

INTER-AMERICAN COURT OF HUMAN RIGHTS

PANIAGUA MORALES *ET AL.* CASE

JUDGMENT OF MARCH 8 1998

In the Paniagua Morales *et al.* case,

the Inter-American Court of Human Rights, composed of the following judges¹:

Hernán Salgado-Pesantes, President,
Antônio A. Cançado Trindade, Vice-President
Héctor Fix-Zamudio, Judge
Alejandro Montiel-Argüello, Judge
Máximo Pacheco-Gómez, Judge
Alirio Abreu-Burelli, Judge, and
Edgar E. Larraondo-Salguero, Judge *ad hoc*;

also present,

Manuel E. Ventura-Robles, Secretary, and
Víctor M. Rodríguez-Rescia, Interim Deputy Secretary,

1 Judge Oliver Jackman abstained from hearing this case because he had participate at various stages during its processing before the Inter-American Commission on Human Rights when he was a member of that Commission. Judges Héctor Fix-Zamudio and Alejandro Montiel-Argüello sat on the Court pursuant to the provisions of Article 54(3) of the American Convention on Human Rights, whereby the judges of the Court shall continue to serve with regard to cases that they have begun to hear and that are still pending.

pursuant to Articles 29 and 55 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), renders the following Judgment in the instant case.

I INTRODUCTION OF THE CASE

1. On January 19, 1995 the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted to the Court an application against the Republic of Guatemala (hereinafter "the State" or "Guatemala") which originated in a petition (No. 10.154) received at the Secretariat of the Commission on February 10, 1988. In its application, the Commission invoked Articles 50 and 51 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 26 *et seq.* of the Rules of Procedure then in force². The Commission submitted this case for the Court to rule on whether Guatemala had violated the Convention by the "*acts of abduction, arbitrary detention, inhuman treatment, torture and murder committed by agents of the State of Guatemala against eleven victims*" during 1987 and 1988 (known as the "*white van case*" because that type of vehicle was part of the *modus operandi*). Consequently, the Commission requested the Court to rule that Guatemala violated the following provisions:

Article 4 of the American Convention (Right to Life) to the detriment of the following victims: Ana Elizabeth Paniagua-Morales, Julián Salomón Gómez-Ayala, William Otilio González-Rivera, Pablo Corado-Barrientos, Manuel de Jesús González-López and Erik Leonardo Chinchilla.

Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty) of the American Convention, and the obligations established in Articles 1, 6 and 8 of the Inter-American Convention to

2 Rules of Procedure of the Inter-American Court of Human Rights, approved by the Court at its XXIII Regular Session held from January 9 to 18, 1991; amended on January 25 and July 16, 1993.

Prevent and Punish Torture, to the detriment of Ana Elizabeth Paniagua-Morales, Julián Salomón Gómez-Ayala, William Otilio González-Rivera, Pablo Corado-Barrientos, Manuel de Jesús González-I.ópez, Augusto Angárta-Ramírez, Doris Torres-Gil, José Antonio Montenegro, Oscar Vásquez and Marco Antonio Montes-Lctona.

Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention, which were, and continue to be, violated to the detriment of all the victims in this case.

Article 1(1) (Obligation to Respect Rights) as a consequence of the aforementioned failure to provide the guarantees enshrined in the Convention.

The Commission also asked the Court to require that the State identify and punish those responsible for the above-mentioned violations, compensate the victims of those violations pursuant to Article 63(1) of the Convention, pay them or their relatives the costs and expenses incurred by them in bringing this case before the Commission and the Court, and pay a reasonable sum for attorneys' fees.

II JURISDICTION OF THE COURT

2. The Court is competent to hear the instant case. Guatemala has been a State Party to the Convention since May 25, 1978, accepted the contentious jurisdiction of the Court on March 9, 1987, and ratified the Inter-American Convention to Prevent and Punish Torture on January 29, 1987.

III PROCEEDING BEFORE THE COMMISSION

3. Case 10.154 was initiated by the Inter-American Commission on the basis of a petition of February 10, 1988, concerning the disappearance of Ana Elizabeth Paniagua-Morales which had occurred the previous day.

4. On February 11, 1988, the Commission transmitted the petition in which Ms. Paniagua-Morales' abduction was denounced to the State and asked it to provide information. On February 16 of the same year, Guatemala confirmed the victim's disappearance and the discovery of her body and reported that the competent authorities were investigating the case.
5. On February 11 and March 2, 1988, and February 13, 1989, the petitioners supplied the Commission with additional information on the circumstances of Ms. Paniagua-Morales' abduction; in the last communication they denounced the murder of a young student, Erik Leonardo Chinchilla, which occurred on February 17, 1988, and later asked for that victim to be included in the case.
6. On April 23 and May 11, 1990, the State informed the Commission of some progress made with the investigation of the case and lodged the objection of non-exhaustion of domestic remedies; it also requested that the case be struck from the Commission's list of cases against Guatemala. It reiterated the same request, based on that argument, on October 3 and 15, 1990.
7. On September 28, 1990, during its 78th session, and on September 23, 1991, at its 80th session, the Commission held hearings on the case, which were attended by representatives of both parties.
8. On November 28, 1990, the State informed the Commission that the Domestic Judicial proceedings against Mr. Oscar Augusto Díaz-Urquízú, former Director of the Treasury Police ["Guardia de Hacienda"], had been dismissed on the grounds of *"insufficient evidence to try [him] for the crime of abuse of authority."*
9. On December 30, 1991, the petitioners submitted to the Commission an expanded list of victims, in keeping with their previous position that the case involved an indeterminate number of victims. It stated that *"five other persons had been abducted and murdered; five others had been abducted and unlawfully detained. All the additional persons named had been previously identified as victims in the police and judicial investigation conducted in Guatemala."*

10. On May 14, 1992, the pertinent parts of this communication were transmitted to the State. Despite two requests for an extension of time for supplying new information on the case, the State never submitted this information, nor its final comments.

11. On July 23 and again on August 5, 1993, the Commission offered its services to the parties in order to facilitate a friendly settlement in the case. Both the State and the petitioners expressed their interest in reaching an agreement and made various representations to that effect; the former even requested information as to the potential beneficiaries. However, as of May 1994 the State ceased to respond favorably to the Commission's attempts at a friendly settlement, and on July 28, 1994, the petitioners informed the Commission that they considered the friendly settlement proceeding to be at an end.

12. On September 11, 1994, five days prior to the final hearing on this case before the Commission, Mr. Oscar Vásquez, a victim and witness in the case, and his son were murdered.

13. On September 16, 1994, during the 87th Regular Session of the Commission, another hearing was held at the petitioners' request and was attended by representatives of both parties. According to the Commission, *"the Government's final written communication on the merits of the case"* was submitted at that hearing.

14. With regard to the proceeding before the Commission, the latter pointed out that *"at no time did the Government dispute the occurrences of the crimes on which this case is based"*, but rather merely stated that the domestic remedies were operative and that the proceeding was at the pre-trial ("sumario") stage.

15. On September 28, 1994, the Commission approved Report 23/94, in the operative part of which it was decided:

1. To admit the present case.
2. To declare that the Government of Guatemala has failed to fulfill its obligations to respect the rights and freedoms contained in

the American Convention on Human Rights, and to ensure their enjoyment as provided for in Article 1 of that instrument.

3. To declare that the Government of Guatemala violated the human rights of the victims in this case, as provided for by Articles 4(1), 5(1), 5(2), (7), 24 and 25 of the American Convention.

4. To recommend to the Government of Guatemala that it take the following measures:

a. investigate the violations that occurred in this case and try and punish those responsible;

b. take the necessary measures to avoid the recurrence of these violations;

c. pay just compensation to the victims' next of kin.

5. To transmit this report to the Government of Guatemala and to provide the Government with 60 days to implement the recommendations contained herein. The 60-day period shall begin as of the date this report is sent. During the 60 days in question, the Government may not publish this report, in accordance with Article 47(6) of the Commission's Regulations.

6. To submit this case to the Inter-American Court on Human Rights in the event that the Government of Guatemala should fail to implement all the recommendations contained herein.

16. The Commission transmitted this report to the State on October 20, 1994, along with a request that the State report on the measures taken to resolve the denounced situation within a 60 day period. The State did not reply to that request, and did not submit its comments on Report 23/94 nor ask for it to be reconsidered.

17. On December 13, 1994, the petitioners sent to the Commission a request for precautionary measures to protect seven members of Oscar

Vásquez's relatives. On the same day, the Commission requested the State to take all the measures necessary to protect the lives, physical safety and liberty of the members of the Vásquez relatives named in the request.

IV PROCEEDING BEFORE THE COURT

18. In accordance with the decision adopted during its 87th. Regular Session (*supra*, para. 15(6)), the Commission submitted the application to the Inter-American Court on January 19, 1995.

19. The Inter-American Commission appointed Claudio Grossman as its Delegate before the Court, Edith Márquez-Rodríguez, David J. Padilla, Elizabeth Abi-Mershed and Osvaldo Kreimer as its Attorneys, and the following persons as its Assistants, also identifying them as the original petitioners' legal representatives: Mark Martel, Viviana Krsticevic, Ariel Dulitzky, Marcela Matamoros, Juan Méndez and José Miguel Vivanco. By note of March 12, 1996, the Commission informed the Court that Jean Joséph Exumé had also been designated as its Delegate for this case, and by note of September 16, 1996, Mr. Juan Méndez withdrew as representative of the original petitioners.

20. On February 9, 1995, the Secretariat of the Court (hereinafter the "Secretariat"), on its President's instructions, informed the Commission that, following the preliminary examination of the petition, it had been decided that it was not possible to notify the State of the application, since it did not fulfill one of the fundamental requirements, namely that some of the evidence listed in the text of the application had not been submitted to the Court.

21. Once the Commission had corrected the defects listed in the Secretariat's letter of February 9, 1995, the President of the Court (hereinafter "the President") authorized the processing of the case. By note of March 6, 1995, the State was officially notified of the application and was granted a period of two weeks to appoint an Agent and Alternate Agent, three months to reply to the application, and 30 days to lodge preliminary objections. By another communication of the same date, the State was invited to appoint a Judge *ad hoc*.

22. By note of March 20, 1995, the State designated Mr. Acisclo Valladares-Molina and Mr. Vicente Arranz-Sanz as its Agent and Alternate Agent respectively, and on April 19, 1995, it appointed Mr. Edgar Enrique Larraondo-Salguero as Judge *ad hoc*. On August 29, 1995, the State informed the Court of the appointment of Mr. Alfonso Novales-Aguirre to replace Mr. Larraondo-Salguero as Judge *ad hoc*. By Order of September 11, 1995, the Court decided "*to disallow the request for the replacement of Judge ad hoc Enrique Larraondo-Salguero by Mr. Alfonso Novales-Aguirre*" on the basis of the following considerations:

[t]hat an *ad hoc* judge is similar in nature to other judges on the Inter-American Court, in that he does not represent a particular government, is not its agent and sits on the Court *in an individual capacity*, as stipulated in Article 52 of the Convention, and in accordance with Article 55(4). An *ad hoc* judge is required to meet the same prerequisites as permanent judges. The provision for all permanent and *ad hoc* judges to sit on the Court in an individual capacity is based on and must always allow for the need to protect the independence and impartiality of an international court of justice;

[t]hat the Statute of the Court establishes the same rights, duties and responsibilities for all judges, whether permanent or *ad hoc* (Article 10(5), in accordance with the provisions from Chapter IV of the Statute of the Court);

[t]hat in this specific case, Judge *ad hoc* Edgar Enrique Larraondo-Salguero, after being designated and sworn in, joined the Court as judge, and even participated in the Court's May 17, 1995 Order concerning the present case. To date the Court is unaware of any factor that might bar him from serving as *ad hoc* judge, and in these circumstances he cannot be replaced; and

[t]hat the Court also takes note that the person proposed by the Government to sit as the *ad hoc* judge was also designated as an Assistant to the Government for the public hearing on preliminary objections next September 16, 1995. This fact in and of itself would constitute clear grounds for incompatibility by virtue of Article

18(c) of the Statute of the Court, which states that the exercise of the position of judge of the Court is incompatible with positions and activities *"that might prevent the judges from discharging their duties, or that might affect their independence or impartiality..."*

23. Pursuant to Article 31 of the Rules of Procedure, the State submitted a brief on April 3, 1995, in which it lodged preliminary objections.

24. On January 25, 1996, the Court disallowed the preliminary objections lodged by the State.

25. On June 2, 1995, the State submitted its answer to the petition, in which it declared that it respected human rights and had profound faith in the inter-American system. It also said that a judgment against it would be *"unjust, and discount the State's attitude toward the events and its reaction manifest in the Law and through its institutions. The Commission has disregarded the substantial changes made in its legislation."* It also stated that the State itself had provided the evidence on which the case is based, thus demonstrating its commitment to human rights. It declared that *"[w]ithout the cooperation of the State of Guatemala there would be no case to hear, a fact that the Honorable Tribunal should bear in mind, since the issue is the condemnation of the State."* In its petition, the State requested that the Court declare *"[o]ut of order the petition lodged by the Inter-American Commission on Human Rights against the State of Guatemala with the Inter-American Court of Human Rights"* and to refuse to award costs.

26. On September 23, 1995, the President requested that the Inter-American Commission and the State inform the Court whether they were interested in submitting, pursuant to Article 29(2) of the Rules of Procedure then in force, other pleadings in the written proceeding on the merits of this case. The Commission replied to the request in the affirmative on October 2, 1995; consequently, the President granted the Commission until December 3, 1995, to submit its brief in answer, and the State two months from receipt of that document to submit its brief of rejoinder.

27. The Commission submitted its brief in answer to the Court in Spanish on December 15, 1995. On December 18 of that year, the brief

was transmitted to the State, which did not submit its brief of rejoinder to the Tribunal.

28. On July 9, 1997, the President summoned the representatives of Guatemala and the Commission to a public hearing to be held at the seat of the Court on September 22, 1997, in order to hear the statements of witnesses Sonia Aracelly del Cid-Hernández, María Elizabeth Chinchilla, María Idelfonsa Morales de Paniagua, Alberto Antonio Paniagua, Jean-Marie Simon, Raquel de Jesús-Solórzano, Marvin Vásquez, Blanca Lidia Zamora de Paniagua, Julio Enrique Caballeros-Seigne, Carlos Odilio Estrada-Gil and Felicito Oliva-Arias, all proposed by the Inter-American Commission; the reports of experts Ken Anderson, Phil Heyman, Robert H. Kirschner, Roberto Arturo Lemus, Anne Manuel and Christian Tomuschat proposed by the Inter-American Commission; and the reports of experts Napoleón Gutiérrez-Vargas, Alberto Herrarte-González, Arturo Martínez-Gálvez and Mario Guillermo Ruíz-Wong, proposed by the State.

29. On September 9, 1997, the State submitted to the Court a brief in which it declared that, for reasons of *force majeure*, Mr. Mario Guillermo Ruíz-Wong and Mr. Alberto Herrarte-González would be unable to appear at the public hearings called by the Court and offered instead experts Ramiro de León-Carpio and Alfonso Novales-Aguirre, who would report on the human rights situation in Guatemala, and experts José Francisco de Mata-Vela, Eduardo Mayora-Alvarado and Carlos Enrique Luna-Villacorta, who would report on the changes made in Guatemalan legislation by the new Code of Penal Procedure and on the relevant jurisprudence.

30. On September 12, 1997, the Inter-American Commission submitted its position on the State's new offer of experts made on September 9 of that year. The Commission stated that it would not contest the appearance of the experts offered to replace those who, for unforeseen reasons, were unable to appear before the Court, provided that their reports were restricted to the topics indicated in the brief in answer to the application. It, however, opposed as time-barred the proposal of new experts to report on new topics, and, moreover, argued that there were grounds for

the disqualification of one of them and, that the topics indicated were not germane to the instant Case.

31. On September 14, 1997, the President decided

1. To reject the offer of Mr. Alfonso Novales-Aguirre as an expert in this case, on the grounds of his disqualification.
2. To reject the offer of Mr. Ramiro de León-Carpio as an expert in this case, as time-barred.
3. To accept the offer of Mr. José Francisco de Mata-Vela, Mr. Eduardo Mayora-Alvarado and Mr. Carlos Enrique Luna-Villacorta as experts in this case to report on the topics indicated by the State in its answer to the application.

32. On September 12, 1997, the Inter-American Commission submitted its final list of witnesses and experts who could be delivering their testimony and reports before the Court. In that communication, the Commission offered Olga Molina and Robert C. Bux, to replace Roberto Lemus and Robert Kirschner, respectively, as experts witnesses at the public hearings called by the Court to hear the merits of the instant case. On September 14, 1998, the Secretariat transmitted a copy of the Commission's brief to the State, and informed the State that it had until September 17, 1997 to submit its comments.

33. On September 18, 1997, the President decided "[t]o *accept the offer of Ms. Olga Molina and Mr. Robert Bux as expert witnesses in this case.*" On September 22, 1997, the State appealed the President's decision and objected to the experts accepted therein. On September 23, 1997, the Court, in exercise of the powers conferred on it by Article 49(4) of its Rules of Procedure, decided "[t]o *bear the opinions of expert witnesses Olga Molina and Robert Bux and to evaluate them at a later date.*"

34. On September 16, 1997, the State objected to experts Mr. Ken Anderson and Ms. Anne Manuel proposed by the Commission on the grounds that they lacked the necessary impartiality, since they belonged

to Human Rights Watch/Americas, an organization designated by the Commission as its Assistant in the instant case. On the same day the President decided "[t]o disallow, as time-barred, the objection to Mr. Ken Anderson raised by the State of Guatemala" and did not rule on the objection to Ms. Anne Manuel, because the Commission had not included her in the final list of experts to appear before the Court (*supra*, para. 32).

35. On September 20, 1997, the Commission submitted a new list of witnesses and experts to appear at the hearings to be held by the Court on the merits of this case. In the list, it proposed witness Oscar Humberto Vásquez, to replace Mr. Marvin Vásquez, and Ms. Jean-Marie Simon, who had been proposed in the brief containing the application but had not been included in the final list of witnesses and experts originally submitted by the Commission (*supra*, para. 32). At the meeting of the Court with the parties on September 22, 1997, the Agent of the State stated that, in order to expedite the hearings, he would not object to those witnesses. On the same day the Court decided to accept the offer of Mr. Vásquez and Ms. Simon to testify.

36. On September 22, 1997, the State submitted to the Court 13 briefs containing a total of 38 sets of documents which, in its opinion, constituted supervening events and which it considered appropriate to place before the Tribunal. On September 24, after studying the content of those sets of documents, the Court decided to refer eight of them to the Inter-American Commission, which it requested to formulate its observations on their inclusion in the inventory of evidence in the case within seven days. The Court also decided to reject, as out of order, the other documents presented by the State.

37. On September 30, 1997, the Commission submitted the brief containing its observations, in which it requested the Court to "*reject the presentation of documents offered by the Illustrious Government of Guatemala on September 22, 1997, inasmuch as the request that the Court accept them as evidence [was] clearly time-barred [...].*"

38. On October 10, 1997 the President decided to add the following documents submitted by the State on September 22 to the inventory of evidence in the instant case:

- a- a photocopy of the file of the investigation conducted in the case of Judge Julio Aníbal Trejo-Duque, No. 00339-88, of the Criminal Investigation Department of the Guatemalan National Police;
- b- a photocopy of the file of the Criminal Investigation Department of the Guatemalan National Police on the investigation into the death of Mr. Carlos Morán-Amaya;
- c- a photocopy of the file of the Criminal Investigation Department of the Guatemalan National Police on the investigation into the death of Mr. Erik Leonardo Chinchilla;
- d- certification relating to the petition for application of the Law of National Reconciliation as an incidental question, submitted by Mr. José Antonio Aldana-Fajardo, a former Treasury Police agent involved in the Paniagua Morales *et al.* Case;

and rejected, as inadmissible, the other documents offered at the same time, which had been the subject of the Commission's observations.

39. At a public hearing held on September 22, 23 and 24, 1997, the Court heard the statements of the witnesses and the reports of the experts offered by the parties.

There appeared before the Court:

For the State:

Acisclo Valladares-Molina, Agent;
Carmela Curup-Chajón, Alternate Agent;
Guillermo A. Carranza-Taracena, Assistant;
Acisclo Valladares-Urruela, Assistant;
César Guillermo Castillo, Assistant;
Rosa María Estrada-Silva, Assistant; and
José Miguel Valladares-Urruela, Assistant.

For the Commission:

Claudio Grossman, Delegate;
Elizabeth Abi-Mershed, Attorney;
Mark Martel, Assistant;
Viviana Krsticevic, Assistant;
Marcela Matamoros, Assistant; and
Ariel E. Dulitzky, Assistant.

Witnesses proposed by the Commission:

María Idelfonsa Morales de Paniagua;
Blanca Lidia Zamora de Paniagua;
Alberto Antonio Paniagua;
María Elizabeth Chinchilla;
Raquel de Jesús Solórzano;
Oscar Humberto Vásquez;
Jean-Marie Simon;
Julio Enrique Caballeros-Seigne;
Carlos Odilio Estrada-Gil; and
Felicito Olíva-Arias.

Experts proposed by the Commission:

Robert C. Bux;
Ken Anderson; and
Olga Molina.

Experts proposed by the State:

Napoleón Gutiérrez-Vargas;
José Francisco de Mata-Vela;
Eduardo Mayora-Alvarado; and
Carlos Enrique Luna-Villacorta.

Although the following witnesses and experts were summoned by the Court, they did not appear to deliver their statements and reports:

Witnesses proposed by the Commission:

Sonia Aracelly del Cid-Hernández, and
Marvin Vásquez.

