensatory in nature, and will be granted to the extent and in the amount sufficient to compensate for the pecuniary and non-pecuniary damages caused.<sup>172</sup>

250. As stated in the section on implementation of the recommendations contained in report 71/04 and the agreement that the parties signed on August 8, 2005 (*supra* paragraph 48 *et seq.*), several of the victims' next of kin have received payment through administrative contentious proceedings.

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See, also, I/A Court H.R., *Case of Almonacid Arellano*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006 Series C No. 154, par. 156.

<sup>171</sup> I/A Court H.R. *Case of Huilca Tecse*. Judgment of March 3, 2005. Series C No. 121, par. 107; I/A Court H.R. *Case of the Serrano Cruz Sisters*. Judgment of March 1, 2005. Series C No. 120, par. 175; I/A Court H.R., *Case of Carpio Nicolle et al.*. Judgment of November 22, 2004. Series C No. 117, par. 128; I/A Court H.R., *Case of the Plan de Sánchez Massacre*. Judgment of November 19, 2004. Series C No. 116, par. 98.

<sup>172</sup> I/A Court H.R., *Case of La Cantuta*. Judgment on Merits, Reparations and Costs. Judgment of November 29, 2006 Series C No. 162, par. 210; I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al.*. Judgment of June 21, 2002. Series C No. 94, par. 204; I/A Court H.R., *Garrido and Baigorria. Case, Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of August 27, 1998, Series C No. 39, par. 41.

251. While domestic decisions are not binding upon the Court, the Commission considers that the amounts of pecuniary compensation agreed upon through the domestic process should be recognized as part of the reparations.

252. It is the Commission's view that the equitable solution would be for the Inter-American Court to set the amounts of compensation to which the victims in the present case are entitled and, when delivering its judgment, to stipulate that the State may deduct any damages already paid at the domestic level in this case from the amount ordered by the Court.

### **C. The beneficiaries**

253. Article 63(1) of the American Convention requires that the consequences of a violation be remedied and that 'fair compensation be paid to the injured party.' The persons entitled to such compensation are generally those directly affected by the events that the violation involved.

254. Given the nature of the present case, the beneficiaries of any reparations that the Court should decide to order as a consequence of the human rights violations that the Guatemalan State perpetrated are as follows: María Tiu Tojín and Josefa Tiu Tojín (victims); Josefa Tojín Tiu (mother and grandmother of the victims); Victoria Tiu Tojín (sister and aunt of the victims); Rosa Tiu Tojín (sister and aunt of the victims); Pedro Tiu Tojín (brother and uncle of the victims); Manuel Tiu Tojín (brother and uncle of the victims); and Juana Tiu Tojín (sister and aunt of the victims), inasmuch as they had a close emotional bond with the victims and were therefore profoundly affected by the events.

### **D. Costs and expenses**

255. The *jurisprudence constante* of the Court is that costs and expenses must be considered part of the concept of reparation set forth in Article 63(1) of the American Convention, since the activity of the victim, his heirs or his representatives to obtain international justice entails disbursements and financial commitments that must be compensated.<sup>173</sup> The Court has also held that the costs to which Article 55(1)(h) of the Court's Rules of Procedure refers include the reasonable expenses necessary to accede to the American Convention's organs of compliance and include the expenses and fees of those who provide legal counsel.

256. In the instant case, the Inter-American Commission notes the payment that the Guatemalan State made to the victims' next of kin for the costs and expenses they incurred for the domestic proceedings and is petitioning the Court, once it has heard from the representatives of the victims and their next of kin, to order the Guatemalan State to pay the costs and expenses shown to have been incurred in litigating the present case before the Court.

## **X. CONCLUSION**

257. The illegal detention and forced disappearance of María Tiu Tojín and her infant daughter Josefa Tiu Tojín, the lack of a diligent, prompt and thorough investigation into the events, and punishment of those responsible, as well as the denial of justice and lack of adequate reparation to the victims' next of kin, are violations of the rights protected in articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 19 (rights of the child) and

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<sup>173</sup> I/A Court H.R., *Case of La Cantuta*. Merits, Reparations and Costs. Judgment of November 29, 2006 Series C No. 162, par. 243; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 455; I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, par. 152.