Experts proposed by the Commission:

Phil Heyman;
Robert H. Kirschner;
Roberto Arturo Lemus;
Anne Manuel; and
Christian Tomuschat.

Experts proposed by the State:

Alberto Herrarte-González;
Arturo Martínez-Álvarez; and
Mario Guillermo Ruíz-Wong.

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* *

40. On October 7, 1997, the State offered the testimony of Mr. Julio Aníbal Trejo-Duque. The State claimed that although this offer was time-barred, it was justified by the fact that the witness's health, which had prevented him from appearing earlier before the Court, had improved. The State further claimed that Mr. Trejo's testimony would help "*determine accurately the reasons why the detention order issued had been revoked, why the judge had not imposed a prison sentence, and why the preliminary hearings were still open.*"

41. On October 13, 1997, the Commission submitted its observations on the State's offer. It affirmed that Mr. Trejo-Duque's testimony was time-barred, that to accept it would impair the integrity of the proceeding, and requested that the Court reject it.

42. On October 16, 1997, the President "[c]all[ed] upon the State of Guatemala to present Mr. Julio Aníbal Trejo-Duque as a witness in the instant

Case." The President also summoned the parties to a public hearing to be held at the seat of the Court on November 13, 1997, for the purpose of hearing the witness' testimony; he further requested them to present their observations thereon and granted them a term of 15 days for submitting to the Court in their written closing arguments, any amendments they deemed necessary.

43. On October 28, 1997, the Commission requested that the Court postpone the date for presentation of written closing arguments to give it the opportunity to hear and examine Mr. Trejo-Duque's testimony. The State concurred in its observations to the Commission's request. Accordingly, the President extended the deadline fixed in his Order of October 16, 1997, for presentation of written closing arguments and decided that the new deadline would be one month from the date on which the transcripts of all the Court's public hearings were delivered to the parties.

44. On October 29 the State submitted two briefs in which it requested the Court to admit four files as part of the evidence. On the same day, at the President's instruction, the Secretariat requested the Inter-American Commission to submit its observations on that offer by November 4, 1997, at the latest.

45. On November 4, 1997, the Inter-American Commission declared that the State's requests

should be dismissed because (1) they are clearly time-barred and breach the terms of Article 43 of the Rules of Procedure of the Court; (2) the State has neither invoked nor substantiated any argument that the conditions necessary for an exception to the requirements of Article 43, and (3) the State has not demonstrated the files' legal relevance to the merits of the case,

and requested that the Court reject them. On November 6 of the same year the President "[r]eject[ed], as inadmissible, the documents offered by the State of Guatemala on October 30 and 31, 1997, as evidence in the instant case," since they had been in the State's possession since between 1987 and 1989 and

there was no evidence of *force majeure* or grave impediment to obtaining them at an earlier date.

46. On November 12, 1997, the State submitted two briefs in which it appealed against the President's Order of November 6 and requested that "*inasmuch as the documents provided [were] evidence needed for rendering a correct decision, they be admitted as evidence as a matter of course.*" On November 14, 1997, the Court decided to uphold the Order appealed on the basis of the following consideration among others:

[t]hat the Court endorses the President's criterion that the time-barred presentation of evidence is admissible only in "*extremely aggravated circumstances which the State has in no way justified.*" In this connection, the State's claim that "*it would be an unacceptable fiction to claim that the Principal Agent of the State of Guatemala knew or was aware of everything*" is inadmissible, since the Rules of Procedure grant the respondent State, represented by its Agent, sufficient time in which to prepare its defense.

47. On November 13, 1997, the Court heard the statement of witness Julio Aníbal Trejo-Duque at a public hearing.

There appeared before the Court:

For the State:

Acisclo Valladares-Molina, Agent;
Carlos Augusto Orozco-Trejo, Alternate Agent;
Guillermo A. Carranza-Taracena, Assistant;
Acisclo Valladares-Urruela, Assistant;
César Guillermo Castillo, Assistant;
Rosa María Estrada-Silva, Assistant; and
José Miguel Valladares-Urruela, Assistant.

For the Commission:

Elizabeth Abi-Mershed, Attorney;

Marcela Matamoros, Assistant; and
Mark Martel, Assistant.

48. On November 13, 1997, the State submitted two briefs in which it offered as evidence socioeconomic studies of the victims and their families, requesting that they be admitted as evidence. On the following day the Court decided "[t]o reject, as out of order, the inclusion of [those] studies as evidence in the merits of the instant case."

49. On the same day the State submitted to the Court its comments on the testimony given by Mr. Julio Aníbal Trejo-Duque. Guatemala stated that

[t]he statement by Judge JULIO ANÍBAL TREJO-DUQUE demonstrates, once more, that there are two clearly differentiated groups of persons connected with this case. Group I, composed of AUGUSTO ANGÁRITA-RAMÍREZ, DORIS TORRES-GIL, JOSÉ ANTONIO MONTENEGRO, OSCAR VÁSQUEZ and MARCO ANTONIO MONTES-LETONA, prosecuted in the courts of justice and submitted to judicial proceedings, as stated in acts and illustrated in Judge Trejo-Duque's testimony. There is, at the same time, a second group quite different to the first, composed of JULIÁN SALOMÓN GÓMEZ-AYALA, ANA ELIZABETH PANIAGUA-MORALES, PABLO CORADO-BARRIENTOS, ERIK LEONARDO CHINCHILLA, MANUEL DE JESÚS GONZÁLEZ-LÓPEZ and WILLIAM OTILIO GONZÁLEZ-RIVERA, individuals abducted and murdered by unknown persons unknown.

50. On November 26, 1997, of that year the Commission reported that in the event of the Court's accepting the brief containing the State's comments on Mr. Trejo-Duque's testimony, it would request the procedural right to also submit its observations on that testimony. The President granted a period for presentation of those comments until December 19, 1997, on which date the Commission submitted the brief in question to the Court in English, followed by the Spanish translation on January 9, 1998.

51. On December 10, 1997, and February 4, 1998, the State requested the Court to admit, as of right, the documents rejected by the President on November 6, 1997 (*supra*, para. 45) and by the Court on November 14, 1997 (*supra*, para. 46). The Commission submitted its comments on the State's first petition on January 6, 1998, requested that note be taken of the fact that it had still not received a copy of the documents referred to in those briefs and, with regard to the merits, stated that

it categorically reject[ed] the requests submitted by the Government of Guatemala [and that as] the Agent of the State had presented no reason to justify the Honorable Court's reconsideration of its previous decision to reject those offers (*see* the two Orders of the Honorable Court of November 14, 1997), it is evident that repetition of these requests breaches the principle of judicial economy (*sic*). The Commission considers that the Illustrious Government's reiteration of the request makes a mockery of the most basic rules of due process.

On January 7, 1998, the Secretariat, at the President's instruction, informed the Commission that it had not received the documents referred to, since they do not appear in the file of the instant case, having been rejected by the Court's two Orders of November 14, 1997. On February 9, 1998, the Secretariat, at the President's instruction, informed the State and the Commission that the former's petitions were to be brought to the attention of the Court at its XXIII Special Session to determine what, if any, action would be appropriate (*infra*, para. 53).

52. On January 6, 1998, the State and the Inter-American Commission submitted their briefs of closing arguments to the Court. The Commission's brief was submitted in English, and the Spanish translation followed on January 6, 1998.

53. On March 3, 1998, the State requested the Court to entrust one or more of its members with the task of conducting, on Guatemalan territory, a judicial inspection of the files it had previously offered as evidence (*supra*, para. 44). It also repeated its request of December 10, 1997, and January 6 and February 4, 1998 (*supra*, para. 51), and asked the Court to

note that it had an *amicus curiae* brief in its possession. This last petition was rejected by the Court on March 4, 1998. With regard to the other requests, the Court referred to the decision contained in its Order of November 14, 1997 (*supra*, para. 46.³)

V

URGENT PROTECTIVE MEASURES

54. On October 3, 1997, the Inter-American Commission informed the Court that Mr. Felicito Olíva-Arias, who testified at the public hearings on this case, had received a death threat from Mr. Oscar Augusto Díaz-Urquizú, former Director of the Treasury Police of Guatemala, hours after presenting his evidence at the seat of the Court in San José, Costa Rica.

55. On October 6, 1997 the Secretariat, at the President's instruction, informed the State that it had until October 10 of that year to submit any information in its possession on the facts denounced by the Commission. On October 9, the State reported that it had taken steps to protect Mr. Olíva-Arias's safety and submitted to the Court a copy of some documents relating to the accusation he had filed in the Costa Rican courts against Mr. Díaz-Urquizú. On the next day, the State submitted a report from the Presidential Coordinating Commission on Executive Human Rights Policy on Mr. Olíva-Arias's situation. On October 29 the State informed the Court that Mr. Olíva-Arias was being protected by the Guatemalan National Police Department.

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* *

56. On February 5, 1998, the Commission requested the Court, pursuant to the provisions of Article 63(2) of the Convention and Article 25 of the Rules of Procedure, to adopt "*provisional measures to protect the life and physical integrity of members of the Vásquez family, including Oscar Humberto Vásquez,*

3 On August 16, 1995 Oscar Augusto Díaz-Urquizú submitted a brief in his capacity as *amicus curiae*, which was not formally added to the case file.

Raquel Solórzano, Thelma Judith de Vásquez, Marvin Vásquez and Lydia de Vásquez." The Commission stated that the request was made in relation to two cases: the instant case and that of Vásquez et al. (No. 11.448) before the Commission. As the basis for its request, the Commission stated that

[o]n January 24, 1998, Mr. Oscar Humberto Vásquez, son of Mr. Oscar Vásquez (a victim in the "white van" case) and a witness who had testified before the Honorable Court in September 1997, was unlawfully detained by a group of three unknown men, who attacked him violently and threatened his life.

The Commission also said that Mr. Vásquez had been threatened, that the Office of the Department of the District Attorney ["Ministerio Público"] had refused to accept a complaint about the events, and that the precautionary measures adopted to protect the members of the Vásquez family (*supra*, para. 17) had not yielded satisfactory results.

57. On February 10, 1998, the President required the State to adopt such measures as were necessary to ensure the physical integrity of the members of the Vásquez family and to investigate the attack on Mr. Oscar Humberto Vásquez.

58. On February 16, 1998, the State submitted its first report on the measures adopted in compliance with the Order of the President. On February 19, the Secretariat, at the President's instruction, requested the State to submit forthwith to the Court documents containing the results of the action taken to protect the Vásquez family, especially those contained in points one and four of its report. On the following day, the State submitted another document also titled as the first report on the measures adopted in this case.

VI DOCUMENTARY EVIDENCE

59. The significant documentary evidence in this case includes, first of all, the extensive report prepared by the *National Police of Guatemala, C.A.*

dated June 6, 1988, and dispatched to the Judge of the Magistrates' Court of Santa Catarina Pinula, Zone 14, through official communication No. 3214. Subsequently, at the public hearing before the Court, the report was acknowledged by those who had ordered the investigation at the time of the events (*infra*, para. 67 (h) and (p)).

60. In that report, the National Police gave an account of the investigation conducted in connection with the operation carried out on March 10, 1988, at kilometer 12 and 1/2 on the highway leading to El Salvador. In that operation, a white Ford van was seized with the following on board: Aníbal René Morales-Marroquín, Manuel de Jesús de la Cruz-Hernández, César Augusto Guerra-Ramírez, Neftalí Ramírez-García, Igloberto Pineda-Juárez and Juan José Elías-Palma, members of the Treasury Police indicated in the report as "*the persons allegedly responsible for the abduction and murders*" of the victims.

61. At the same time as the report, the Police delivered to the magistrate the vehicle described above, together with two others, "*claiming that criminal acts had been committed on board them.*" The vehicles were: a white Ford Econoline 350 van; a white Nissan Cherry Vanette private minibus and a beige Chevrolet Chevy Van 20, with brown borders, at that time painted all brown.

62. The conclusions reached by the police investigators in that report were as follows:

1) The white FORD ECONOLINE 350 van with tinted windows was detained on March 10, 1988, at kilometer 12 and 1/2 on the El Salvador highway, following many complaints to the country's authorities that a series of criminal acts had been committed in it.

2) Following an exhaustive investigation by the NATIONAL POLICE DEPARTMENT, it was reliably concluded and proven that on March 10, 1988, at kilometer 12 and 1/2 on the highway leading to El Salvador, no operation had been ordered by the "INAFOR" [National Forestry Institute], "DIGESEPE" [Department of Cattle Services] or any other State body.

- 3) The aforementioned white van had, days before it was detained, been driven without registration plates or any identifying documentation.
- 4) Some of the six MEMBERS OF THE TREASURY POLICE inside the detained white van were recognized as perpetrators of criminal acts.
- 5) The statements of the six members of the Treasury Police seriously contradicted one another as to their reason for being in the white van at the spot where the vehicle was detained.
- 6) Some of the six members of the Treasury Police perjured themselves by saying that it was the first time they had gone out on operations in the white van.
- 7) The six members of the Treasury Police contradicted one another, some saying that they had carried out an operation and others saying that they had not. They did not even know what kind of barriers or signals should be used.
- 8) CÉSAR AUGUSTO GUERRA-RAMÍREZ, a member of the Treasury Police who was inside the captured white van, stated that some members of the Treasury Police Department used knives or razors as part of their equipment.
- 9) The corpses of five of the six persons kidnapped and later killed showed knife wounds as the cause of death.
- 10) Some members of the Treasury Police were recognized as having made arrests in civilian or sports clothes.
- 11) After making arrests, members of the Treasury Police tortured their detainees and robbed them of valuables.
- 12) Both the white FORD ECONOLINE 350 van with tinted windows and the beige CHEVROLET CHEVI VAN 20 with

brown stripes, now painted brown by the Treasury Police, had been unlawfully obtained by that Institution, having been taken from the storage where they were kept.

13) The white FORD ECONOLINE 350 van with tinted windows had entered Guatemalan territory with clear glass which had been tinted by the Treasury Police for reasons unknown.

14) Both the white and the beige van, now painted brown, had transported a large amount of merchandise to the Tecúm Umán customs post in Guatemala with an unknown destination.

15) The Treasury Police Department has been illegally using fourteen registration plates belonging to private citizens, including two foreign plates, as seen in the Reserve Guard log.

16) The Treasury Police said that, owing to an oversight, the white van had no rear registration plate on March 10, 1988; but that vehicle was also photographed on March 8, 1988, by the SECOND INTELLIGENCE SECTION OF THE MINISTRY OF DEFENSE in the vicinity of the Treasury Police without a rear registration plate.

17) It is untrue that the Treasury Police detained vehicles at the place where they had been detained in the white van since the three arrests indicated were made by different Treasury Police than those detained at kilometer 12 and 1/2 on the El Salvador highway, and had taken place in Zone 10 of the city.

18) The Treasury Police states that the beige CHEVROLET CHEVY VAN 20 was not used in its operations, but that is untrue because in the log the vehicle appears as having gone out on operations after it had been painted brown to hide its original color.

19) The white NISSAN CHERRY VANETTE minibus, registration number P-89324, property of AUTORENTAS, S.A., was also used by the Treasury Police and was involved in the abduction of one of the six murder victims, as appears in the log.

20) Investigations reveal that the TREASURY POLICE DEPARTMENT has been operating on the margins of the law, abusing its power to the detriment of the people and violating human rights.

(cfr. Police report, official communication No. 3214 Ref. BIEN. FOA/rrb, of June 6, 1988, signed by Felicito Oliva-Arias, Chief of the Special Investigations and Narcotics Brigade of the National Police; by the captors Infantry Colonel [Dem]. Julio Enrique Caballeros-Seigne, Director General of the National Police; Amado de Jesús Campos-Monterroso, Francisco Castañeda-Espino, Fausto Enrique Meda-Navarro, Rubén Darío González-Escobar, Orlando Hernández-Ascencio, Francisco Javier-Cameros, José Arturo Trabanino-Morales; by investigators Reinaldo Rodríguez-Hernández, Chief of the Homicide Section, Edwin Gudiel-Alveño, Eusbaldo Morales-Marroquín, José Eduardo Cabrera, Miguel Wilfrido Santelis-Barillas, Manuel Alfonso Pinto-Martínez, Carlos René Juárez-Hernández, Francisco Domingo Cipriano S., Sonia Aracelly del Cid-Hernández and Rudy Alex Miranda-Ramírez).

63. Attached to the aforementioned report, the Police submitted documentation relating to the following: the alleged abduction and murder of each one of the victims; the detention and introduction into the white van; the investigation into registration plates used by the Treasury Police, many of which belonged to vehicles owned by individuals and private firms. Also attached to the report, as evidence, were six cassette tapes containing the statements of six members of the Treasury Police and the Treasury Police Department "Log" for January 22 to March 20, 1988. There were contradictions and inaccuracies in the statements of the six members of the Treasury Police; in their statements to the examining magistrate in the case they denied everything, including their presence in the van on the day and at the time of its seizure by the Police.

(cfr. Police report, official communication No. 3214 Ref. BIEN. FOA/rrb, of June 6, 1988, signed by Felicito Oliva-Arias, Chief of the Special Investigations and Narcotics Brigade of the National Police; questionnaire for the interviews with the members of the Treasury Police detained on March 10, 1988; statement of César Augusto Guerra-Ramírez, delivered to the Chief of the Special Investigations

and Narcotics Brigade of the National Police, Felicito Oliva-Arias, on April 13, 1988; statement of Nefталí Ramírez-García, delivered to the Chief of the Special Investigations and Narcotics Brigade of the National Police, Felicito Oliva-Arias, on April 13, 1988; statement of Manuel de Jesús de la Cruz-Hernández, delivered to the Chief of the Special Investigations and Narcotics Brigade of the National Police, Felicito Oliva-Arias, on April 13, 1988; statement of Aníbal René Morales-Marroquín, delivered to the Chief of the Special Investigations and Narcotics Brigade of the National Police, Felicito Oliva-Arias, on April 13, 1988; statement of Juan José Elías-Palma, delivered to the Chief of the Special Investigations and Narcotics Brigade of the National Police, Felicito Oliva-Arias, on April 13, 1988; statement of Igloberto Pineda-Juárez, delivered to the Chief of the Special Investigations and Narcotics Brigade of the National Police, Felicito Oliva-Arias, on April 13, 1988; statement of José Luis Grajeda-Beltetón, delivered to the Seventh Court of Criminal First Instance of Guatemala on July 19, 1988; statement of Nefталí Ramírez-García, delivered to the Seventh Court of Criminal First Instance of Guatemala on July 19, 1988; statement of Igloberto Pineda-Juárez, delivered to the Seventh Court of Criminal First Instance of Guatemala, on July 19, 1988; statement of César Augusto Guerra-Ramírez, delivered to the Seventh Court of First Criminal Instance of Guatemala on July 19, 1988; statement of Manuel de Jesús de la Cruz-Hernández, delivered to the Seventh Court of Criminal First Instance of Guatemala on July 19, 1988; statement of Juan José Elías-Palma, delivered to the Seventh Court of Criminal First Instance of Guatemala on July 19, 1988, and statement of Aníbal René Morales-Marroquín, delivered to the Seventh Court of Criminal First Instance of Guatemala on July 19, 1988).

64. During the public hearings held at the Court on September 22, 23 and 24, 1997, this report was ratified in all its parts by witnesses Julio Enrique Caballeros-Seigne and Felicito Oliva-Arias, who at the time of the acts being tried were, respectively, Director-General of the National Police and Chief of the Special Investigations and Narcotics Brigade of the National Police (*infra*, para. 67 (h) and (p)).

65. The aforementioned police report, and the conclusions the police arrived at, was based on numerous prior police reports prepared on the basis of the initial investigations into the acts *sub judice*, including personal testimony.

66. The Court deems it useful to summarize some of those statements, and to also include the autopsy reports on the murdered persons as well as reference to other evidence.

1 Concerning Mr. Julián Salomón Gómez-Ayala:

a. Following the complaint lodged by Ms. Bertha Violeta Flores-Gómez, the victim's companion, investigators from the Homicide Section of the National Police, Rudy Alex Miranda-Ramírez and Edwin Gudiel-Alveño, went to the place from which Mr. Julián Salomón Gómez-Ayala had disappeared at Ferrocarril Avenue and 35th Street. There they conducted "*door-to-door interrogations throughout the neighborhood and were helped in their inquiries by Mr. PEDRO VICTORIO*", who informed them that a woman he knew only as "María", who worked at a "tortillería" shop two blocks from the site of Mr. Gómez's abduction, told him that she had seen a man kidnapped there and taken away in a "*white van*."

(cfr. Police report of March 21, 1988, signed by Rudy Alex Miranda-Ramírez, Edwin Gudiel-Alveño and Reinaldo Rodríguez-Hernández, Chief of the Homicide Section of the National Police).

b. The investigators went to the "tortillería" shop, identified Ms. Josefa González-Rivera as the woman known as "María" and questioned her. She told them that on June 2 (sic), 1987, she was walking towards the "El Guarda" market when, on reaching 3rd Avenue, between 4th and 5th Streets, she saw "*a white truck without windows*" with small light blue letters on its rear. The vehicle stopped in front of a bar and about five young men carrying firearms got out and forced into the vehicle a man she did not know who was walking along 3rd Avenue. Ms. González-Rivera also testified that about three days later she met the kidnapped man's wife and mother and told them what she had seen.

(cfr. Interview with Josefa González-Rivera, alias "María", contained in police report of March 21, 1988, signed by Rudy Alex Miranda-Ramírez, Edwin Gudiel-Alveño and Reinaldo Rodríguez-Hernández, Chief of the Homicide Section of the National Police).

The investigators asked Ms. González-Rivera to help them identify the white van, which was parked in the National Police compound. She said that the vehicle was different to the one used in Mr. Gómez's detention, but was of the same color and type. Ms. González-Rivera also did not recognize the photographs of the members of the Treasury Police since, as she explained, she had not observed any of the men who detained Mr. Gómez-Ayala because she had poor vision and it had all happened rather suddenly.

(cfr. Police report of March 21, 1988, signed by Rudy Alex Miranda-Ramírez, Edwin Gudiel-Alveño and Reinaldo Rodríguez-Hernández, Chief of the Homicide Section of the National Police; identification by Ms. Josefa González-Rivera at the Headquarters of the National Police of Guatemala C.A., contained in report No. "3" of the Guatemalan National Police Homicide Squad of March 22, 1988, signed by Rudy Alex Miranda-Ramírez, Edwin Gudiel-Alveño and Reinaldo Rodríguez-Hernández, Chief of the National Police Homicide Squad).

c. Ms. Bertha Violeta Flores-Gómez, Mr. Gómez-Ayala's companion, recounted that an unknown individual informed her that Mr. Gómez "had been abducted and put inside a white van, [... that the van ...] had tinted windows" and that "no one had come to look for" the victim, with the exception of an acquaintance who answered to the nickname of "the Colonel." Ms. Flores did not recognize any of the photographs of six Treasury Police agents she was shown.

(cfr. Statement of Ms. Bertha Violeta Flores-Gómez, delivered through record at the Special Investigations and Narcotics Brigade of the National Police Department on May 5, 1988).

d. Ms. Blanca Alicia Ochaeta-Corzo de Ortiz, Mr. Gómez Ayala's landlady, delivered three statements: one during questioning by Police Officer II Reinaldo Rodríguez-Hernández at the Observation Room of the IGSS General Hospital on April 16, 1988; the other two through affidavits at the Special Investigation and Narcotics Brigade of the National Police Department on April 28 and May 20, 1988.

In her testimony of April 28, 1988, she said that in 1986 she had as tenants the victim, his companion Bertha Violeta Flores-Gómez and their small son; that Gómez-Ayala's companion told her that he had been abducted by individuals "in a white van;" that eight days after the kidnapping three individuals arrived on three consecutive days and were let in by Ms. Flores-Gómez, as if she knew them. To the witness's remark that she disapproved of that sort of visitor, Ms. Flores-Gómez replied that she received them because "one of them was known as 'the Colonel', that the other two were his employees and that he had reassured her and offered to locate her husband and bring him back." Those three individuals arrived on three successive days; on one occasion "the Colonel" was wearing green uniform trousers similar to those worn by the army.

She was shown photographs of the white Ford "van" but did not recognize it. On the other hand, she "was absolutely sure" that she recognized two photographs: one, of the person known as "the Colonel," which was a photograph of Aníbal René Morales-Marroquín, and another of Manuel de Jesús de la Cruz-Hernández. Both of these men were members of the Treasury Police.

(cfr. Statement of Ms. Blanca Alicia Ochaeta-Corzo de Ortiz, delivered through affidavit at the Special Investigations and Narcotics Brigade of the National Police Department on April 28, 1988).

In her testimony of May 20, 1988, she repeated what she had stated earlier and, having been shown thirty-two photographs of persons in police uniform, she recognized the following: Edwin Arturo Pineda-Hichus (sic), José Luis Grajeda-Bentetón, Douglas Rafael Meneses-González, Manuel de Jesús de la Cruz-Hernández and Aníbal René Morales-Marroquín. She said that she had already recognized the last two in another proceeding. She also pointed out that the first three photographs "[were] of persons who came to visit Mr. JULLÁN SALOMÓN GÓMEZ-AYALA before his abduction."

(cfr. Statement of Ms. Blanca Alicia Ochaeta-Corzo de Ortiz, delivered through affidavit at the Special Investigations and Narcotics Brigade of the National Police Department on May 20, 1988).

e. Autopsy report, official communication No. DI-19/87 of June 18, 1987, containing the results of the autopsy carried out on the body of Mr. Julián Salomón Gómez-Ayala, read as follows:

LESIONS: wound produced by contusion on the nose with ecchymosis and slight swelling. Grazing on the left knee. Indentation produced by the tying of both wrists. Indentation from hanging around the entire neck of 0.5 cm, hyper-pigmented. A wound produced by a short, blunt object on the front left of the neck measuring eleven by six centimeters exposing muscle and cervical organs. Wound produced by a sharp object on the front thorax, in the form of a cross, the vertical line measuring thirty-one centimeters and the horizontal twenty centimeters, affecting only the dermal tissue.

The conclusions are:

a) Asphyxiation by hanging; b) penetrating neck wound produced by a short, blunt object; c) the findings described. -
-----CAUSE OF DEATH: a) asphyxiation by hanging; b) penetrating neck wound produced by a short, blunt object.

(*cf.* Forensic autopsy report, official communication DI-19/87 of June 18, 1989).

f. Expert Robert C. Bux referred to this document in his report delivered at the public hearing before the Inter-American Court on September 23, 1997 (*infra*, para. 67(l) (1)).

2 Concerning Mr. Augusto Angárta-Ramírez and Ms. Doris Torres-Gil:

a. Mr. Angárta-Ramírez made two statements at the "Pavón" rehabilitation model farm on May 5 and June 15, 1988, respectively.

In the first statement, Mr. Angárta said that he was detained at approximately 1.00 p.m. on December 29, 1987, together with his female companion, Ms. Doris Torres-Gil, by agents of the Treasury Police wearing green uniforms and driving a white van with tinted windows, in which he and his companion were taken to the offices of the Treasury Police. There the Director-General of that body, Mr. Oscar Augusto Díaz-Urquizú, ordered three policemen to take him away and force him to confess to a crime he had not committed. He said that he was handcuffed, ordered to lie face down on the floor and felt a man kneel on his back, his nose and mouth were covered with a thick plastic sheet which prevented him from breathing, while his head was bent back and his legs folded under him. He had been beaten and subjected to painful treatment. A guard had the television on at full volume so that the screams of those being tortured would not be heard. He said that the Treasury Police took away his belongings, that these had not been handed over to the Tribunal, and that they had therefore been taken by the Police. When he was shown photographs of the white "van" with tinted windows, a 1981 Ford Econoline 350, chassis No. IFTJE3460BHA37911, he recognized it as the one used in his capture.

(cfr. Affidavit signed by Augusto Angárta-Ramírez at the "Pavón" Rehabilitation Model Farm on May 5, 1988).

In his second statement, Mr. Angárta-Ramírez said that when he was captured he was ordered to place his hands behind his back so that he could be handcuffed and to lie face down on the ground; a plastic hood was placed over him so that he could not breathe, while he was kicked in the ribs and his legs folded forward; he was hit on the hands, feet and genitals and threatened with electric shocks. He realized that other people were being tortured in the room and their belongings had been taken away; he was later taken to the Second Precinct of the National Police, together with Ms. Torres-Gil and others.

(cfr. Statement of Augusto Angárta-Ramírez to the Seventh Court of First Criminal Instance, delivered at the "Pavón" Rehabilitation Model Farm on June 15, 1988).

b. Ms. Doris Torres-Gil, referred to in some documents as Mr. Angárita-Ramírez's wife and in others as his companion, made two statements, one on June 15 and the other on June 23, 1988, before the Seventh Judge of Criminal First Instance.

In her first statement, Ms. Torres-Gil said that she was apprehended on December 29, 1987, by uniformed members of the Treasury Police and transported in a white "van" about which she knew no other details. She said that she was taken with Mr. Angárita-Ramírez to the offices of the Treasury Police, where they were separated. When she next saw her husband his mouth was bleeding, he was handcuffed and showed signs of torture. She said that her belongings were stolen from her, that sexual advances had been made to her, and that she was taken to the Santa Teresa prison, where she was held.

(cfr. Statement of Doris Torres-Gil to the Seventh Judge of Criminal First Instance on June 15, 1988).

In her expanded statement delivered to the same court on June 23, 1988, Ms. Torres-Gil recognized the white van in photographs relating to the case, which she was shown, and also recognized photographs of Treasury Police agents Francisco Javier (illegible), Manuel Castañeda-Obua, Miguel Humberto Aguirre-López and Hugo Silva-Morán, against whom she brought a formal accusation.

(cfr. Expanded statement delivered to the Seventh Judge of Criminal First Instance by Doris Torres-Gil on June 23, 1988).

Mr. Angárita and Ms. Torres both filed complaints with the Office of the Ministry of Interior (Ministerio de Gobernación) and the Procurator for Human Rights of Guatemala, in which they reiterated their previous statements.

(cfr. Complaint by Augusto Angárita-Ramírez and Doris Torres-Gil to the Office of the Ministry of Interior (Ministerio de Gobernación) of Guatemala

and complaint of Augusto Angárita-Ramírez and Doris Torres-Gil to the Human Rights Procurator of Guatemala, on April 26, 1988).

c. The then Judge in the case, Mr. Julio Aníbal Trejo-Duque, in his testimony to the Inter-American Court referred to the statements delivered by Mr. Angárita-Ramírez and Ms. Torres-Gil (*infra*, para. 68).

d. In official communication No. F-1580. I-613-88, Dr. Mario Alfredo Porres O., Forensic Expert of the Judiciary of the Republic of Guatemala, reproduced the results of a physical examination conducted on Mr. Angárita-Ramírez on December 30, 1987, in response to a request from the Eleventh Criminal Magistrates' Court, with the following results: superficial chafing at the level of the intermediate line of the rear thorax, the radial and cubital regions of the wrists and the radial region of the first phalanx of the right hand's index finger. Bruises and chafing of the side region of the thorax and abdomen. CONCLUSIONS: a) requires seven days of medical treatment, as of the date in which the injuries were suffered. b) five-day leave of regular occupations. c) no operational impediment, deformity or permanent face scar will derive from the depicted injuries [...].

(cfr. Official communication No. F-1580. I-613-88 of June 15, 1988, issued by Doctor Mario Alfredo Porres O., Forensic Expert of the Judiciary of the Republic of Guatemala, addressed to the Seventh Criminal Court of First Instance, single folio).

e. Expert Robert C. Bux informed the Court that he had reviewed the document on Mr. Angárita-Ramírez's injuries (*infra*, para. 67 (1) (2)).

f. The following information was entered in the Log of the Treasury Police Intelligence and Narcotics Squad of Guatemala City for December 29, 1987:

CAPTURE, CONFISCATION AND REMAND: At 23:00 hours [on December 29 1987], members of the Treasury

Police serving in this Squad, on the public thoroughfare of 6th Avenue "A" between 10th and 11th Streets in Zone 1 of this capital city, in front of the San Luis car park, captured AUGUSTO ANGÁRITA-RAMÍREZ, JOSÉ ROLANDO AGUIRRE-AVELAR, CÉSAR AUGUSTO CALDERÓN (no other surname) and the following women: DORIS TORRES-GIL and GLADYS ANGEOLINA GARCÍA-ROS-ALES, having surprised them in *flagrante delicto* as they hastily and suspiciously attempted to abandon the following vehicles: a 1982 black Mazda 323, with registration No. P-225584, chassis No. BD1011-538478, engine No. E1-125254, and a red 1974 Toyota pickup with black and gray stripes, registration No. P-93167, chassis No. Kp36-0627, engine No. 2K-0490480, for which reason the captors decided to conduct a detailed search of those persons and of the vehicles described above, and seized from Ms. García-Rosales a package containing TWO (2) pounds and TWO (2) ounces of the drug "COCAINE" which she had hidden under her blouse; from Mr. Calderón (no other surname) an office-sized folder with various documents, which showed that he forged papers and conducted illicit transactions; from Mr. Angárita-Ramírez was seized a package containing TWO (2) pounds and FOUR (4) ounces of the drug "COCAINE" in a red nylon bag; from Mr. Aguirre-Avelar was seized HALF an ounce of the drug "COCAINE", TWO (2) ounces of marijuana, and cocaine-inhaling implements, for which reason they were detained and the aforementioned drugs were seized and those responsible subsequently brought before the authorities of the Eleventh Criminal Magistrates' Court for legal proceedings. The aforementioned cocaine and vehicles were placed at the disposal of that Tribunal, the cocaine was kept at the Squad in my charge and the vehicles placed in the courtyard of the Treasury Police Department, for consequent proceedings.

(cfr. Log of the Intelligence and Narcotics Brigade of the Treasury Police of the city of Guatemala for the month of December 1987).

3. Concerning Ms. Ana Elizabeth Paniagua-Morales:

a. Ms. María Idelfonsa Morales de Paniagua, mother of victim Ana Elizabeth Paniagua-Morales, reported her daughter's disappearance to the Anti-Kidnapping Squad of the Special Investigations and Narcotics Brigade of the National Police on February 9, 1988.

(cfr. Police report of February 15, 1988, signed by the Acting Chief of the Anti-Kidnapping Squad of the Special Investigations and Narcotics Brigade of the National Police).

She also testified before the Inter-American Court (*infra*, para. 67 (d)).

b. Ms. Blanca Lidia Zamora de Paniagua, wife of the brother of victim Ana Elizabeth Paniagua-Morales, was questioned at her home by investigators Domingo Cipriano-Santos and Ana Aracelly del Cid-Hernández of the Anti-Kidnapping and Extortion Squad of the Special Investigations and Narcotics Brigade of the National Police on February 9, 1988.

(cfr. Police report of February 15, 1988, signed by the Acting Chief of the Anti-Kidnapping Squad of the Special Investigations and Narcotics Brigade of the National Police).

She also testified before the Inter-American Court (*infra*, para. 67 (b)).

c. Mr. Eugenio Ruano, a neighbor of Ms. Ana Elizabeth Paniagua-Morales, was questioned by the aforesaid investigators on February 9, 1988. In his statement Mr. Ruano said that he saw "the individuals when they were kidnapping" Ms. Paniagua-Morales and that they were wearing casual clothes (shorts and sandals). Mr. Ruano also said that he did not know the reasons for the abduction or anything about the kidnappers or the plates on the vehicle they used.

(cfr. Interview with Eugenio Ruano contained in police report of February 15, 1988, signed by the Acting Chief of the Anti-Kidnapping Squad of the Special Investigations and Narcotics Brigade of the National Police).

d. The report of the National Police of Guatemala C.A. of June 6, 1988, stated that Ms. Felipa Aguirre-González de Celada testified, through affidavit of April 29, 1988, that "individuals in a white Ford van abducted Ana Elizabeth Paniagua-Morales."

(cfr. Police report, official communication No. 3214 Ref. BIEN. FOA/rr, of June 6, 1988, signed by Felicito Oliva-Arias, Chief of the Special Investigations and Narcotics Brigade of the National Police, p. 5).

e. The police report of February 12, 1988, list the examination of a woman's body found at kilometer 1 and 1/2 at the entrance of the highway leading to the Municipality of Palencia. The report describes the cause of death as stab wounds to the left side of the neck and right cheek, possibly inflicted with a bladed weapon.

(cfr. Police report of February 12, 1988, signed by investigator Julián (illegible) López of the Section on Crimes Against the National Heritage of the National Police).

f. The results of the autopsy on Ms. Paniagua-Morales's corpse include:

LESIONS: wound produced by a sharp, pointed weapon 18 cm long by 7 cm wide inflicted on the front and left side of the neck, affecting the skin, subcutaneous tissue, muscles, trachea, outer carotid artery and jugular vein on the left side [...] CONCLUSIONS: a)- Hypovolemic shock; b)- penetrating neck wound made by a sharp, pointed weapon; c)- perforation of the trachea; d)- perforation of the veins on the left side of the neck. CAUSE OF DEATH: hypovolemic shock; penetrating neck wound made by a sharp, pointed weapon.

(*cf.* Official communication No. A-567.B-70/95 of the Forensic Department of the Judiciary of the Republic of Guatemala, C.A., dated December 22, 1995, and signed by Dr. Alonso René-Portillo).

g. Expert Robert C. Bux referred to the documents relating to the death of Ms. Paniagua-Morales in the report he delivered before the Inter-American Court (*infra*, para. 67 (l) (3)).

4. Concerning William Otilio González-Rivera and Pablo Corado-Barrientos:

a. Mr. Gilberto González-Saquij, an travelling vendor who witnessed the arrest of Mr. González and Mr. Corado, testified on two occasions: the first on March 22, 1988, to investigators José Eduardo Cabrera and Carlos René Juárez-Hernández, and the second on May 25, 1988 to investigator José Eduardo Cabrera.

In the first statement Mr. González-Saquij said that he had known Mr. "William Otilio" and Mr. Pablo Corado for three months; that on the day they disappeared he had seen them at 6.00 p.m. talking to an "unknown man armed with a pistol and cartridges;" that "he heard the armed man persuading them to go for a walk, and they went away." He said that the man and others with him appeared to be soldiers and often visited the banana stalls; that he had not seen them since the two victims' disappearance and "he had heard that those [unknown persons] were from the G-2." He further testified that a coal vendor there, known as "Tanish", packed up his stall when he realized that those persons were there and went away; that "Tanish" was a friend of the deceased, knew what had occurred and told "people in the area that he would tell the authorities what he knew." He would not give his address because he was afraid of what would happen to him, as was everyone in the area.

(*cf.* Interview with Gilberto González-Saquij contained in the police report of March 22, 1988).

In his second statement, Mr. González-Saquij added that the victims, accompanied by a stranger armed with *"a pistol and two cartridges,"* had walked away from the area.

(cfr. Interview with Gilberto González-Saquij contained in the police report of May 25, 1988).

b. Mr. Carlos René Juárez-Hernández, investigator with the Special Investigations and Narcotics Brigade of the National Police, testified before the Seventh Judge of Criminal First Instance on July 13, 1988, that he had thought at the time he took Mr. González-Saquij's statement that *"at the terminal anyone armed was said to belong to the G-2, and [...] perhaps [the armed men] visited them because Mr. William Otilio González-Rivera was an ex-paratrooper."*

(cfr. Statement of Carlos René Juárez-Hernández, investigator of the National Police serving with the Special Investigations and Narcotics Brigade of the National Police).

c. According to the autopsy report of February 12, 1988, Mr. Corado-Barrientos's corpse had

[g]razes on the forehead and chin. Second-degree ecchymosis on the right cheek. A stab wound measuring thirteen by three cm. on the left middle clavicle of the pectoral area affecting the skin, cellular tissue, and pectoral muscles, forming a cavity. A stab wound measuring twelve by three cm. on the right middle clavicle of the pectoral region affecting skin, cell tissue, pectoral muscles and forming a cavity

adding as conclusions:

a) Stab wounds to the thorax and abdomen inflicted with a bladed weapon. b) Hypovolemic shock. Acute anemia. c) Bilateral haemothorax. Haemoperitonitis. d) Perforation of the lungs and liver. e) Perforation of the heart. f) Fracture - ribs. -- CAUSE OF DEATH: Stab wounds to the chest and abdomen.

(*cfr. Official communication No. F-1655, D-72-88 of June 22, 1988*).

d. According to the autopsy report of February 12, 1988, Mr. González-Rivera's corpse had:

LESIONS: Stab wounds measuring ten by two and half centimeters on the right middle clavicle of the pectoral area. A short bruising wound measuring three by three centimeters running vertically along the left middle clavicle [.]

and the following conclusions:

a) Chest and abdominal stab wounds inflicted with a bladed weapon; b) Hypovolemic shock - acute anemia; c) Bilateral haemothorax - haemoperitonitis; d) Lung perforation; e) Perforation of the heart; f) Rib and bone fractures. CAUSE OF DEATH: 1) Stab wounds to the chest and abdomen.

(*cfr. Forensic report of February 12, 1988, reproduced in official communication number C-3006-88 of June 22, 1988*).

e. Expert Robert C. Bux referred to documents relating to the deaths of Mr. González-Rivera and Mr. Corado-Barrientos in his report delivered before the Inter-American Court (*infra*, para. 67 (l) (4) and (5)).

5. Concerning Mr. Manuel de Jesús González-López:

a. Ms. María Elizabeth Chinchilla de González, wife of Mr. Manuel de Jesús González-López, delivered three statements: the first two through affidavits of May 5 and 13, 1988, and the third to the Inter-American Court (*infra*, para. 67 (a)).

In her first statement, Ms. Chinchilla de González said that her husband had been kidnapped in a white "*minibus*" on February 11, 1988, at approximately 6.00 p.m. and was found dead on February 13. When later shown photographs of a white "van", she said that

it was not the vehicle in which her husband had been abducted, and that one had been smaller with windows. She was also shown "six photographs of six persons, to see whether she recognize[d] any of them as a participant in her husband's abduction." Ms. Chinchilla de González declared that she did not recognize the men in the photograph.

(cfr. Sworn statement of María Elizabeth Chinchilla de González delivered to Notary Jorge Humberto Castillo de León on May 5, 1988).

In her second statement, Ms. Chinchilla de González said that her husband had been abducted by four armed men in a white "van". She was shown the white 1986 Nissan Cherry Vanette minibus, chassis No. KHGC120-027394, engine No. A15-092198A, registration plate P-89324. After close study, Ms. Chinchilla de González said that it was the same as the vehicle "in which her husband had been kidnapped."