25 (right to judicial protection) of the American Convention; the State's failure to respect the human rights recognized in the Convention and to ensure their free and full exercise is a violation of its obligation under Article 1(1) of the Convention.

258. Once again, the Commission reiterates its appreciation of the Guatemalan State's positive attitude toward this process, its express acknowledgement of the facts in the case and of their legal consequences, and its demonstrated willingness to redress at least in part the human rights violations committed.

#### **XI. OBJECT OF THE APPLICATION**

259. Based on the arguments of fact and of law set forth in the present application, the Inter-American Commission on Human Rights is petitioning the Inter-American Court of Human Rights to adjudge and declare that the Guatemalan State:

a) is responsible for violation of articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention, in relation to its general obligation under Article 1(1) of the Convention, which is to respect and ensure the Convention-recognized rights, and its obligation under Article I of the Inter-American Convention on Forced Disappearance of Persons, all to the detriment of María Tiu Tojín and Josefa Tiu Tojín;

b) is responsible for violation of Article 19 (rights of the child) of the American Convention, in relation to the general obligation established in its Article 1(1) requiring the State to respect and ensure the rights recognized in the Convention, to the detriment of the infant Josefa Tiu Tojín; and

c) is responsible for violation of articles 5 (right to humane treatment), 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention, in relation to the general obligation established in its Article 1(1), which is to respect and ensure the rights and freedoms recognized in the Convention, to the detriment of Victoria Tiu Tojín, sister and aunt of the victims.

As a consequence of the foregoing, and taking the considerable efforts that Guatemala has already made to acknowledge its responsibility under the August 8, 2005 agreement signed with the victims' next of kin (*supra*, paragraph 34), the Commission is petitioning the Court to order the State:

a) to conduct, in the civilian justice system, a rigorous, impartial and effective special inquiry to prosecute and punish the material and intellectual authors of the forced disappearance of María Tiu Tojín and the infant Josefa Tiu Tojín;

c) to adopt the measures necessary to locate the remains of María Tiu Tojín and Josefa Tiu Tojín and hand them over to their next of kin;

d) to pay the legal costs and expenses incurred by the victims' next of kin in litigating the case before the Inter-American Court, and

e) adopt all the legal, administrative and other measures necessary to avoid a recurrence of similar events in future, in keeping with its obligations to prevent violations of the human rights recognized in the American Convention and to ensure their free and full exercise.

## XII. EVIDENTIARY SUPPORTS

### A. Documentary evidence

260. The following is a list of the documentary evidence available as of the present:

- APPENDIX 1:** IACHR Report No. 71/04, Case 10,686, *María Tiu Tojín and Josefa Tiu Tojín*, Guatemala, October 18, 2004;
- APPENDIX 2:** Case file for IACHR case 10,686;
- ANNEX 1:** Partial list of those taken from Amacchel to the CEAR camp at Xematatze;
- ANNEX 2:** Memorandum that the director of the CEAR camp at Xematatze sent to the executive director of CEAR reporting that the victims' names were on the list of those moved, but that they had not arrived at the camp;
- ANNEX 3:** Report on vital records destroyed in the internal conflict;
- ANNEX 4:** Baptismal certificate of María Tiu Tojín, issued by the Parish of Santo Domingo de Guzmán, Sacapulas, Department of El Quiché. The Commission notes that this is the best copy it has available and that it is illegible in parts;
- ANNEX 5:** Copy of military criminal justice case file No. 2047-90, a case in which the charge was unlawful deprivation of freedom and that was prosecuted by the office of the judge advocate for military district 20 of El Quiché;
- ANNEX 6:** Copy of the case file with the Office of the Special Prosecutor for Human Rights (case instituted in response to complaints filed October 15, 1990, on behalf of María Tiu Tojín and her daughter Josefa Tiu Tojín; and on November 20, 1990, on behalf of María Tojín García and her daughter María Josefa);
- ANNEX 7:** Copy of the main documents from the case file on the *habeas corpus* petition heard by the Second Court of First Instance of Santa Cruz del Quiché (in response to complaints brought on behalf of María Tiu Tojín and her daughter Josefa Tiu Tojín on October 14, 1990, and on behalf of María Tojín García and her daughter María Josefa, dated November 4, 1990);
- ANNEX 8:** Report prepared by the Chief of Police of the Department of El Quiché, based on the complaint filed by Victoria Tiu Tojín on November 20, 1990;
- ANNEX 9:** Power of attorney that Victoria Tiu Tojín gave to the Center for Legal Action in Human Rights "CALDH.
- ANNEX 10:** *Curriculum vitae* of Helen Mack, expert offered by the Commission.
- ANNEX 11:** *Curriculum vitae* of Javier Gurriaran Prieto, expert offered by the Commission.
- ANNEX 12:** Photographs taken during the ceremony at which international responsibility was acknowledged, headed by the Vice President of the Republic of Guatemala.