(cfr. Sworn statement of María Elizabeth Chinchilla de González delivered to Notary Fernández Font on May 13, 1988).

b. Ms. María Julia González-López, the victim's sister, was questioned on March 30, 1988, by investigators Edwin Gudiel-Alveño and Miguel Wilfredo Santeliz, from the Homicide and Disappeared Persons squads, respectively, of the Special Investigations and Narcotics Brigade of the National Police. Ms. González-López declared that when she asked her sister-in-law (the wife of Mr. Manuel de Jesús González-López's) about her husband's death, she had told her "not to ask her anything about what had happened because she knew nothing, adding that she was not to say anything because MANUEL [de Jesús González-López] was already dead and [...] she was not to accord it any importance." Ms. González-López also said that, when she asked her sister-in-law whether she remembered what the vehicle in which Mr. González-López had been abducted was like, she told her that it was a white van "and that afterwards she sa[id] that it was a grey SUBARU van, and later again she sa[id] that she kn[ew] nothing and she was not to ask her any more questions."

(cfr. Police report of the Special Crimes and Narcotics Squad of the Homicide Section of the National Police of April 4, 1988).

c. The following mention is made in the police report of February 13, 1988, concerning Mr. González-López's corpse when it was found.

[i]ndentation on the neck, with signs of torture and hanging: [...] on the wrists signs of having been tied, grazes on the forehead.

(cfr. Police report of February 13, 1988, signed by Mario Alfonso Pérez Martínez, Second Int. Chief, Homicide Sec. of the National Police).

d. According to the autopsy report of February 18, 1988, Mr. González-López's corpse bore:

LESIONS: a two-centimeter-wide indentation from hanging was found [...].

CONCLUSIONS: a- an indentation from hanging. b- signs of asphyxiation. c- pancreatitis.

CAUSE OF DEATH: asphyxiation by hanging.

(cfr. Official communication No. A-568.B-71/95 of the Forensic Department of the Judiciary of the Republic of Guatemala, dated December 22, 1995, and signed by Dr. Alonso René Portillo, Medical Examiner; death certificate of Manuel de Jesús González-López Ref. C-165-87/Of.7th. of May 14, 1990).

e. At the public hearing before the Court, expert Robert C. Bux commented on the contents of the autopsy report on Mr. González-López (*infra*. 67 (1) (6)).

6. Concerning Mr. Oscar Vásquez:

a. Mr. Vásquez made a statement through affidavit signed on March 15, 1988, at the Office of the Warden of the Pavón Rehabilitation Correctional Farm. He said that he had been

detained at approximately 7.30 p.m. on February 13, 1988, at his home in Zone 6 of Guatemala City; that he had been put into a white "van" with tinted windows; that he had been taken to the Treasury Police station, where he was beaten. He recognized the photograph of a white "van" shown him and those of agents Manuel de Jesús de la Cruz-Hernández, Aníbal René Morales-Marroquín and Juan José Elías-Palma. The last two were wearing Treasury Police uniform and took part in his arrest.

(cfr. Affidavit signed by Oscar Vásquez on March 15, 1988, at the Office of the Warden of the Pavón Rehabilitation Correctional Farm).

b. Mr. Oscar Humberto Vásquez, the victim's son, testified before the Court (*infra*, para. 67 (f)).

c. Ms. Raquel de Jesús Solórzano, the victim's wife, testified before the Inter-American Court (*infra*, para. 67 (e)). Ms. Solórzano also testified through a affidavit signed on March 16, 1988, that on February 13 of that year her husband had been arrested by a member of the Treasury Police and another individual wearing gray trousers, both of whom were armed. She learned from neighbors that the vehicle used to transport them was a white van and that her husband's captors were accompanied by about eight other men.

(cfr. Notarial act signed by Raquel de Jesús Solórzano on March 16, 1988).

d. Mr. José Antonio Montenegro, in a statement delivered on March 15, 1988, at the Office of the Warden of the Pavón Rehabilitation Correctional Farm said that when he was forced into the white "van", Mr. Oscar Vásquez was already inside (*infra*, 7 (a)).

(cfr. Affidavit signed by José Antonio Montenegro on March 15, 1988, at the Office of the Warden of the Pavón Rehabilitation Correctional Farm).

e. Notarial act signed by Delia Amparo Hernández-Mejía on March 16, 1988, in which she declared that she had seen a white "van" with tinted windows and no registration plates, in which

three uniformed Treasury Police agents were taking Mr. Oscar Vásquez away. She recognized the "van" shown to her in photographs, as well as Manuel de Jesús de la Cruz-Hernández, Aníbal René Morales-Marroquín and Neftalí Ramírez as the three individuals who abducted Mr. Vásquez.

(cfr. Affidavit signed by Delia Amparo Hernández-Mejía on March 16, 1988).

f. In his report to the Inter-American Court, expert Robert C. Bux (*infra*, para. 67 (l) (7)) referred to the file on Mr. Vásquez and the injuries inflicted on him after his arrest.

g. The following activity is recorded in the Guatemala City Treasury Police Department Intelligence and Narcotics Squad log for February 13, 1988:

CAPTURE, SEIZURE AND REMAND: at 23:00 hours, members of the Treasury Police serving in this Section effected the arrest of persons [...] OSCAR VÁSQUEZ-PALACIOS [...], on the public thoroughfare at 25th Avenue and 26th Street in Zone 6 [...] *in flagrante delicto* when at the above address one of them was selling Marijuana and others purchasing and consuming it, seizing that drug from each of them, which was the reason for their detention and remand, together with the *corpus delicti*, to the Twelfth Court of Criminal Justice; to that court they had delivered a sum of exactly one hundred and eighty-two quetzales (Q. 182.00) with which money the accused attempted to bribe the arresting officers.

(cfr. Log book showing the activities and events in the Intelligence and Narcotics Squad of the Guatemala City Treasury Police Department of Guatemala City for the month of February nineteen hundred and ninety-eight, folio 4).

h. According to official communication No. 167-REF. GCD/Jmpo of February 14, 1988 from the Chief of the Treasury

Police II to the Twelfth Examining Magistrate of Guatemala City, Mr. Vásquez was referred to that Court after being apprehended *in flagrante delicto* at a suspicious meeting, and a quantity of "the herb *marihua* (sic)" seized from him. The official communication also states that, according to the statements of the other persons detained and of Mr. Vásquez himself, he was a drug dealer and trafficker in the area in which he was arrested.

(cfr. Official communication No. 167. REF. GCD/Jmpo of February 14, 1988, from the Chief of the Treasury Police II to the Twelfth Court of Criminal Instruction of Guatemala City).

i. According to an official communication of June 13, 1988, signed by Judge Otto Fernando Palma-Chacón, Twelfth Examining Magistrate, to the Seventh Judge of Criminal First Instance, Mr. Vásquez was taken by the Treasury Police before the Twelfth Examining Magistrate of Guatemala on February 14, 1988, through official communication No. 167, accused of unlawful traffic in pharmaceutical products, drugs or narcotic substances, and active bribery.

(cfr. Official communication of June 13, 1988, signed by Judge Otto Fernando Palma-Chacón, XII Examining Magistrate and addressed to the Seventh Criminal Judge of First Instance).

7. Concerning Mr. José Antonio Montenegro

a. Affidavit signed by José Antonio Montenegro on March 15, 1988, at the Office of the Governor of the Pavón Rehabilitation Correctional Farm. He testified that he was detained at his home on February 13, 1988, at 7:00 p.m. by three persons in civilian clothes and placed inside a white "van" vehicle with tinted windows and occupied by Mr. Oscar Vásquez. Inside were also seven or eight agents of the Treasury Police, who ill-treated him. At the Treasury Police station they were undressed and beaten, and boxes of sweets and marijuana planted on them as proof of their commission of the crimes attributed to them. He recognized the photo-

graph of a white "van" he was shown and photographs of Manuel de Jesús de la Cruz, Aníbal René Morales and Juan José Elías-Palma. The last two were wearing Treasury Police uniform and took part in his arrest.

(cfr. Affidavit signed by José Antonio Montenegro on March 15, 1988, at the Office of the Governor of the Pavón Rehabilitation Correctional Farm).

b. Ms. Miriam Elizabeth Huertas de Gatica testified by affidavit that she witnessed José Antonio Montenegro's capture on February 13, 1988, by three individuals wearing civilian clothes, their faces hidden by dark caps, who took him away. She recognized the photographs of a white van she was shown.

(cfr. Statement by Miriam Elizabeth Huertas de Gatica delivered on March 16, 1988, to Notary Eduardo Roberto González-Garnica).

c. Ms. Graciela Cante testified by affidavit on March 16, 1988, that on February 13, 1988 two men wearing civilian clothes came to her house asking for Mr. Montenegro, who was out at the time. They waited for him and she was later told, when he arrived later they took him away in a white van.

(cfr. Statement of Graciela Cante delivered on March 16, 1988, to Notary Eduardo Roberto González-Garnica).

d. The log of the Intelligence and Narcotics Squad of the Treasury Police Department of Guatemala City contains the following entry for February 13, 1988:

CAPTURE, SEIZURE AND REMAND: at 11:00 p.m., members of the Treasury Police serving in this Section effected the arrest of persons [...] JOSÉ ANTONIO MONTENEGRO WITHOUT A SECOND SURNAME, on the public thoroughfare at 25th Avenue and 26th Street in Zone 6 [...] *in flagrante delicto* when at the above address one of them was selling Marijuana and others purchasing and consuming

it, seizing that drug from each of them, which was the reason for their detention and remand, together with the *corpus delicti*, to the Twelfth Court of Criminal Justice; to that court was delivered a sum of exactly one hundred and eighty-two quetzales (Q. 182.00), with which money the accused had attempted to bribe the arresting officers.

(cfr. Log book showing the activities and events in the Intelligence and Narcotics Squad of the Guatemala City Treasury Police Department, for the month of February, nineteen hundred and ninety-eight, folio 4).

e. According to official communication No. 167-REF. GCD/Jmpo of February 14, 1988, from the Chief of the Treasury Police II to the Twelfth Examining Magistrate of Guatemala City, Mr. Montenegro was referred to that Court after being apprehended *in flagrante delicto* at a suspicious meeting and a quantity of marijuana seized from him.

(cfr. Official communication of June 13, 1988, signed by Judge Otto Fernando Palma-Chacón, Twelfth Examining Magistrate and addressed to the Seventh Court of Criminal First Instance; official communication No. 167. REF. GCD/Jmpo of February 14, 1988, from the Chief of the II Treasury Police to the Twelfth Examining Magistrate of Guatemala City).

f. According to official communication of June 13, 1988, from Judge Otto Fernando Palma-Chacón, Twelfth Examining Magistrate, to the Seventh Court of Criminal First Instance, Mr. Montenegro was remanded to the Twelfth Criminal Court of Guatemala on February 14, 1988, through official communication No. 177, accused of the crimes of unlawful traffic in pharmaceutical products, drugs or narcotic substances, and active bribery.

(cfr. Official communication of June 13, 1988, signed by Judge Otto Fernando Palma-Chacón, Twelfth Examining Magistrate and addressed to the Seventh Court of Criminal First Instance).

8. Concerning Mr. Erik Leonardo Chinchilla:

a. Mr. Mario Ricardo Álvarez-Guevara testified that he saw Mr. Erik Leonardo Chinchilla at 4:35 p.m. when he left with some men in "his pick-up truck." He further testified that a friend called Romeo had told him that he had witnessed the kidnapping and that the kidnapper was a thin man of medium height, with dark wavy hair, wearing light clothes and dark glasses, and that he took away Mr. Chinchilla's keys and carried him off in his own "pick-up" followed by another gray or light blue "pick up." The witness made the same statement in police report of July 23, 1992.

(cfr. Interview with Mario Ricardo Álvarez-Guevara, recorded in police report of February 20, 1988; interview with Mario Ricardo Álvarez-Guevara, recorded in police report of July 23, 1992).

b. Ms. María Luisa Chinchilla-Ruano, Mr. Erik Leonardo Chinchilla's mother, testified that on the day before his death, her son told her that he had been involved in an accident with two individuals who had identified themselves as bodyguards of Mr. Julio Caballeros, Director of the National Police; they threatened him and forced him to sign a document for payment of damages. On the day of her son's death a friend of his told her that he had seen him arguing around 4.00 p.m. with persons unknown who had taken him away. From the friend's description, one of them appeared to be the person with whom he had had the aforesaid incident.

(cfr. Interview with Ms. María Luisa Ruano, recorded in police report of February 20, 1987 (rectius 1988)).

c. Mr. Nicomedes Castillo-Guzmán, Mr. Chinchilla's biological father, said that he spoke to the bodyguard involved in the traffic accident with his son, who was a man of light brown complexion, thin, with very short semi-straight semi-wavy hair, and that one of the three men that kidnapped his son had the same physical characteristics as the bodyguard who spoke to him. That the witness

called "Darwin" saw a gray "pick-up with a camper" intercept Erik Chinchilla's car, saw some people arguing with him and then take him away in his own vehicle, following it in another. In a subsequent statement, he also said that when the "pick-up" intercepted Mr. Chinchilla's car, the latter said something like "IT WAS NOT MY FAULT."

(cfr. Interview with Mr. Nicomedes Castillo-Guzmán, recorded in police report of February 22, 1988; interview with Mr. Nicomedes Castillo-Guzmán, recorded in police report of July 23, 1992).

d. Mr. Manuel de Jesús Bautista-Marroquín said that his sister informed him that they had killed someone in the field, that he heard shots and went to the National Police to report the incident.

(cfr. Interview with Mr. Manuel de Jesús Bautista-Marroquín recorded in police report of February 23, 1987 (rectius 1988)).

e. Ms. María Cristina Bautista-Marroquín said that she heard a number of shots and told her brother and that, according to the neighbors, three unknown persons fled "in a yellow, beige or perhaps silver truck" after the shots were fired.

(cfr. Interview with María Cristina Bautista-Marroquín, contained in police report of February 23, 1987 (rectius 1988)).

f. Mr. Juan Guillermo Granados-Fernández said that at 4.30 p.m. on Monday, February 15, 1988, Ms. María Luisa Chinchilla's son, whom he did not know, entered his shop with a rank-and-file policeman and an officer wearing "two deltas" (police insignia); another thin young man of 28, with smooth to slightly wavy hair; a minor of 16 and a girl of about 12, asking him to repair a "Plymouth" vehicle, which was being driven by a bodyguard.

(cfr. Interview with Juan Guillermo Granados-Fernández, recorded in police report of February 23, 1988).

g. Ms. Sabina-Sian testified that on the day of Mr. Erik Leonardo Chinchilla's murder, she passed between two vehicles, a red "pick-up truck" with Mr. Chinchilla and another thin, light brown skinned man, wearing a shirt with brown stripes and a blue jacket, seated inside; in the other vehicle were two individuals whom she could not see clearly, because this "vehicle, which was yellow or beige, or rather mustard-colored, was a truck" with tinted windows.

(*cf.* Interview with Ms. Sabina-Sian, recorded in police report of February 23, 1987 (*rectius* 1988)).

h. Dr. Carlos Manuel Alegría indicated in a police report of February 23, 1987 (*rectius* 1988), that he had performed the autopsy on Mr. Chinchilla on February 17 and that his body had nine bullet holes, four in the cranial area, two in the chest, two in the right forearm and one in the right hand. Two bullets were found, one in the right elbow and the other in the stomach muscles. Death occurred at 6.00 p.m. The shots were fired from a distance of fifty centimeters.

(*cf.* Interview with Dr. Carlos Manuel Alegría, recorded in police report of February 23, 1987 (*rectius* 1988)).

i. Investigators Izquierdo and Villagrán said they had taken preliminary statements at the site of Mr. Erik Leonardo Chinchilla's murder; that they interrogated a 58-year old individual who said that a "pick-up" and yellow van with tinted glass carrying two men had arrived at the spot. Both vehicles stopped for fifteen minutes; he then saw the man sitting in the right seat of the "pick-up" get out and fire at the driver, get back in to the van and speed off.

(*cf.* Interview with agents Izquierdo and Villagrán, recorded in police report of March 3, 1988).

j. Expert Robert C. Bux reported to this Court on some documents referring to Mr. Erik Leonardo Chinchilla's death (*infra*, para. 67 (l) (8)).

9. Concerning Mr. Marco Antonio Montes-Letona:

a. Mr. Montes-Letona delivered a statement at the Office of the Warden of the Pavón Rehabilitation Correctional Farm on March 15, 1988, in which he declared that he was detained on February 19, 1988, at 3.30 p.m. in the lobby of the Hotel Capri on Ninth Avenue between 15th Street "A" and 16th Street in Zone 1 of Guatemala City, by four individuals wearing civilian clothes. He further stated that two other individuals wearing the uniform of the Treasury Police were waiting outside and put him into a white "van" with tinted windows and took him to the Treasury Police station. There he was beaten up by different uniformed agents then those who had seized him. When he was shown six photographs of Treasury Police agents, he recognized Mr. César Augusto Guerra-Ramírez as one of the agents who had beaten him, and said that he could identify the individuals who had detained him. When shown photographs of the white "van", he identified it as the one in which he had been taken to the Treasury Police station.

(cfr. Sworn statement of Mr. Marco Antonio Montes-Letona of March 15, 1988, at the Office of the Warden of the Pavón Rehabilitation Correctional Farm).

b. In the February 19, 1988 confidential report of the Special Investigations and Narcotics Brigade of the National Police, Police Officer II, José Luis Castillo-Silva, Deputy Chief of Section, informed the Special Investigations and Narcotics Brigade of the National Police that on February 19, 1988, at 3.00 p.m., he received a confidential telephone call informing him that a brown vehicle bearing registration plate P-219022 with four persons inside was parked on 16th Street between Eighth and Ninth Avenues, Zone 1, of Guatemala City. He also stated that, together with investigator Mario Armando Castro-Palomo, he went to the address indicated, where they kept watch for fifteen minutes. They observed on Ninth Avenue between 16th and 17th Streets of Zone 1 a white Ford "van" with tinted windows, registration plate P-123857. At 3.30 p.m. the vehicle described pulled away and parked in front of the Hotel Capri, located on Ninth Avenue and 15th Street, Zone 1.

Persons wearing the uniform of the Treasury Police got out and with the help of the occupants of the brown vehicle, who were dressed in civilian clothes, they took two individuals out of the hotel and put them in the white van. The detainees were male and possibly foreign. Both vehicles drove away from the site.

(cfr. Confidential report of the Special Investigations and Narcotics Brigade of the National Police of February 19, 1988, signed by Police Officer II, José Luis Castillo-Silva, Deputy Chief of Section, and addressed to the Special Investigations and Narcotics Brigade of the National Police)

c. The following information for February 19 was entered in the February 1988 log book of the Intelligence and Narcotics Section of the Treasury Police Department:

members of the Treasury Police serving in this Intelligence and Narcotics Section, on the public road near 11th Street and 5th Avenue of Zone 1 of this capital city, in front of the offices of the National Bank in the "Banvi" building, captured two individuals: MARCO ANTONIO MONTES-LETONA [and another ...]. They also seized from them two forged I.D. papers with which they were attempting to change money [...], for which reason they were arrested and taken before the Thirteenth Criminal Justice of Peace.

(cfr. Log of activities of the Intelligence and Narcotics Section of the Treasury Police Department for February 1988, folio number six).

d. By official communication of June 14, 1988, the Thirteenth Criminal Justice of Peace informed Judge Trejo-Duque that on February 20, 1988, Mr. Montes-Letona, accused of the crimes of forgery, theft and unlawful use of identity papers, was placed at the disposal of the Court. The proceedings were subsequently sent to the Fifth Court of Criminal First Instance on February 23, 1988.

(cfr. Official communication number 051/Srio. of June 14, 1988, signed by Luis Alberto Mazariegos-Castellanos, Judge of the Thirteenth Criminal Justice

of Peace, addressed to the Seventh Judge of Criminal First Instance, Julio Anibal Trejo-Duque).

VII TESTIMONIAL AND EXPERT EVIDENCE

67. At public hearings on September 22, 23 and 24, 1997, the Court heard the statements of the witnesses and the reports of the experts produced by both the Inter-American Commission and the State. The reports and statements are summarized below in the order in which they were delivered:

a. Testimony of María Elizabeth Chinchilla, wife of Manuel de Jesús González-López

In February 1988 she was living with her husband, Manuel de Jesús González-López, and their children at the Mezquital Estate in Zone 12 of Guatemala City. Her husband worked as a mechanic and played sports. On February 11, 1988, she went to meet her husband outside his place of work and they returned home by car at 5.45 p.m.; while he was closing the car door a white "van" with Guatemalan plates drew up and four men got out. They were dark, wearing civilian clothes, with very short hair, shorter on the sides than on top. They seized her husband from behind and put him into the "van"; she went to get help from the police station in Bolívar Avenue in Guatemala City; the next day she went to look for her husband at the General Hospital; early on Saturday, the 13th, she went to the morgue but could obtain no information; around midday her sister-in-law told her that her husband's body was at the morgue and that it had been found beheaded and naked in the street, and bore traces of burns similar to those made with a cigar. She went to the morgue and saw her husband's body in a box; he looked purple, had cuts and bore signs of hanging, with his tongue outside, also purple, and burns on his skin. Following her husband's death, she returned to the Sixth Avenue police post in Guatemala City, where she was questioned and shown photographs

for her to identify those responsible; she was unable to identify anyone in the photographs because they were of common criminals. She was never summoned to any court. Some time after her husband's death she went to Los Angeles and did not return to Guatemala because she was afraid.

b. Testimony of Blanca Lidia Zamora de Paniagua, sister-in-law of Ana Elizabeth Paniagua-Morales

In February 1988 she was living with her parents-in-law, her daughters, her brother, her niece and her pregnant sister-in-law, Ana Elizabeth Paniagua-Morales. On February 9, 1988, Ms. Paniagua-Morales got up early and went to the shop to buy bread and milk. Ms. Zoila Ruano told her that her husband, Eugenio Ruano, had seen her sister-in-law abducted in a white "van". She spoke to a neighbor ("*Irene*") who told her that a long white "van" with dark windows was parked in front of her house with a man sitting in the "*right front seat*." She also spoke to the shopkeeper ("*Doña Felipa*", see *supra*, para. 66 (3) (d)), who told her that a white van drew up and four men got out, one of whom seized her sister-in-law by the hands and covered her head with a towel while another grabbed her legs; they put her into the "van", which drove off to an unknown destination. She passed that information on to her sister-in-law's mother, to her husband and her brother. The victim's mother went to various police stations to find out whether her daughter had been detained; six men came to the house that day in a private car to ask questions about her sister-in-law. She later heard on the news that the bodies of two women who had been brutally tortured and killed had been found and taken to the morgue of the General Cemetery in Zone 3. She went there and identified her sister-in-law's body. She had two holes at the top of her head which were bleeding; her forehead was damaged, swollen and green and purple; her cheek was open below the eye; she had another injury like a knife wound on her cheek or mouth; she had two red marks under her breasts; she had no fingernails or toe nails; her head had been almost severed from her body; her tongue stuck out between her clenched teeth and was purple in color; her genital organs also bore

signs of rape. The witness made the necessary arrangements for removing her sister-in-law's body from the morgue.

c. Testimony of Alberto Antonio Paniagua-Morales, brother of Ana Elizabeth Paniagua-Morales

The witness was not in Guatemala on the day of his sister's abduction and returned at the end of April of the year in which the events occurred. He testified that unknown persons were watching his house, some of whom appeared to be policemen and had short hair at the bottom and less short on top, military style. His fear increased when a grenade exploded six months after his sister's murder, and when another, which did not explode, was also planted; that day uniformed police arrived, wearing their hair that was slightly longer on top than on bottom, military style. His sister's death had totally destroyed his family; they had never filed any civil action in Guatemala for reparation of injuries or damages.

d. Testimony of María Idelfonsa Morales de Paniagua, mother of Ana Elizabeth Paniagua-Morales

The witness testified that in 1988 her daughter was 23 years old and two months pregnant; she had last seen her at 6.00 a.m. on February 9, 1988, when she told her she was going to buy milk; she went to the shop and never returned. When she learned that she had been abducted, she went with her son to look for her at the police stations and hospitals; she filed a writ of *habeas corpus* but never received a reply. On February 11, 1988, she learned that two unidentified bodies had been discovered, and asked her daughter-in-law (Ms. Blanca Lidia Zamora de Paniagua) to go. Her daughter-in-law informed her that one of the bodies was her daughter's. Her home was placed under surveillance and she was told by Mr. Adolfo Soto, an acquaintance of hers who worked with the judicial police, that they had been sent to watch her. She left Guatemala for the United States and, later, Canada on February 28, 1988. On August 21, 1997, she returned to Guatemala and Yolanda Sánchez from the Office of the Procurator General of the Nation offered

her compensation for her daughter's death. She had not brought any civil or criminal action in Guatemala in connection with her daughter's death, nor had she made any statement.

e. Testimony of Raquel de Jesús Solórzano, wife of Oscar Vásquez

The witness testified that her husband, who was a wood-seller, was abducted on February 13, 1988; they were together at home when there was a knock on the door; her husband went out and was seized by four Treasury Police agents, three of whom were wearing the olive green uniform and cap, while the fourth was dressed in civilian clothes; they beat him and handcuffed him. The agents did not have an arrest warrant, nor did they produce a search warrant; they entered asking where "*the marijuana*" was, told her they knew that her husband sold it, searched the house and found nothing, but stole money from them. Their sons Marvin and Oscar followed the agents who carried her husband away and saw them beat him with a rifle butt. Mr. Vásquez's captors put him face down through the back door of a large white "van", in which there were other agents who put their feet on top of him. The next day she went to the "*Second Precinct*" where she was told that her husband was not there, but she did see him when she returned on visiting day. He had been badly beaten, found it difficult to speak and one eye was closed and inflamed; he told her that after they had seized him they took him to the Treasury Police and transferred him the next day to the "*Second Precinct*." She went to the Third Justice of Peace, where she was told that her husband was accused of drug possession and consumption; they sentenced him "*to four years*." On her second visit to her husband he still had visible swellings, which disappeared approximately one month later. In response to questions from the Commission and the State, she said that following her husband's arrest she had been visited by six or eight agents carrying a great many photographs of agents and of a van, but the photographs were not those of the agents that had apprehended her husband. At the time of her husband's detention she did not file a writ of *habeas corpus*; her husband identified six Treasury Police

agents and the white van in a statement made to a notary, who delivered it to the police. No one was detained, but they had not detained anyone; her husband was murdered five days before he was due to testify before the Inter-American Commission.

f. Testimony of Oscar Humberto Vásquez, son of Oscar Vásquez

On February 13, 1988, at around seven or eight at night, he was at home when some policemen arrived and asked for his father, whom they arrested and handcuffed when he went out to them. There were some fifteen men outside the house, four of whom came in to search it. Three wore the green uniform of the Treasury Police, while one wore civilian clothes; they told his father to hand over "*the marijuana*" and beat him. They searched the entire house and took money away. He saw them put his father face down into a white "van" with tinted windows, two doors in front, a sliding door on the right side and other behind, and also saw all the agents put their feet on his father's back; the operation lasted about 15 minutes. Approximately eleven men were arrested for the beating his father received, but they were released. In reply to questions from the Commission and the State, he said that after the detention a policeman came to his home with photographs to see whether his mother could identify the policemen that had arrested his father or the "van", and that his family had never been compensated for the damage occasioned by his father's arrest.

g. Testimony of Jean-Marie Simon, journalist and former Human Rights Watch/Americas consultant

The witness testified that in 1988 she was working in Guatemala as a journalist and human rights consultant; she had interviewed Judge Julio Aníbal Trejo-Duque four days after his release; that day she also interviewed Judge Guerra-Juárez at his office; she took notes of the interviews but the judges gave her certain information which they did not allow her to write down. Judge

Guerra-Juárez told her that Judge Trejo-Duque was very scared and that everyone thought that he had been kidnapped by military intelligence (G-2). She interviewed Judge Trejo at his office and he informed her of the circumstances of his kidnapping; that it occurred in a busy sector and that police officers in the vicinity had not intervened. He also said that while he was in captivity his captors asked him questions, threatened that if he investigated anything they would kill him, and warned him that they knew where his family lived; he knew that they were referring to the "white van case" because it was the only sensitive case in which he was involved; Mr. Carlos Morán-Amaya was a close friend who was investigating that case at the time that they were both kidnapped. Judge Trejo-Duque also said that he thought, about revoking the detention order issued by Judge Vicente Sagastume-Pérez.

h. Testimony of Julio Enrique Caballeros-Seigne, former Director of the Guatemalan National Police

The witness testified that he was currently a retired officer of the Guatemalan Army and that on March 10, 1988, a vehicle resembling one that had been sought for many months was seen on the highway leading to El Salvador. The vehicle was parked and his duty as Director of Police was to check its occupants. The vehicle had only one plate and several of its occupants, who wore the uniform of the Treasury Police and were armed, were detained by patrolmen; the Treasury Police agents were taken to the Second Precinct of the National Police, but refused to relinquish their weapons. A confrontation ensued between the members of the Treasury Police and the Second Precinct police. He pursued the trail of the white "van" because it was the common denominator in a series of crimes that were being investigated. He was unable to seize the vehicle at once because of Treasury Police intervention. He undertook an investigation on the basis of the seizure of the "van", for which purpose a team of experts was named. In his view, there was no reason for the vehicle in question to be in the possession of the Treasury Police, since it had been confiscated.

The investigation showed that the Director-General of the Treasury Police had illegally used fourteen sets of registration plates belonging to private individuals. That the Treasury Police agents captured (on the El Salvador highway) said that they were conducting an operation, but that was not so. No pressure had been put on him to desist from his investigation. He acknowledged the content, authenticity and signature of the documents shown him during the public hearing (*Police report, official communication No. 3214; Ref. BIEN. FOA/rrh, of June 6, 1988, and Official Communication of June 10, 1988, signed by Infantry Colonel DEM Julio Enriquez Caballeros-Seigne, Reference "Case No. 165, Official communication 7."*)

i Report of Carlos Enrique Luna-Villacorta, Dean of the Faculty of Law of the Rafael Landívar University in Guatemala

A Code of Penal Procedure, now abrogated, was in force in Guatemala in 1988 and established an essentially written procedure which was very cumbersome, with an initial secret phase in which the parties found it practically impossible to learn what was going on, resulting in the delayed administration of justice. This private phase of the process was known as the summary phase ("etapa de sumario"). With the delay of justice a case could sometimes go on for six or seven years. In Guatemala the extinction of punishment for the crime of murder and kidnapping is twice the duration of the sentence. It is possible to bring a civil action independent of the criminal action. There is a constitutional provision establishing that the State is responsible for damage and injury caused by any public official or employee. Under the previous system, it was possible to appeal against a decision to dismiss a case. The former system allowed for a private accuser who could participate in the process, although this was not generally done. There are very few known cases in Guatemala in which a State agent has been accused of torture, decapitation and murder. The former system did not grant effective, simple and prompt recourse to the national courts.

j. Report of Eduardo René Mayora-Alvarado, Dean of the Faculty of Law of the Francisco Marroquín University in Guatemala

The witness testified that the system of criminal procedure in force in Guatemala in 1988 was fundamentally inquisitorial. The investigation was conducted during a secret summary phase. Once this phase had ended an analysis was made to determine whether or not to proceed to the criminal case. The investigation function was somewhat deficient. The remedy of *habeas corpus* is enshrined in the political constitution of Guatemala; it is a prompt and informal process that averts violation of rights, but is not ideal for restoring freedom when a victim is held by kidnapers. The remedy of *amparo* is an immediate action and one of the most important means of defense. The witness had no direct knowledge of cases in which any decision rendered in relation to *amparo* or *habeas corpus* had not been observed. In Guatemala extrajudicial statements had no probative value; what was important was for the proof to emerge within the debate. Guatemala was prone to systematic and deliberate violations of individuals' rights and there was no real possibility of defense before the justice system; these circumstances began to change in the mid-1980s. He had no direct knowledge of intimidation of judges in Guatemala, although he did recall one or two cases in which prosecutors had to leave the country because they felt threatened. Under both the former and current systems, arrest without *flagrante delicto* or the order of a competent court would be illegal, but would not be kidnapping. If dismissal is ordered and the litigant to whom that decision was unfavourable did not appeal, the decision stands. There are crimes of public action in Guatemala, and the State's obligation in such cases is to pursue them in accordance with the Code of Penal Procedure and the law of the Office of the Attorney-General. Strictly speaking, there is no constitutional obligation on the State to undertake all the actions.

k Report of Napoleón Gutiérrez-Vargas, Presiding Magistrate of the Seventh Chamber of the Court of Appeals of Guatemala, based in Quetzaltenango

The witness testified that Decree 5273 (Code of Penal Procedure) remained in force in Guatemala well into 1994. This Code established the semi-secret, bureaucratic, formal, ritual and written inquisitorial system. In accordance with the abrogated law, once the summary phase was concluded, the part played by the accused in the act under investigation was established, and if the elements of the crime were proven, the case on the merits was opened. Under the former Code, as in the current one, extrajudicial statements are not given any value. The investigation conducted by the National Police is also given no weight if it is not ratified before the competent court. He knew of no case in which the judgment was rendered in Guatemala within three months, nor of any case in which the first instance, appeal and cassation for cases of crimes such as murder and kidnapping were heard by the courts within three months. *Habeas corpus* is a remedy accessible to any person and the tribunal is obliged to exercise it immediately, but it is not an effective recourse when someone is kidnapped by common criminals, because it is intended as a safeguard against unlawful detention by the authorities. In the legislation in force in 1988, a distinction was made between final dismissal and total dismissal. If the "white van case" had not been *sub judice* it would then have been settled under the current Code. A civil action may be brought independently of a criminal action in Guatemala. He was aware that there corrupt were judges and judged whom had been threatened.

l Report by Robert C. Bux, forensic pathologist, on the autopsies

1. Concerning Julián Salomón Gómez-Ayala:

The witness reviewed the reports of the police investigation and the autopsy, which indicated that Mr. Gómez-Ayala was abducted on June 2, 1987, and a photograph of the murder victim. The forensic

report shows that death was produced by asphyxia by hanging; the victim had a penetrating wound on the neck produced by a sharp pointed object; a contusion on the nose with ecchymosis; grazes on the left knee, an indentation on both wrists from having been bound, and a cross-shaped wound on the thorax. All the wounds had been inflicted before death, as attested to by the swellings and grazes on the body. The witness deemed the wounds to show that the victim had been tortured.

2. Concerning Augusto Angárita-Ramírez:

The witness reviewed the forensic medical examiner's report of December 30, 1987. It stated that Mr. Angárita had wounds, grazes and bruises. In his opinion, the wounds showed that the victim had been tortured.

3. Concerning Ana Elizabeth Paniagua-Morales:

The witness reviewed an autopsy report, a photograph and a police report. The forensic report gave the cause of Ms. Paniagua-Morales' death as a penetrating stab wound to the neck, which penetrated the carotid artery and the jugular vein. The victim had cuts on her neck and cheek, her throat had been slit. These wounds, inflicted before death, were indicative of torture. A study of the documents did not reveal that Ms. Paniagua had been raped, nor that she had been burned with an open flame or with cigarettes. If the victim had been pregnant, it should have been stated in the autopsy protocol. There were discrepancies between the medical examiner's report and the police statements.

4. Concerning William Otilio González-Rivera:

The witness reviewed some documents concerning the murder of Mr. González-Rivera: an autopsy report and a photograph. The forensic report showed two wounds in the lungs, heart and liver as the cause of death. He deemed the documents to be inconsistent and the injuries mentioned in them to constitute forms of torture.

5. Concerning Pablo Corado-Barrientos:

The witness reviewed the autopsy report and a photograph taken at the morgue. The forensic report states the cause of Mr. Corado's death as a stab wound on the chest inflicted with a bladed weapon; hypothermic shock and a lateral haemothorax and haemoperitonitis. The victim had suffered those injuries before his death. The witness believed that the injuries recorded in the documents indicated torture.

6. Concerning Manuel de Jesús González-López:

The witness reviewed a police report, an autopsy report and a photograph. The forensic report showed asphyxia from hanging as the cause of death. The police report indicated signs of torture. He considered that the victim received the wounds before his death, because the grazes and bruises were on the face and hands, and indicated torture. The documents were not consistent. There was information suggesting that the bodies had been moved after death.

7. Concerning Oscar Vásquez:

The witness reviewed the file on Mr. Vásquez, which stated that several days after he was deprived of his liberty he bore signs of beatings on the chest and back. He had grazes and bruises which, in the witness' opinion, indicated torture.

8. Concerning Erik Leonardo Chinchilla:

The witness reviewed the autopsy report of February 17, 1988, in which the cause of Mr. Chinchilla's death was stated as penetrating wounds to the cranium and thorax, produced by a firearm. He considered the report to be deficient. He found no evidence of torture in the documents on Mr. Chinchilla, only gunshot wounds.

9. General conclusions:

The expert considered this case to reveal certain patterns or constants: two of the victims sustained wounds with a cutting edge on

the thorax, one on each side, with penetration into the thorax and abdomen, puncturing the lungs, heart and liver; two others had indentations from hanging and wounds on the front of the left side of the neck; there were traces of indentations around the victims' wrists and of grazing and other lesions on the face. There were gaps in the forensic report and a dearth of photographs. Signs of bruising or grazing did not necessarily indicate torture, depending on the circumstances. All the wounds visible in the photographs and recorded in the forensic reports were consistent with torture.

m. Report of Ken Anderson, Professor at the Faculty of Law at the American University, Washington D.C., United States of America

The witness testified that he had worked in Guatemala with the B.I.E.N. (Special Investigations and Narcotics Brigade) for nine months in 1987 in connection with his work with the *International Human Rights Law Group*. It was impossible to investigate human rights cases because the police could not touch them, in addition to which the political will to pursue them was lacking. The police acted under the direction of the examining magistrate or the judge in charge of the investigation. In cases where human rights violations were denounced, judges acted with great caution. In private conversations he had with several of them, they told him that fear was widespread and that they were not willing to investigate human rights cases. The judges did not possess the facilities for implementing *habeas corpus*, particularly when it meant going into military bases or police detention centers. The military authorities responded in writing without supplying any useful information. People were afraid and therefore reluctant to testify. There had been a number of cases in which policemen and soldiers were prosecuted, but virtually all of them concerned corruption rather than human rights violations. The 1985 Constitution did not facilitate the trial or sanction of security agents guilty of human rights violations.

n. Report of Olga Molina-Obregón, former Judge

The witness declared that judges received no kind of state protection for processing writs of *habeas corpus*; they were usually afraid when they processed cases involving the State's security forces. In cases involving members of the security forces, witnesses were afraid and refused to testify. In 20 years of professional experience she had not received any direct information about persons kidnapped by State security agents. From her 15 years of experience in the courts, she knew that very few remedies were admitted. Under the former Code, final dismissal was a form of termination of the process that produced *res judicata*. Simple release, under the previous Code of Procedure, was what was granted when procedural evidence showed it to be impossible that the accused committed the crime or when there was no evidence against that person. She had the opportunity to read the file on the "*white van case*," thought that the investigation was very extensive and that the data could provide the judge with a wide margin for developing an investigation. Under the Code of Procedure in force in 1988, it was Judge Trejo, and not the private accusers, who had the obligation to investigate the facts. The appropriate remedy against a final dismissal issued by the justice tribunals in Guatemala, under the previous Code, would have been that of appeal; the private accusers could file it if they had the status of parties within the process; it could also be filed by the Department of the District Attorney ("Ministerio Público"). Extrajudicial statements had no judicial value; in taking decisions, judges could not take into account probative elements not in the record.

o. Testimony of Carlos Odilio Estrada-Gil, former Seventh Judge of Criminal First Instance of Guatemala City, Guatemala

The witness declared that he had been in charge of the "*white van case*" for the summary phase; he recalled that some of the persons accused had been freed; the case was still at the investigation stage when he left the Bench. During the years in which he was in

charge of the court he had not ordered the detention of any Treasury Police agent. On one occasion he had been asked for a dismissal; the request was made by one of the accused in the case, Mr. [Díaz] Urquizú, former Director-General of the Treasury Police; after studying the proceedings, he decided that the dismissal requested was out of order and rejected it.

p. Testimony of Felicito Olíva-Arias, Commissioner-General of the National Police of Guatemala

The witness testified that in 1987 he was Chief of the National Police Investigations Department and investigated the "*white van case*." A white "van" with tinted windows was detained on March 10, 1988, at kilometer 12 (sic) on the highway leading to El Salvador. Six agents were also detained. He recalled that the Treasury Police said that the vehicle had no rear license plate. The Treasury Police claimed that the "beige" Chevrolet Chevy "Van" 20 was not used in its operation; this was false, inasmuch as that institution's operations log contained an entry stating that the vehicle went out on an operation after it was painted brown to conceal its original color. It was inconceivable that there could have been another white van or other white vans in the hands of common criminals, one of whom passed himself off as a Treasury Police agent. His investigations showed that the Treasury Police Department had been operating on the margins of the law, abusing its power to the detriment of the citizens and breaching human rights. He was also able to verify some cases in which uniformed members of the Treasury Police had detained and remanded to the Courts some of the persons involved in this case. He had prepared a final report which he sent to the Judiciary. In that report he identified two vans, one white and the other cream. He also reported that the Treasury Police Department illegally used 14 private license plates.

68. At the public hearing held at its seat on November 13, 1997, the Court heard the testimony of Mr. Julio Aníbal Trejo-Duque, former Seventh Judge of Criminal First Instance, who had been in charge of the

so-called "*white van case*." His statement is summarized as follows by the Court:

The witness's obligation in regard to the "*white van case*" was to attempt to convert the statements contained in the police report into judicial proceedings, but most of the witnesses refused to testify because they were afraid. He considered that 60 per cent of the police investigation submitted to him was "*judicialized*." He had made a judicial inspection of the seized vehicles at the Department of the National Police, but none revealed any evidence. It was usual for the Treasury Police to use private license plates, there being a great many such plates at both the National Police and the Treasury Police. Persons connected with the case were imprisoned: Ms. Torres-Gil, Mr. Angárita-Ramírez, Mr. Vásquez and Mr. Montenegro, who, in his view, were the Treasury Police's main accusers and then acted as private accusers against that institution. Mr. Angárita-Ramírez said that he had been brutalized by his captors but, although the existence of injuries was proven, he thought that they may have occurred while the accused was resisting arrest. He had never issued a warrant for the arrest of any Treasury Police agent or of Oscar Augusto Díaz-Urquizú. He summoned the accused to question them and they appeared voluntarily. Before initiating the inquiry, he had issued a restriction order against all of the accused. The examination was conducted in groups from July 19 to 22, 1988, after which he ordered preventive detention. At that stage he had five days in which to legalize the detention while he settled the legal situation of the accused. Under the law, at the end of those five days, he was obliged to order their release or place them in provisional imprisonment so that the investigation phase could begin. In order to issue the order for imprisonment there must be sufficient motive to suggest that the accused were guilty of the act. He only issued a detention order, given the short time he had to conduct the 27 examinations. He was kidnapped on July 20, 1988, released two days later, and told that his abduction had been a mistake. He was not asked any questions about the "*white van case*" during his captivity. He returned to work on July 23, 1988, at which time the examination of the accused had been completed. All of the

accused were placed in preventive detention and the substitute judge, Vicente Sagastume-Pérez, issued an order for imprisonment of some of them, because the deadline had passed between July 19 and 22. He began to study the case as soon as he resumed his duties and, on July 26, decided to issue an order of provisional release ("libertad bajo caución juratoria") so that the case could move to the indictment stage ("sumario"), and to continue the investigation. On July 27, he ruled on the legal situation of the Treasury Police agents against whom Sagastume-Pérez had issued the imprisonment orders. He revoked those orders and issued an order for their provisional release and, in this way, the 27 accused remained connected to the process. The accused did not enjoy absolute freedom, but rather were required to appear at the Tribunal whenever they were summoned. He also reconfirmed the restrictions on all the accused. Had he decided on preventive imprisonment, he would have had to complete the investigation in 15 days, since the pertinent legislation required the judge to decide whether the accused would go free or a criminal proceedings would be opened within 15 days after an order of preventive imprisonment. Some of the accused, who sought unconditional release ("libertad simple"), appealed the decision. The case was referred to the Tenth Chamber of the Court of Appeal, which, on October 18, revoked his decisions and ordered the unconditional release of the accused.