261. Furthermore, the Commission is petitioning the Honorable Court to order the Guatemalan State to send certified copies of all the documents related to the judicial, administrative or other inquiries conducted within domestic jurisdiction in connection with the events in this case, as well as an authenticated copy of the applicable laws and regulations.

**B. Testimonial and expert evidence**

**1. Witnesses**

262. The Commission is asking the Court to receive the testimony of the following witnesses:

- Victoria Tiu Tojín, who will testify on María Tiu Tojín's association and work with the CERJ; the circumstances under which the victims' detention and disappearance occurred; the relationship between the execution of her sister María Mejía Tojín and the disappearance of her sister María Tiu Tojín; the obstacles and harassment that the victims' family has experienced in its quest for justice in this case; the consequences that the human rights violations suffered by her sister and niece have had for the family, and other matters related to the object and purpose of this application.
- Magdalena Perpuac Mejía, who will testify about the circumstances under which the 86 townspeople of Santa Clara, Nebaj, were arrested on August 29, 1990; the military troops' treatment of María Tiu Tojín and her infant daughter Josefa; the circumstances under which she last saw the victims, and other matters related to the object and purpose of this application.

**2. Experts**

263. The Commission is petitioning the Court to receive the opinions of the following experts:

- Javier Gurriaran Prieto, who will present an expert report on the situation of the communities of peoples in resistance and organizations dedicated to defending these communities and the rights of indigenous peoples during the period of Guatemala's internal conflict, and other matters pertinent to the object and purpose of the present application
- Helen Mack Chang, sociologist, who will present an expert report on access to the justice system and impunity for human rights violations in Guatemala; how these two factors affect the indigenous people of Guatemala, and other matters pertinent to the object and purpose of the present application.

**XIII. PARTICULARS ON THE ORIGINAL COMPLAINANTS, THE VICTIMS AND THEIR NEXT OF KIN**

264. In keeping with the provisions of Article 33 of the Court's Rules of Procedure, the Inter-American Commission is presenting the following information: the original complaint was filed by the *Comisión de Derechos Humanos de Guatemala* [Guatemalan Human Rights Commission], a nongovernmental organization. The *Centro para la Acción Legal en Derechos Humanos "CALDH"* joined as a co-petitioner in the case.

265. Mrs. Victoria Tiu Tojín (sister and aunt of the victims) has granted powers of attorney to the *Centro para la Acción Legal en Derechos Humanos* "CALDH", to represent her in the judicial phase of the proceedings before the system, as confirmed in the attached document.<sup>174</sup>

266. Mrs. Josefa Tojín Tiu (mother and grandmother of the victims); Rosa Tiu Tojín (sister and aunt of the victims); Pedro Tiu Tojín (brother and uncle of the victims); Manuel Tiu Tojín (brother and uncle of the victims); and Juana Tiu Tojín (sister and aunt of the victims) have not granted the corresponding powers of attorney. Therefore, until that formality is settled, the Commission will defend their interests.

267. The representatives of the victims and their next of kin have established the offices of "CALDH" as their domicile, located at [REDACTED].

Washington, D.C.  
July 28, 2007

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<sup>174</sup> See Annex 9.