VIII EVALUATION OF THE EVIDENCE

69. Prior to the examination of the evidence received, the Court specifies the general criteria for the evaluation of evidence in this case, most of which were developed on the basis of this Tribunal's jurisprudence.
70. In an international tribunal such as the Court, whose aim is the protection of human rights, the proceeding possesses its own characteristics that differentiate it from the domestic process. The former is less formal and flexible than the latter, which does not imply that it fails to ensure the parties' legal security and procedural balance.

71. At the same time, it must be remembered that the international protection of human rights should not be confused with criminal justice. In cases in which States appear before the Tribunal they do so not as defendants in a criminal case, since the Court does not punish those guilty of human rights violations. Its function is to protect the victims and to determine the reparation of damages resulting from the acts by the States responsible (*Velásquez Rodríguez Case*, Judgment of July 29, 1988. Series C No. 4, para. 134; *Suárez Rosero Case*, Judgment of November 12, 1997. Series C No. 35, para. 37).

72. In addition to direct evidence, -whether it be personal, expert or documental-, international tribunals and domestic courts may base judgments on circumstantial evidence, indications or presumptions provided that they lead to sound conclusions in regards to the facts. In this respect, the Court has previously stated that

in the exercise of its jurisdictional functions and when ascertaining and weighing the evidence necessary to decide the cases before it, the Court may, in certain circumstances, make use of both circumstantial evidence and indications or presumptions on which to base its pronouncements when they lead to consistent conclusions in regards the facts (*Gangaram Panday Case*, Judgment of January 21, 1994. Series C No. 16, para. 49; see also *Loayza Tamayo Case*, Judgment of September 17, 1997. Series C No. 33, para. 42; *Castillo Páez Case*, Judgment of November 3, 1997. Series C No. 34, para. 39; *Blake Case*, Judgment of January 24, 1998. Series C No. 36, para. 49).

73. In the instant Case the Court, with full discretion, admitted most of the evidence -documentary, personal and expert- offered to it by the parties; it even ordered some probative elements it deemed necessary. Those that were presented extemporaneously and without justification by the State were rejected on the basis of clear statutory provisions (Article 43 of the Rules of Procedure).

74. With regard to the objection which, for a variety of reasons, the State raised to some witnesses and experts, the normal practice of this

Court, unlike that of the domestic tribunals, has been to receive the statements and reports, leaving their final evaluation for the appropriate procedural phase.

75. In relation to the newspaper articles, they do not have the status of documentary evidence. However, they are important in that they are the expression of public and well-known facts, and they corroborate the testimony received in the case with regard to the circumstances of the victims' arrests and murders.

76. In conclusion, any domestic or international tribunal must be aware that proper evaluation of evidence according to the rule of "sound criticism" will allow judges to arrive at a decision as to the truth of the alleged acts.

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* *

77. The report of the Guatemalan National Police and the previous police investigative reports, which contain data, interrogations and a number of statements produce probative elements which, in the Court's view, are important as a basis for this Judgment.

78. The declaration made by the investigators of the National Police of Guatemala on the responsibility of the six Treasury Police agents for the acts denounced must be considered by the Court, bearing in mind that those agents and others were subsequently identified by eyewitnesses of the aforesaid kidnappings and by the very victims who were mistreated.

79. This National Police report, having being acknowledged and ratified before this Court by the persons responsible for it (*supra*, para. 67 (h) and (p)), has the status of evidence in that its investigations and conclusions corroborate the evidence delivered before this Tribunal.

80. The merit of this investigation was not disputed by the State; on the contrary, the Agent referred to it in the following terms in his closing arguments:

a police investigation conducted by a State investigation body, which warrants the respect of the State

[...]

the State has conducted [...] an outstanding police investigation, described as such by the [C]ommission and by experts.

81. The Court grants circumstantial status to the numerous previous police reports used as a basis for the final report. These reports contain interrogations, declarations, descriptions of places and facts, legal practices such as those relating to the removal of the victims' corpses and other information. These previous police reports are useful in the instant Case because, by the rules of sound criticism, they help form an opinion on the facts; all the more so in these situations of kidnappings and violent death, in which attempts are made to erase any trace that would betray their perpetrators.

82. Analysis of the witnesses' statements made to this Court or to the Guatemalan Police, shows that those who took part in the arbitrary arrests did not always wear uniforms that would identify them as State agents. The murdered victims' captors wore "*civilian clothes*" and even sportswear, as in the case of Ms. Paniagua-Morales. Some of the captors of those who were taken to the Treasury Police premises wore uniforms, while others wore civilian clothes, as attested to by Mr. Vásquez, Mr. Montenegro, Mr. Montes-Letona et al., but they were always armed.

83. It has been established that the vehicle used to convey most of the victims after their detention was a white "van". Both the Ford and the Nissan Cherry Vanette (used in Mr. González-López's abduction) were later identified, except in the cases of Mr. González-Rivera, Mr. Corado-Barrientos and Mr. Erik Chinchilla.

84. There is also a certain similarity in the manner in which the victims were killed, except for Mr. Erik Leonardo Chinchilla, who was shot. The others were stabbed to death (Ms. Paniagua-Morales, Mr. González-Rivera and Mr. Corado-Barrientos) or strangled (Mr. Gómez-Ayala and

Mr. González-López). Those five victims were brutally murdered and there are clear signs that they were tortured, as shown in the autopsy reports, documents pertaining to the removal of the bodies, photographs, and the report by expert Robert C. Bux.

85. Victims González-Rivera and Corado-Barrientos, who, according to witness González-Saquij, walked away with the armed man, were presumably placed inside a vehicle where there were other armed persons besides the one seen by the witness. It was reported on page 6 of the Guatemala City newspaper "El Gráfico" of February 12, 1988 that witnesses saw those two persons put into a white van with tinted windows. The reporters' article included the attached police report.

86. While this newspaper report may not suffice as evidence in the case of these two victims, there is further probative evidence, such as the similar pattern of their deaths and their captors' cruelty, as already noted.

87. Moreover, with respect to Mr. González-Rivera and Mr. Corado-Barrientos, the Court considers that State agents were involved in their detentions and murders, whether or not they were "G-2" (Military Intelligence) or from the Treasury Police itself. This case was also included in the investigations on record in the National Police report which attributed responsibility to the agents of the State.

88. With regard to the official autopsies performed on the victims, the report of expert Robert C. Bux, who saw the autopsies and was able to compare them with the photographs in preparation of his report, is deemed by the Court to be flawed in that they make no mention of wounds, contusions or other details that could have signaled the abuse and torture to which the victims were subjected prior to their deaths.

IX PROVEN FACTS

89. The Court now considers the following significant facts corroborated through the submissions of the State and the Inter-American

Commission, as well as the documentary and testimonial evidence presented in the instant Case.

a. Between June 1987 and February 1988, Guatemala witnessed a series of arbitrary detentions described as kidnappings, accompanied by ill-treatment, torture and, in some cases, deprivation of life. Some of those detained were taken to the premises of the Treasury Police where they were abused; others, whose place of detention remains unknown, were found dead and their bodies, bearing signs of physical violence, were abandoned the same day or a few days after their detention on the streets in and around Guatemala City.

(cfr. Police report, official communication No. 3214 Ref. BIEN. FOA/rrh, of June 6, 1988; interview with Eugenio Ruano contained in police report of February 15, 1988, signed by the acting chief of the Anti-Kidnapping Section of the Special Investigations and Narcotics Brigade of the National Police; statement by María Luisa Chinchilla-Ruano on February 20, 1987 (rectius 1988); sworn declaration of Marco Antonio Montes-Letona on March 15, 1988 at the Office of the Warden of the Pavón Criminal Rehabilitation Farm; notarial act signed by José Antonio Montenegro on March 15, 1988, at the Office of the Warden of the Pavón Criminal Rehabilitation Farm; notarial act signed by Oscar Vásquez on March 15, 1988, at the Office of the Warden of the Pavón Criminal Rehabilitation Farm; notarial act signed by Delia Amparo Hernández-Mejía on March 16, 1988; notarial act signed by Raquel de Jesús Solórzano on March 16, 1988; statement by Miriam Elizabeth Huertas de Gatica on March 16, 1988; statement by Graciela Cante of March 16, 1988; interview with Josefa González-Rivera, a.k.a. "María", contained in police report of March 21, 1988, signed by Rudy Alex Miranda-Ramírez, Edwin Gudiel-Alveño and Reinaldo Rodríguez-Hernández, Chief of the Homicide Squad of the National Police; interview with Gilberto González-Saquij contained in police report of March 22, 1988; statement by Ms. Blanca Alicia Ochaeta-Corzo de Ortiz, delivered by notarial act at the Special Investigations and Narcotics Brigade of the Department of the National Police on April 28, 1988; statement by Ms. Bertha Violeta Flores-Gómez, delivered through notarial act at the Special Investigations and Narcotics Brigade of the Department of the National Police on May 5, 1988; notarial act signed by Augusto Angárita-Ramírez at the "Pavón Model Rehabilitation Farm" on May 5, 1988; sworn statement by María Elizabeth Chinchilla de González delivered on May 5, 1988; sworn statement by María Elizabeth Chinchilla de González of

May 13, 1988; statement by Ms. Blanca Alicia Ochaeta-Corzo de Ortiz, delivered through notarial act at the Special Investigation and Narcotics Brigade of the Department of the National Police on May 20, 1988; interview with Gilberto González-Saquij contained in police report of May 25, 1988; notarial act signed by Augusto Angárta-Ramírez at the "Pavón Model Rehabilitation Farm" on June 15, 1988; statement by Doris Torres-Gil to the Seventh Judge of Criminal First Instance of June 15, 1988; expansion of the statement delivered to the Seventh Court of Criminal First Instance by Doris Torres-Gil on June 23, 1988; statement by Carlos René Juárez-Hernández, National Police investigator in the Special Investigations and Narcotics Brigade, of July 13, 1988; testimony of María Idelfonsa Morales de Paniagua; testimony of Blanca Lidia Zamora de Paniagua; and testimony of Oscar Humberto Vásquez}.

b. Armed men, most of them wearing civilian clothes, connected with the Treasury Police or with some military or police institution, took part in the arbitrary arrests referred to in the instant Case.

(*cf.* Police report, official communication No. 3214 Ref. BJE:N. FOA/rrb, of June 6, 1988; interview with Eugenio Ruano contained in police report of February 15, 1988, signed by the acting chief of the Anti-Kidnapping Section of the Special Investigations and Narcotics Brigade of the National Police; statement by María Luisa Chinchilla-Ruano on February 20, 1987 (*rectius* 1988); sworn declaration of Marco Antonio Montes-Letona on March 15, 1988 at the Office of the Warden of the Pavón Criminal Rehabilitation Farm; notarial act signed by José Antonio Montenegro on March 15, 1988, at the Office of the Warden of the Pavón Criminal Rehabilitation Farm; notarial act signed by Oscar Vásquez on March 15, 1988, at the Office of the Warden of the Pavón Criminal Rehabilitation Farm; notarial act signed by Delia Amparo Hernández-Mejía on March 16, 1988; notarial act signed by Raquel de Jesús Solórzano on March 16, 1988; statement by Miriam Elizabeth Huertas de Gatica of March 16, 1988; statement by Graciela Cante of March 16, 1988; interview with Josefa González-Rivera, a.k.a. "María", contained in police report of March 21, 1988, signed by Rudy Alex Miranda-Ramírez, Edwin Gudiel-Aveño and Reinaldo Rodríguez-Hernández, Chief of the Homicide Squad of the National Police; interview with Gilberto González-Saquij contained in police report of March 22, 1988; statement by Ms. Blanca Alicia Ochaeta-Corzo de Ortiz, delivered by notarial act at the Special Investigations and Narcotics Brigade of the Department of the National Police on April 28, 1988; statement by Ms. Bertha Violeta Flores-

Gómez, delivered through notarial act at the Special Investigations and Narcotics Brigade of the Department of the National Police on May 5, 1988; notarial act signed by Augusto Angárta-Ramírez at the "Pavón Model Rehabilitation Farm" on May 5, 1988; sworn statement by María Elizabeth Chinchilla de González delivered on May 5, 1988; sworn statement by María Elizabeth Chinchilla de González on May 13, 1988; statement by Ms. Blanca Alicia Ochoaeta-Corzo de Ortiz, delivered through notarial act at the Special Investigation and Narcotics Brigade of the Department of the National Police on May 20, 1988; interview with Gilberto González-Saquij contained in police report of May 25, 1988; notarial act signed by Augusto Angárta-Ramírez at the "Pavón Model Rehabilitation Farm" on June 15, 1988; statement by Doris Torres-Gil to the Seventh Judge of Criminal First Instance of June 15, 1988; expansion of the statement delivered to the Seventh Court of Criminal First Instance by Doris Torres-Gil on June 23, 1988; statement by Carlos René Juárez-Hernández, National Police investigator in the Special Investigations and Narcotics Brigade, on July 13, 1988; testimony of María Idelfonsa Morales de Paniagua; testimony of Blanca Lidia Zamora de Paniagua; and testimony of Oscar Humberto Vásquez).

c. In most cases, the persons detained were forced into a white "van-type" vehicle (a kind of minibus or van).

(cfr. Police report, official communication No. 3214 Ref. BIEN. FOA/rrb, of June 6, 1988; interview with Eugenio Ruano contained in police report of February 15, 1988, signed by the acting chief of the Anti-Kidnapping Section of the Special Investigations and Narcotics Brigade of the National Police; statement by María Luisa Chinchilla-Ruano of February 20, 1987 (rectius 1988); sworn declaration of Marco Antonio Montes-Letona on March 15, 1988 at the Office of the Warden of the Pavón Criminal Rehabilitation Farm; notarial act signed by José Antonio Montenegro on March 15, 1988, at the Office of the Warden of the Pavón Criminal Rehabilitation Farm; notarial act signed by Oscar Vásquez on March 15, 1988, at the Office of the Warden of the Pavón Criminal Rehabilitation Farm; notarial act signed by Delia Amparo Hernández-Mejía on March 16, 1988; notarial act signed by Raquel de Jesús Solórzano on March 16, 1988; statement by Miriam Elizabeth Huertas de Gatica of March 16, 1988; statement by Graciela Cante of March 16, 1988; interview with Josefa González-Rivera, a.k.a. "María", contained in police report of March 21, 1988, signed by Rudy Alex Miranda-Ramírez, Edwin Gudiel-Alveño and Reinaldo Rodríguez-Hernández, Chief of the Homicide Squad of the

National Police; interview with Gilberto González-Saquij contained in police report of March 22, 1988; statement by Ms. Blanca Alicia Ochaeta-Corzo de Ortiz, delivered by notarial act at the Special Investigations and Narcotics Brigade of the Department of the National Police on April 28, 1988; statement by Ms. Bertha Violeta Flores-Gómez, delivered through notarial act at the Special Investigations and Narcotics Brigade of the Department of the National Police on May 5, 1988; notarial act signed by Augusto Angárta-Ramírez at the "Pavón Model Rehabilitation Farm" on May 5, 1988; sworn statement by María Elizabeth Chinchilla de González delivered on May 5, 1988; sworn statement by María Elizabeth Chinchilla de González on May 13, 1988; statement by Ms. Blanca Alicia Ochaeta-Corzo de Ortiz, delivered through notarial act at the Special Investigation and Narcotics Brigade of the Department of the National Police on May 20, 1988; interview with Gilberto González-Saquij contained in police report of May 25, 1988; notarial act signed by Augusto Angárta-Ramírez at the "Pavón Model Rehabilitation Farm" on June 15, 1988; statement by Doris Torres-Gil to the Seventh Judge of Criminal First Instance of June 15, 1988; expansion of the statement delivered to the Seventh Court of Criminal First Instance by Doris Torres-Gil on June 23, 1988; statement by Carlos René Juárez-Hernández, National Police investigator in the Special Investigations and Narcotics Brigade, of July 13, 1988; testimony of María Idelfonsa Morales de Paniagua; testimony of Blanca Lidia Zamora de Paniagua; and testimony of Oscar Humberto Vásquez).

d. The names of the persons included in the Commission's application and the details of the facts deemed to have been proven are as follows:

1) Concerning Mr. **Julián Salomón Gómez-Ayala:**

detained by five persons on June 1, 1987, at 10.00 a.m., while walking in Zone 11 of Guatemala City;

forced into a white "van" by armed persons;

his body was found in the early hours of the morning of June 17, 1987 in Zone 8 of Guatemala City;

the corpse bore wounds, especially on the neck (the deepest) and the chest; it also had an indentation on each wrist indicating that

they had been bound, and another indentation on the neck from hanging;

the home of Mr. Gómez-Ayala and his companion Bertha Violeta Flores-Gómez was visited, before and after his detention, by persons recognized as Treasury Police agents.

(cfr. Interview with Josefa González-Rivera, alias "Maria", contained in police report of March 21 of 1988, signed by Rudy Alex Miranda-Ramírez, Edwin Gudiel-Alveño and Reinaldo Rodríguez-Hernández, Chief of the Homicide Squad of the National Police; police report of March 21, 1988, signed by Rudy Alex Miranda-Ramírez, Edwin Gudiel-Alveño and Reinaldo Rodríguez-Hernández, Chief of the Homicide Squad of the National Police; examination proceeding contained in report No. "3" of the Homicide Squad of the National Police of Guatemala, C.A. of March 22, 1988, signed by Rudy Alex Miranda-Ramírez, Edwin Gudiel-Alveño and Reinaldo Rodríguez-Hernández, Chief of the Homicide Squad of the National Police; statement by Ms. Blanca Alicia Ochaeta-Corzo de Ortiz, delivered through notarial act at the Special Investigations and Narcotics Brigade of the National Police Department on April 28, 1988; statement by Ms. Bertha Violeta Flores-Gómez, delivered through notarial act at the Special Investigations and Narcotics Brigade of the National Police Department on May 5, 1988; statement by Ms. Blanca Alicia Ochaeta-Corzo de Ortiz, delivered through a notarial act at the Special Investigations and Narcotics Brigade of the National Police Department on May 20, 1988; police report, official communication No. 17020/cme of June 17, 1987; police report of June 17, 1987, signed by Roel Mermelino Galindo-Cano, Chief of the Homicide Squad of the National Police, Guatemala, C.A.; forensic autopsy report, official communication DI-19/87 of June 18, 1987 and report delivered by expert Robert C. Bux to the Inter-American Court).

2) Concerning Mr. **Augusto Angárta-Ramírez** and Ms. **Doris Torres-Gil**:

detained on December 29, 1987, by uniformed members of the Treasury Police. There are contradictions regarding the time and circumstances of the arrests;

taken away in a white Ford Econoline van with tinted windows;

taken to the premises of the Treasury Police;

during his detention, Mr. Angárta was beaten and injured by members of the Treasury Police.

(cfr. Official communication No. F-1580. I-613-88.- of June 15, 1988, signed by Dr. Mario Alfredo Porres O., Forensic Expert of the Republic of Guatemala, addressed to the Seventh Court of First Criminal Instance; notarial act by Augusto Angárta-Ramírez at the "Pavón" Rehabilitation Model Farm on May 5, 1988; statement by Doris Torres-Gil to the Seventh Court of First Criminal Instance on June 15, 1988; petition by Augusto Angárta-Ramírez to the Minister of the Interior of Guatemala; statement by Augusto Angárta-Ramírez to the Seventh Court of First Criminal Instance delivered at the "Pavón" Rehabilitation Model Farm on June 15, 1988; statement given to the Seventh Court of Criminal First Instance by Doris Torres-Gil on June 23, 1988; report of expert Robert C. Bux to the Inter-American Court and brief of closing arguments by the State, folio 2).

3) Concerning Ms. **Ana Elizabeth Paniagua-Morales:**

detained at approximately 6.00 a.m. on February 9, 1988, near her home (Tenth Avenue "A" 10-78, Zone 7, Castillo Lara Estate) by a group of men wearing sports clothes, when she went out to buy food;

forced into a white "van" with tinted windows;

a writ of *habeas corpus* was filed on her behalf on the day of her arrest;

her body was found on February 11, 1988, in the Municipality of Palencia, Zone 3, Guatemala City, covered with wounds and traces of physical violence; her head had been almost severed from the body;

her family was constantly harrassed by the police and some of her relatives were forced to flee Guatemala.

(cfr. Police report of February 10, 1988; police report of February 12, 1988; expansion of police report of February 12, 1988; petition presented by María Idefonsa Morales de Paniagua contained in police report of February 15, 1988; interview with Eugenio Ruano contained in police report of February 15, 1988; official communication of the Anti-Kidnapping and Extortion Squad of the Special Investigations and Narcotics Brigade of the National Police of February 15, 1988; official communication No. A-567.B-70/95 of the Forensic Department of the Republic of Guatemala, C.A., dated December 22, 1995 and signed by Dr. Alonso René Portillo; testimony of María Idefonsa Morales de Paniagua; testimony of Blanca Lidia Zamora de Paniagua and report of expert Robert C. Bux to the Inter-American Court).

4) Concerning Mr. **William Otilio González-Rivera** and Mr. **Pablo Corado-Barrientos**:

On February 10, 1988, the day of their disappearance, the victims were detained by a State agent wearing a pistol and two cartridges;

an article in the daily paper "El Gráfico" of February 12, 1988 reports that Mr. González and Mr. Corado were forced into a white "van" by armed men;

their bodies were found the same day, February 10, 1988, in Zone 4 (Second Street, Route 6) of Guatemala City and showed signs of violence and injuries, one of which caused their deaths.

(cfr. Police report of February 10, 1988, issued by the officer III of the National Police of Guatemala; certificate of removal of the corpses issued by the Thirteenth Criminal Magistrate's Court of Guatemala on February 10, 1988; interview with Gilberto González-Saquij contained in police report of March 22, 1988; interview with Gilberto González-Saquij contained in police report of May 25, 1988; autopsy report of February 12, 1988, reproduced in official communication No. F-1655. D-72-88 of June 22, 1988; autopsy report of February 12, 1988, reproduced in official communication No. 3006-88 of June 22, 1988; statement by Carol René Juárez-Hernández, National Police investigator with the Special Investigations and Narcotics Brigade of the National Police and expert report by Robert C. Bux to the Inter-American Court).

5) Concerning Mr. **Manuel de Jesús González-López:**

detained at approximately 6.00 p.m. on February 11, 1988 outside his home in the Mezquital Estate in Zone 12 of Guatemala City by persons wearing civilian clothes;

forced into a white 1986 Nissan Cherry Vanette vehicle;

his body was found on February 13, 1988, close to the highway leading from Villa Canales to the El Zapote Farm, and bore an indentation on the neck from hanging, with signs of bruising and indications that his wrists had been bound.

(cfr. Testimony of María Elizabeth Chinchilla de González; police report of February 13, 1988; police report of the Special Crimes and Narcotics Section of the Homicide Squad of the National Police of April 4, 1988; sworn statement by María Elizabeth Chinchilla de González delivered to Notary Jorge Humberto Castillo de León on May 5, 1988; sworn statement by María Chinchilla de González delivered to Notary Fernández-Font on May 13, 1988; death certificate issued by Registrar of the Capital - Municipality of Guatemala on May 14, 1990, and report of expert Robert C. Bux).

6) Concerning Mr. **Oscar Vásquez:**

detained on February 13, 1988 by Treasury Police agents subsequently identified as such;

forced into a white van with tinted windows and no license plates;

taken to the premises of the Treasury Police where he was beaten;

placed at the disposal of the Twelfth Criminal Justice of Peace of Guatemala by the Treasury Police at 2:00 a.m. on February 14, 1988, through official communication No. 167, accused of illegal traffic in pharmaceutical products and drugs or narcotic substances, and active bribery.

(cfr. Official communication No. 167.- REF. GCD/Jmpo of February 14, 1988, from the Chief of the Treasury Police II to the Twelfth Criminal Justice of Peace of Guatemala City; notarial act signed by Oscar Vásquez on March 15, 1988, at the Office of the Warden of the Pavón Criminal Rehabilitation Farm; notarial act signed by José Antonio Montenegro on March 15, 1988, at the office of the warden of the Pavón Criminal Rehabilitation Farm; notarial act signed by Raquel de Jesús Solórzano on March 16, 1988; notarial act signed by Delia Amparo Hernández-Mejía on March 16, 1988; official communication of June 13, 1988, signed by Judge Otto Fernando Palma-Chacón, XII the Criminal Justice of Peace and addressed to the Seventh Court of Criminal First Instance; testimony of Oscar Humberto Vásquez, testimony of Raquel de Jesús Solórzano, report of expert Robert C. Bux and brief of final pleadings by the State, folio 2).

7) Concerning Mr. **José Antonio Montenegro**:

detained on February 13, 1988 by three men in civilian clothes, who were identified as investigation agents of the Special Investigations and Narcotics Brigade (BIEN);

taken away in a white "van" with tinted windows, which he later identified, whose interior contain a bench, a spare tire, and Mr. Oscar Vásquez;

taken to the premises of the Treasury Police, where he was beaten;

he was placed at the disposal of the Twelfth Criminal Court of Guatemala by the Treasury Police at 2.00 a.m. on February 14, 1988, through communication No. 167, accused of illegal traffic in pharmaceutical products and drugs or narcotic substances, and active bribery.

(cfr. Official communication No. 167.- REF. GCD/Jmpo of February 14, 1988, from the Chief of the Treasury Police II to the Twelfth Criminal Justice of Peace of Guatemala City; notarial act signed by José Antonio Montenegro on March 15, 1988, at the Office of the Warden of the Pavón Criminal Rehabilitation Farm; notarial act signed by Oscar Vásquez on March 15, 1988, at the Office of the Warden of the Pavón Criminal Rehabilitation Farm;

statement by Miriam Elizabeth Huertas de Gatica delivered on March 16, 1988, to Notary Eduardo Roberto González-Garnica; statement by Graciela Cante delivered on March 16, 1988, to Notary Eduardo Roberto González-Garnica; official communication of June 10, 1988, signed DEM Infantry Colonel Julio Enrique Caballeros-Seigne, Director-General of the National Police, addressed to the Seventh Court of Criminal First Instance; official communication of June 13, 1988, signed by Judge Otto Fernando Palma-Chacón, XII Criminal Justice of Peace and addressed to the Seventh Court of Criminal First Instance; official communication No. 802/jlop from the Chief of the Warrants Office of the Special Investigations and Narcotics Bureau of the National Police of Guatemala and brief of final pleadings by the State, folio 2).

8) Concerning Mr. **Erik Leonardo Chinchilla:**

shot dead in circumstances that have not been clarified; the preliminary police investigation did not generate due criminal process.

(cfr. Interview with María Luisa Chinchilla-Ruano contained in police report of February 20, 1987 (rectius 1988); interview with Mario Ricardo Álvarez-Guevara contained in police report of February 20, 1988; statement by Nicomedes Castillo-Guzmán contained in police report of February 22, 1988; statement by Juan Guillermo Granados-Fernández contained in police report of February 23, 1988; interview with Sabina Sian contained in police report of February 23, 1987 (sic); interview with María Cristina Bautista-Marroquín contained in police report of February 23, 1987 (sic); police report of February 24, 1988, police report of March 3, 1988; interview with Mario Ricardo Álvarez-Guevara contained in police report of July 23, 1992; interview with Nicomedes Castillo-Guzmán recorded in police report of July 23, 1992, and police report of July 23, 1992).

9) Concerning Mr. **Marco Antonio Montes-Letona:**

detained on February 19, 1988 by six men, two dressed in the uniform of the Treasury Police and four in civilian clothes;

forced into a white Ford "van" with tinted windows bearing license plate P-1233857;

taken to the Treasury Police premises;

brought before the Thirteenth Criminal Justice of Peace on February 20, 1988, accused of the crimes of fraud, theft and unlawful use of identity papers.

(cfr. Confidential report of the Special Investigations and Narcotics Brigade of the National Police of February 19, 1988; police report of February 23, 1987 (sic); statement by Marco Antonio Montes-Letona delivered at the office of the Warden of the Pavón Criminal Rehabilitation Farm on March 15, 1988, official communication of the Special Advisory Service of the National Police of Guatemala on April 21, 1988; official communication No. 051/Srio. of June 14, 1988, signed by Luis Alberto Mazariegos-Castellanos, Thirteenth Magistrate, addressed to the Seventh Judge of Criminal First Instance, Julio Anibal Trejo-Duque; report of expert Carlos Roberto Bux and brief of closing arguments by the State, folio 2).

c. On March 10, 1988, the then Director of the National Police of Guatemala, Mr. Julio Enrique Caballeros-Seigne, personally led an operation in which six Treasury Police agents were arrested inside a white van with the front license plate identified by the flag O-16997. The statements given during the investigation by the arrested agents, who were later identified by eyewitnesses and victims as the authors of some of the arrests and beatings described, contained serious contradictions and discrepancies.

(cfr. Memorandum of the Third Corps of the National Police of March 10, 1988; police report, official communication No. 3214 Ref. BIEN. FOA/rrb, of June 6, 1988, signed by Felicitó Oliva-Arias, Chief of the Special Investigations and Narcotics Brigade of the National Police; questionnaire for interviews of the Treasury Police agents detained on March 10, 1988; statement by César Augusto Guerra-Ramírez, delivered to the Chief of the Special Investigations and Narcotics Brigade of the National Police, Felicitó Oliva-Arias, on April 13, 1988; statement by Nestali Ramírez-García, delivered to the Chief of the Special Investigations and Narcotics Brigade of the National Police, Felicitó Oliva-Arias, on April 13, 1988; statement by Manuel de Jesús de la Cruz-Hernández, delivered to the Chief of the Special Investigations and Narcotics Brigade of the National Police, Felicitó Oliva-Arias, on

April 13, 1988; statement by Aníbal René Morales-Marroquín delivered to the Chief of the Special Investigations and Narcotics Brigade of the National Police, Felicitó Oliva-Arias, on April 13, 1988; statement by Juan José Elías-Palma, delivered to the Chief of the Special Investigations and Narcotics Brigade of the National Police, Felicitó Oliva-Arias, on April 13, 1988; statement by Iglberto Pineda-Juárez, delivered to the Chief of the Special Investigations and Narcotics Brigade of the National Police, Felicitó Oliva-Arias, on April 13, 1988; statement by José Luis Grajeda-Belletón, delivered to the Seventh Judge of Criminal First Instance of Guatemala on July 19, 1988; statement by Nefstali Ramírez-García, delivered to the Seventh Judge of Criminal First Instance of Guatemala on July 19, 1988; statement by Iglberto Pineda-Juárez, delivered to the Seventh Judge of Criminal First Instance of Guatemala on July 19, 1988; statement by César Augusto Guerra-Ramírez, delivered to the Seventh Judge of Criminal First Instance of Guatemala on July 19, 1988; statement by Manuel de Jesús de la Cruz-Hernández, delivered to the Seventh Judge of Criminal First Instance of Guatemala on July 19, 1988; statement by Juan José Elías-Palma, delivered to the Seventh Judge of Criminal First Instance of Guatemala on July 19, 1988; statement by Aníbal René Morales-Marroquín, delivered to the Seventh Judge of Criminal First Instance of Guatemala on July 19, 1988; official communication 0618/C.SB-Dg.- of June 8, 1988, signed by Mr. Carlos Salazar Bonilla, Director of the Treasury Police and addressed to the Seventh Judge of the Criminal First Instance, single folio; official communication of June 10, 1988, signed by DEM Infantry Colonel Julio Enrique Caballeros-Seigne, Director-General of the National Police, addressed to the Seventh Judge of Criminal First Instance; official communication of June 13, 1988, signed by Judge Otto Fernando Palma-Chacón, XII Criminal Justice of Peace and addressed to the Seventh Judge of Criminal First Instance; official communication No. 0475.852/Mbal/arc.- of June 13, 1988, signed by Mr. Carlos Salazar-Bonilla, Director-General of the Treasury Police, addressed to the Seventh Judge of Criminal First Instance; official communication No. 802/jlop from the Chief of the Warrants Office of the Special Investigations and Narcotics Bureau of the National Police of Guatemala and conclusions of the replies obtained during the interrogation of the six Treasury Police agents detained in the white "van" - document undated and unreferenced).

f. At the end of the investigations, the National Police prepared a report dated June 6, 1988, which concluded that Treasury Police agents had committed a series of crimes using the "van" confiscated on March 10 of the same year. The Police concluded that the Treasury Police

agents arrested on that day gave false statements about their activities; that on March 10 they were not making routine vehicle checks as they claimed in their statement; that several of them had been identified as participants in the crimes; and that they robbed and tortured their victims after arresting them. The National Police also concluded that Treasury Police agents had unlawfully used a number of vehicle license plates; that agents had made false statements regarding the reason why the white "van" had no license plate on the day it was confiscated, and that they had abused their authority and violated the rights of Guatemalan citizens.

(cfr. Police report, official communication No. 3214 Ref. BIEN. FOA/rrb, of June 6, 1988, signed by Felicito Oliva-Arias, Chief of the Special Investigations and Narcotics Brigade of the National Police; statement by César Augusto Guerra-Ramírez, delivered to the Chief of the Special Investigations and Narcotics Brigade of the National Police, Felicito Oliva-Arias, on April 13, 1988; statement by Nefalí Ramírez-García, delivered to the Chief of the Special Investigations and Narcotics Brigade of the National Police, Felicito Oliva-Arias, on April 13, 1988; statement by Manuel de Jesús de la Cruz Hernández, delivered to the Chief of the Special Investigations and Narcotics Brigade of the National Police, Felicito Oliva-Arias, on April 13, 1988; statement by Anibal René Morales-Marroquín delivered to the Chief of the Special Investigations and Narcotics Brigade of the National Police, Felicito Oliva-Arias, on April 13, 1988, and statement by Juan José Elías Palma, delivered to the Chief of the Special Investigations and Narcotics Brigade of the National Police, Felicito Oliva-Arias, on April 13, 1988).

g. According to the "operations log" of the Intelligence Section of the Treasury Police, license plates P-219022 and P-123857 were used, along with others, by this institution, although they belonged to vehicles owned by private citizens.

(cfr. List of the twenty-four (24) sets of vehicle license plates used by the Treasury Police, according to the operations log of that institution's intelligence squad, issued by the Special Advisory Services of the National Police of Guatemala on April 21, 1988).

h. The June 6, 1988 report of the National Police was delivered to the Seventh Criminal Court of Instruction, together with the following vehi-

cles: a white 1981 Ford Econoline 350 "van" with only one license plate with the tag No. O-16997; a white 1986 "Cherry Vanette" Nissan minibus, with the license plate number P-89324, and a brown 1978 Chevrolet Chevy Van 20 with no license plates.

(cfr. Note of notification of information of June 6, 1988, signed by Justice of Peace Victor Hugo Trejo-Deleón and addressed to the Director-General of the National Police; order of the Seventh Court of Criminal First Instance of Guatemala of June 7, 1988, and official communication No. 558 Ref. CSB/Jodcp of July 7, 1988, from the Director-General of the Treasury Police to the Seventh Judge of Criminal First Instance).

i. On June 8, 1988, Mr. Felicito Olíva-Arias appeared before the Seventh Court of Criminal First Instance and corroborated the contents of the National Police report of June 6, 1988, and the complaints contained therein. The Court ratified the complaint which originated the trial in that Court and on the same day he ordered the initiation of the necessary proceedings to clarify the facts denounced. These included a summons issued to seventeen National Police agents involved in the investigation, 44 eyewitnesses and 23 persons identified as injured in the case; instructions were given for the vehicles mentioned in the court order to be examined and the courts were asked to process the individual cases concerning the deaths and disappearances mentioned in the police report of June 6, 1988, and to report on the proceedings to the Seventh Court.

(cfr. Summons of Felicito Olíva-Arias to appear before the Seventh Court of Criminal First Instance on June 8, 1988; order of the Seventh Court of Criminal First Instance of Guatemala of June 8, 1988 and official communication ref. C-165.of.7o. from the Seventh Judge of Criminal First Instance to the Director-General of the National Police).

j. The Seventh Judge of Criminal First Instance, Julio Aníbal Trejo-Duque, initiated the preliminary investigation, and on June 10, 1988 he inspected the Treasury Police "operations log."

(cfr. Certificate of judicial recognition of June 10, 1988).

k. On July 19 and 20, 1988, Judge Trejo-Duque ordered the arrest of Aníbal René Morales-Marroquín, Manuel de Jesús de la Cruz-Hernández, Edwin Arturo Pineda-Hichos, José Luis Grajeda-Beltetón, Juan José Elías-Palma, César Augusto Guerra-Ramírez, Nefthalí Ramírez-García, Igloberto Pineda-Juárez, Marco Tulio Ramírez-Lorenzana, Edgar René Eguizabal-Morales, Jorge Edilio Guerra-Lemus, Sarvélio Valdéz-Hernández, Juan Francisco Pensamiento-Alvarado, Víctor Manuel Samayoa-García, Hugo Silva-Morán and Mario Rolando Marín-León, all of whom were Treasury Police agents at the time of the events that led to the instant Case. He also summoned the Director of the Treasury Police, Oscar Augusto Díaz-Urquizú, and two officers of that police corps for questioning.

(cfr. Order of the Seventh Court of Criminal First Instance of Guatemala of July 19, 1988; order of the Seventh Court of Criminal First Instance of July 20, 1988; official communication No. 165/87 Of. 7o. of July 20, 1988, signed by the Seventh Judge of Criminal First Instance of Guatemala; statement by José Luis Grajeda-Beltetón delivered to the Seventh Judge of Criminal First Instance of Guatemala on July 19, 1988; statement by Nefthalí Ramírez-García, delivered to the Seventh Judge of Criminal First Instance of Guatemala on July 19, 1988; statement by Igloberto Pineda-Juárez, delivered to the Seventh Judge of Criminal First Instance of Guatemala on July 19, 1988; statement by César Augusto Guerra-Ramírez, delivered to the Seventh Judge of Criminal First Instance of Guatemala on July 19, 1988; statement by Manuel de Jesús de la Cruz-Hernández, delivered to the Seventh Judge of Criminal First Instance of Guatemala on July 19, 1988; statement by Juan José Elías-Palma, delivered to the Seventh Judge of Criminal First Instance of Guatemala on July 19, 1988, and statement by Aníbal René Morales-Marroquín, delivered to the Seventh Judge of Criminal First Instance of Guatemala on July 19, 1988).

l. Judge Trejo-Duque was kidnapped at 3.45 p.m. on July 20, 1988 and released two days later.

(cfr. Report of the Anti-Kidnapping and Extortion Section of the Criminal Investigations Department of the National Police of July 21, 1988; report of the Criminal Investigation Department, Homicide Investigation Section, of the National Police of July 23, 1988, signed by José Eduardo Cabrera, Miguel Francisco Carreto and Mario Alfonso Pérez-Martínez; report of the Anti-Kidnapping and Extortion

Section of the DIC; National Police of July 23, 1988; report of the Criminal Investigations Department, - Homicide Investigation Section - of the National Police of July 23, 1988, folio 3; report of the Criminal Investigations Department of the National Police, Homicide Section, Guatemala, C.A., of July 26, 1988, folio 9, and testimony of Judge Trejo-Duque).

m. On July 22 the Judge who replaced Judge Trejo-Duque while he was in captivity, Vicente Sagastume-Pérez, continued the questioning and ordered the provisional imprisonment of Treasury Police agents Aníbal René Morales-Marroquín, Manuel de Jesús de la Cruz-Hernández, Edwin Arturo Pineda-Hichos, José Luis Grajeda-Beltetón, Juan José Elías-Palma, César Augusto Guerra-Ramírez, Neftalí Ramírez-García, Igloberto Pineda-Juárez, Marco Tulio Ramírez-Lorenzana, Edgar René Eguizabal-Morales, Jorge Odilio Guerra-Lemus, Sarvélio Valdéz-Hernández, Juan Francisco Pensamiento-Alvarado, Víctor Manuel Samayoa-García, Hugo Silva-Morán, Mario Rolando Marín-León, José Ruben Carías-Ortega, José Germán Mazariegos-Salazar, Benner Orlando Noriega-Batres, José Antonio Aldana-Fajardo, Francisco Javier Guerra-Trabanino, Jorge Enrique Pérez-Ruíz, Miguel Humberto Aguirre-I.ópez and Manuel Boiton-Ayala, considering that there was sufficient reason to suppose that they could be guilty of the crimes of continuous kidnapping, continuous murder, continuous aggravated robbery, aggravated larceny, unlawful search, abuse of authority and abuse of individuals. That same day Judge Sagastume-Pérez ordered the arrest of Mr. Oscar Augusto Díaz-Urquizú, former Director of the Treasury Police, and two agents, Mr. Tomas Roca-Estrada and Mr. Douglas Rafael Meneses-González.

(cfr. Order (I) of the Seventh Court of Criminal First Instance of July 22, 1988, and order of (II) of the Seventh Court of Criminal First Instance of July 22, 1988).

n. Once he had returned to his duties, on July 26, 1988, Judge Trejo-Duque revoked the orders of provisional imprisonment against Mr. Díaz-Urquizú and officers Tomas Roca-Estrada and Douglas Rafael Meneses-González, "on the ground that there was insufficient reason for ordering [it]", but maintained the restriction order against them. The next day Judge Trejo-Duque officially revoked the order of provisional imprisonment against all the other accused Treasury Police agents, on the ground that "[a]

detailed study of the evidence showed that there was insufficient motive for maintaining the order of provisional imprisonment issued against the defendants." All the accused were required to post bail.

(cfr. Order of the Seventh Court of Criminal First Instance of July 26, 1988; order of the Seventh Court of Criminal First Instance of July 27, 1988; communication No. C-165.of.7o.- of August 23, 1988, signed by the Officer of the Seventh Court of Criminal First Instance).

o. The two decisions ordering the release of those implicated were appealed and on October 18, 1988 the Tenth Chamber of the Court of Appeal confirmed them individually, deeming them consistent with the law. However, that Chamber altered the defendants' situation and ordered that they be granted an absolute release instead of a provisional release on bail.

(cfr. Order (I) of the Tenth Chamber of the Court of Appeals of Guatemala of October 18, 1988, and order (II) of the Tenth Chamber of the Court of Appeals of Guatemala of October 18, 1988).

p. No significant progress was made with the investigation and after the aforesaid decision by the Tenth Chamber of the Court of Appeal the case is still open and at the indictment ("sumario") stage, although the State has claimed that on September 10, 12, 14 and 22, 1987 it undertook action, the outcome of which is unknown to the Court.

X IMPUTABILITY

90. This Court must decide in the present Judgment whether the facts demonstrated may or may not be imputed to the State. This calls for a detailed examination of the conditions in which a particular act or omission that impairs one or more of the rights enshrined in the American Convention may be attributed to a State Party and, consequently, calls into question its responsibility in accordance with the rules of international law.

91. Unlike domestic criminal law, it is not necessary to determine the perpetrators' culpability or intentionality in order to establish that the rights enshrined in the Convention have been violated, nor is it essential to identify individually the agents to whom the acts of violation are attributed. The sole requirement is to demonstrate that the State authorities supported or tolerated infringement of the rights recognized in the Convention. Moreover, the State's international responsibility is also at issue when it does not take the necessary steps under its domestic law to identify and, where appropriate, punish the authors of such violations.

92. Guatemala has never disputed that it was Treasury Police agents who detained several of the victims and later brought them before the judicial authorities. Where the victims who were deprived of their liberty and cruelly murdered are concerned, the State maintained that those acts were committed by common criminals and not by its agents, so that it could not be held responsible for them.

93. Despite that assertion, this Tribunal is of the view that the body of evidence concerning the *modus operandi* in all the cases reveals a similar pattern in the arbitrary arrests or kidnappings of the victims and the murder of several of them: they were committed by armed individuals wearing military or police dress and others wearing civilian clothes; they used light-colored "vans" with tinted windows without license plates or with private plates; the perpetrators acted with total freedom and impunity; they neither hid their faces nor acted stealthily; rather, the arrests were made in broad daylight on a public thoroughfare or within view of witnesses and the perpetrators, in some cases were identified as Treasury Police agents, which suggests that all these acts were committed by agents of the State, and the latter has not proven its assertion to the contrary.

94. At the same time, it has been shown that despite the Guatemalan police's investigation of the acts, considered to be exhaustive by the parties to the instant Case, the State Judiciary failed to take diligent and effective measures to prosecute and, where appropriate, punish those responsible for the acts.

95. Consequently, there is sufficient evidence in this case to conclude that the above-mentioned acts were committed by persons acting as agents of the authorities, and although this Court deems that the violations denounced are not part of State policy or that the senior authorities knew of the actions of the perpetrators, those circumstances were irrelevant to the effects of establishing Guatemala's international responsibility as a State Party to the Convention, under which it is obliged to ensure to all persons, in this case the victims, the free and full exercise of their human rights.

XI VIOLATION OF ARTICLE 7

96. The Commission claims that Guatemala violated the right to personal liberty and security to the detriment of Ms. Ana Elizabeth Paniagua-Morales, Mr. Julián Salomón Gómez-Ayala, Mr. William Otilio González-Rivera, Pablo Corado-Barrientos, Manuel de Jesús González-López, Mr. Augusto Angárita-Ramírez, Ms. Doris Torres-Gil, Mr. José Antonio-Montenegro, Mr. Oscar Vásquez and Mr. Marco Antonio Montes-Letona, inasmuch as the persons who arbitrarily detained them, tortured them and, in some cases, murdered them were agents of the State. The Commission claims that the arrests were arbitrary because there is no information that *"even one of the kidnappings was carried out with a warrant or that they conformed to pre-existing procedural or fundamental laws."* The State investigated the events as unlawful acts and supplied the Commission with information proving the responsibility of the Treasury Police agents. The Commission also underscored the fact that the Guatemalan National Police itself *"concluded that the Treasury Police had 'abused its power to the detriment of the public and [had] violated the rights of Guatemalan citizens."*

97. The Commission pointed out that the arbitrary deprivation of the victims' liberty in this case obstructed access to an effective remedy of *habeas corpus*, since the victims were not taken to officially recognized detention centers, but to Treasury Police premises where they were held *incommunicados*. The victims who lost their lives were not registered as detainees in any official document.

98. According to the Commission, Guatemala's Political Constitution requires that any detainee be brought before a competent judicial authority within a maximum of six hours after his or her detention. The Commission alleged that in every case this provision was breached.

99. The Commission contended that in the case of Mr. Vásquez and Mr. Montenegro the State's claim that they were arrested while dealing in drugs was entirely unfounded, inasmuch as the sworn statements of the victims and witnesses did not corroborate this version, nor did the acts of the Guatemalan National Police, who included these cases in its investigation of the "*white van case*."

100. In its answer to the application, the State denied that it had violated the right to liberty of the persons indicated to that effect in the Commission's application (*supra*, para. 96), since there was nothing to suggest any intentionality on the part of the State in that regard. The State adduced, moreover, that all its actions were designed to clarify the facts and to punish those responsible.

101. In its brief of closing arguments, the Commission claimed that the requirement of an arrest warrant issued by a competent judicial authority is the most effective means of protecting the right to personal liberty, the only exception being an arrest *in flagrante delicto*. The Commission alleged that, from the evidence submitted in this case, it was proven that the victims were deprived of their liberty without judicial authorization, which in itself violates the fundamental principle established in Article 7 of the American Convention, and that during the proceedings the State neither produced any warrant in justification of the victims' detention nor showed that the arrests had been made *in flagrante delicto*.

102. The Commission further claimed that the Treasury Police did not record the arrests, prevented the detainees from making any contact with the outside world, did not present them before any competent judicial authority within the six-hour deadline prescribed in the Constitution and denied them access to the remedy of *habeas corpus* established in Article 7(6) of the Convention. According to the Commission, the clandestine

nature of the arrests in this case denied the victims access to the non-derogable judicial guarantees.

103. Regarding the remedy of *habeas corpus*, the Inter-American Commission pointed out that the victims were denied access to simple and prompt recourse because, in the case of Ana Elizabeth Paniagua-Morales, the writ of *habeas corpus* filed by her mother yielded no result. It added that a number of witnesses testified that the remedy of *habeas corpus* was ineffectual at the time the events occurred; that 5,729 writs of *habeas corpus* had been filed between August 1987 and December 1989 and that 80% of them had not yielded any result. According to the Commission, this claim was amply corroborated by the reports of experts Anderson (*supra*, para. 67 (m)), Mayora (*supra*, para. 67 (j)) and Molina (*supra*, para. 67 (n)) to this Court.

104. In its brief of closing arguments, the State maintained that Mr. Augusto Angárita, Ms. Doris Torres-Gil, Mr. José Antonio Montenegro, Mr. Marco Antonio Montes-Letona and Mr. Oscar Vásquez were arrested by Treasury Police agents and later taken before a justice tribunal. Guatemala further stated that

[i]n any event there was room for discussion of the legality or illegality of the arrest but never the kidnapping. The five appeared before the courts. In the case of Mr. Augusto Angárita-Ramírez and Ms. Doris Torres-Gil a full trial was conducted up to the point of their acquittal or conviction, as was the case with Mr. Oscar Vásquez, who had been sentenced to four years' imprisonment for the crime of drug trafficking and selling narcotic substances. Mr. Montenegro had been convicted and Mr. Montes-Letona acquitted. Consequently, the State of Guatemala did not violate those persons' right to personal liberty.

105. Regarding Ms. Ana Elizabeth Paniagua-Morales, Mr. Julián Salomón Gómez-Ayala, Mr. William Otilio González-Rivera, Mr. Pablo Corado-Barrientos and Mr. Manuel de Jesús González-López, the State claimed that "[i]t played no part [...] in those persons kidnappings" and that there was no evidence of any motive for the State to have been involved in the kidnappings and murders described.

106. With regard to the alleged breach of the right of *habeas corpus*, the State claimed that no special formalities are attached to this remedy and that any court may resolve it; further, the remedy could not be effective in the only case in which it was filed, namely that of Ms. Ana Elizabeth Paniagua-Morales, who had been kidnapped and subsequently murdered by common criminals.

107. In this connection, Article 7 of the American Convention provides that:

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 a 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. The 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.

[...]

108. In the case in question, the Court finds that Ms. Ana Elizabeth Paniagua-Morales, Mr. Julián Salomón Gómez-Ayala, Mr. William Otilio González-Rivera, Mr. Pablo Corado-Barrientos and Mr. Manuel de Jesús González-López were arbitrarily detained by agents of the State and murdered hours or days later. Indeed, it has been proven that:

- a) Julián Salomón Gómez-Ayala was detained on June 1, 1987 and his body discovered on June 17 (*supra*, para. 89 (d) (1));
- b) Ana Elizabeth Paniagua-Morales was detained on February 9, 1988 and her body discovered two days later (*supra*, para. 89 (d) (3));
- c) William Otilio González-Rivera and Pablo Corado-Barrientos were detained on February 10, 1988 and found murdered on the same day (*supra*, para. 89 (d) (4)); and
- d) Manuel de Jesús González-López was detained on February 11, 1988 and his body found two days later (*supra*, para. 89 (d) (5)).

109. Moreover, Mr. Gómez-Ayala, Ms. Paniagua-Morales and Mr. González-López were placed in a white "van" used by the Treasury Police and later killed.

110. Although Mr. González-Rivera and Mr. Corado-Barrientos were deprived of their liberty under different circumstances, the period of time during which they were detained is the same, as are the means (steel blades) used to inflict their fatal injuries, the cruelty of their treatment, and the circumstances in which their bodies were discovered, all of which suggests that their arrests and deaths form part of the so-called

"white van case." Moreover, their cases were included in the National Police report, which the Court has categorized as circumstantial proof (*supra*, para. 79). All of the foregoing indicates that the perpetrators of those persons' detained and murdered were members of the Treasury Police.

111. The evidence does not legitimize the State's declaration that Mr. Vásquez and Mr. Montenegro were arrested under the circumstances described in the police reports on records. Under the appropriate constitutional provision, in the case of *flagrante delicto* there is no need for a warrant to have been issued by a competent judicial authority. However, in the cases of Mr. Angárita, Ms. Torres and Mr. Montes, the mere fact of their acquittal, mentioned by the State in its brief of closing arguments, shows that they were not caught in the act.

112. The allegations and evidence examined by the Court contain sufficient, grave and converging facts -not diminished by the State- demonstrating that the following persons' right to liberty was violated by their arbitrary arrests: Ms. Ana Elizabeth Paniagua-Morales, Mr. Julián Salomón Gómez-Ayala, Mr. William Otilio González-Rivera, Mr. Pablo Corado-Barrientos, Mr. Manuel de Jesús González-López, Mr. Augusto Angárita-Ramírez, Ms. Doris Torres-Gil and Mr. Marco Antonio Montes-Letona, in contravention of the obligations set forth in Article 7 of the American Convention of Human Rights.

XII

VIOLATION OF ARTICLE 4

113. The Commission requested that the Court declare that

the State of Guatemala has violated the right to life, enshrined in Article 4 of the American Convention to the detriment of the following victims: Ana Elizabeth Paniagua-Morales; Julián Salomón Gómez-Ayala; William Otilio González-Rivera; Pablo Corado-Barrientos; Manuel de Jesús González-López and Erik Leonardo Chinchilla.

The Commission declared that preservation of the right to life was one of a State's fundamental obligations, a right that is non-derogable. Further, they concluded that Ms. Paniagua-Morales, Mr. Gómez-Ayala, Mr. González-Rivera, Mr. Corado-Barrientos, Mr. González-López and Mr. Chinchilla were arbitrarily executed by members of the Treasury Police, in other words, agents of the State. The Commission added that at no time during the process before it did the State deny that the victims in this case were murdered by members of the Treasury Police.

114. In its answer to the application, the State contended that it was untrue that it had violated the aforesaid victims' right to life, a right protected under its Political Constitution, "*from the very moment of conception.*" It further maintained that if the State had deprived those persons of their lives it "*would imply the existence of the State's intentionality, which cannot be inferred from [its] actions.*" It further stated that there was no evidence of any State intention in this case, apart from that of investigating the events, punishing those responsible, and going so far as to conduct a thorough reform of the penal system.

115. In its brief of rejoinder, the Inter-American Commission claimed that proof of intent is not required in order to establish the State's responsibility for human rights violations, and declared in its closing arguments that the murders of six victims in this case (*supra*, para. 113) are directly attributable to Guatemala, owing to the arbitrary deprivation of life by State agents. It also claimed that the State possessed the means to elucidate these violations and had the obligation to carry out an effective judicial inquiry designed to prosecute and punish the perpetrators of those violations.

116. The Commission further maintained that even when the circumstances surrounding a death are not completely clarified, international human rights protection organs have declared the State in question responsible for the violation of the right to life when that State has not conducted an adequate investigation of the accusations.

117. Guatemala indicated in its brief of closing arguments that there is no evidence to show that it was State officials who deprived the victims

who lost their lives in the instant Case of their liberty. It went on to say that "[i]nstead, there is evidence to the contrary: there was evidence to show that when members of the Treasury Police officiated in Guatemala, they did so in uniform." The State claimed that the weapons used by the Treasury Police did not correspond to those used in the murders of the aforesaid victims, adding that, however,

the State of Guatemala cannot come before this Honorable Court to affirm or deny whether any agent could have been involved: it would be absurd to deny it when an entire police investigation conducted by a State investigation body, which is deserving of the State's respect, upholds this hypothesis and when, moreover, an Attorney-General's office accuses them, not to mention the State's efforts, which will continue until it finds the perpetrators. How could the State of Guatemala then deny it? But how can it affirm it if the presumption of innocence exists as long as there is no conviction? This hypothesis is not excluded and is one which, with the greatest procedural honesty, the State of Guatemala has raised before this Honorable Court in the light of the State's own investigations.

118. Article 4(1) of the American Convention establishes that

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

119. The Court now turns to the examination of the cases in which the Commission claims that the State violated the right to life enshrined in Article 4 of the American Convention.

120. The Court has deemed it proven that it was members of the Treasury Police who deprived the following persons of their liberty: Mr. Gómez-Ayala (*supra*, paras. 89 (d) (1) and 93), Ms. Paniagua-Morales (*supra*, paras. 89 (d) (3) and 93), Mr. González-Rivera (*supra*, paras. 89 (d) (4) and 93), Mr. Corado-Barrientos (*supra*, paras. 89 (d) (4) and 93) and Mr. González-López (*supra*, paras. 89 (d) (5) and 93). This proof leads the

Court to conclude that it was those agents who deprived these victims of their lives and that their deaths are therefore imputable to the State.

121. In the case of Mr. Erik Leonardo Chinchilla, the Court does not find any connection with members of the Treasury Police, and although the police investigation mentions an accident in which bodyguards of the Director of the National Police were allegedly involved, there is no evidence that it was they who killed him. Furthermore, Mr. Chinchilla was not arrested and he was shot to death, a different *modus operandi* that what was used in the other cases. The Court has studied the paragraph of an Americas Watch publication (*Closing the Space; Human Rights in Guatemala, May 1987 - October 1988; an Americas Watch Report; November 1988*) which claimed that the murderers were driving a white "van", but no such evidence has been submitted to the Court. The finding is that in that case there was insufficient evidence to impute responsibility for Mr. Chinchilla's death to the State.

122. Consequently, the Court declares that Guatemala violated Article 4(1) of the American Convention to the detriment of Ms. Ana Elizabeth Paniagua-Morales, Mr. Julián Salomón Gómez-Ayala, Mr. William Otilio González-Rivera, Mr. Pablo Corado-Barrientos and Mr. Manuel de Jesús González-López.

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**CONCERNING MR. OSCAR VÁSQUEZ,
MR. CARLOS MORÁN-AMAYA,
MR. JOSÉ ALVINO GRIJALVA-ESTÉVEZ AND
MR. ÁLVARO GONZÁLEZ-TEPAZ**

123. Through the request for provisional measures submitted by the Commission on February 5, 1998, the Court learned that Mr. Oscar Vásquez's death is the subject of a proceeding currently before the Inter-American Commission. This information is consistent with the fact that the Commission did not include that act in the application on which the instant Case is based. For this reason, the Court concludes that it may

rule only on the facts concerning Mr. Oscar Vásquez's arrest, but not on his death.

124. The Court has not found sufficient evidence to link to the present process the circumstances surrounding the death of Mr. Carlos Morán-Amaya who, according to the Commission, was Judge Trejo-Duque's assistant and was involved in the investigation of the "*white van case*." The Court also notes that Mr. Morán-Amaya was not included as a victim in the Commission's petition.

125. With regard to Mr. José Alvino Grijalva-Estévez and Mr. Álvaro González-Tepaz, although they were included in the police report as victims of the crimes allegedly committed by the Treasury Police, the Commission did not include their names among the victims in the application.

XIII VIOLATION OF ARTICLE 5

126. In the brief containing its application, the Commission claimed that the State violated the right to humane treatment and requested that the Court find

that Guatemala violated [this right] enshrined in Article 5 of the American Convention and the obligations established in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of: Ana Elizabeth Paniagua-Morales; Julián Salomón Gómez-Ayala; William Otilio González-Rivera; Pablo Corado-Barrientos; Manuel de Jesús González-López; Augusto Angárta-Ramírez, Doris Torres-Gil; José Antonio Montenegro; Oscar Vásquez and Marco Antonio Montes-Letona.

The Commission declared that the victims were cruelly treated by members of the Treasury Police and that they were violently beaten and subjected to threats of all kinds, this being the case both for those victims who survived their captivity and those who lost their lives and whose bodies bore signs of torture and mutilation. The Commission further

stated that the risk of torture is particularly high when a person is unlawfully and clandestinely detained. It concluded by asserting that the State did not investigate the torture inflicted on the victims as it is required to do by Article 8 of the Inter-American Convention to Prevent and Punish Torture.

127. In answer to the application, Guatemala denied that it violated the right to physical integrity of the persons named in the preceding paragraph, there being nothing to imply any intentionality on the part of the State in this regard and repeated that all the State's actions were geared to clarifying the facts and punishing those responsible.

128. In its brief of final arguments the Commission stated that ten victims in this case were captured and detained by State agents. It claimed that the ill-treatment of Ms. Paniagua-Morales, Mr. Gómez-Ayala, Mr. González-Rivera, Mr. Corado-Barrientos and Mr. González-López was deliberate, a fact confirmed by the condition of their bodies. The Commission pointed out that Mr. Angárita-Ramírez, Ms. Doris Torres-Gil, Mr. Montenegro, Mr. Vásquez and Mr. Montes-Letona had testified to the then Judge in the case, Mr. Julio Aníbal Trejo-Duque, that they had been subjected to torture or cruel or inhuman treatment at the Treasury Police premises.

129. The Commission said that it had been proven that the victims, with the exception of Erik Leonardo Chinchilla, were subjected to intentional acts that produced pain and physical and mental suffering in order to intimidate and punish them, in breach of the prohibition of torture. According to the Commission, when any person suffers any injury while in State custody it is incumbent upon the State to provide a reasonable explanation of the causes of such injury by virtue of the detainee's particularly vulnerable circumstances.

130. Concerning the victims who survived their kidnapping, the Commission maintained that no effective investigation was conducted to determine responsibility for their injuries and that Guatemala acknowledged that they were captured by members of the Treasury Police and suffered injuries during their detention. The Commission made specific

reference to Judge Trejo-Duque's statements before this Court, in which he submitted that the injuries suffered by some victims who survived their captivity could have been produced while they were resisting arrest. In this regard, the Commission stated that

[w]hat was required was not speculation but an effective judicial inquiry to establish whether violations had been perpetrated and lay the basis for the necessary judicial response. The Commission pointed out that Judge Trejo had officially taken note of the injuries suffered at the hands of State agents, including violent blows to several parts of the body, and other forms of violence that could only imply torture. The State's expressed position shows a total reluctance to respond with due diligence to grave accusations. Four of the five victims were never even examined by a professional doctor and there is no record of any attempt to adopt elementary measures to investigate the site of the tortures denounced or to attempt to locate possible witnesses. (Footnote references have been omitted)

131. In the brief containing its final arguments, Guatemala indicated that in the case of Ms. Paniagua-Morales, Mr. Gómez-Ayala, Mr. González-Rivera, Mr. Corado-Barrientos, Mr. González-López and Mr. Chinchilla it was not responsible *"on the ground that if it did not in any way participate in the persons' kidnapping, neither was it involved in the beatings they received."* Concerning Augusto Angárta-Ramírez, the State said that the blows he received, *"while not desirable, could be normal, in some sense, if there is any kind of confrontation during the arrest of persons connected with narcotics traffic who obviously try to resist arrest."* The State also said that Mr. Angárta filed an accusation in this regard and took advantage of his rights under Guatemalan legislation.

132. Article 5 of the American Convention establishes in this regard that

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.

[...]

6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

133. Articles 1, 6 and 8 of the Inter-American Convention to prevent and punish torture establish that:

1. The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention.

[...]

6. In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction.

The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature.

The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

{...}

8. The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case.

Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their juris-

diction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.

After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.

134. In the case of the victims who were deprived of the right to life, with the exception of Mr. Chinchilla, the autopsies reliably revealed signs of torture (tying, beating, etc). imputable to the State for the same reason that their deaths are attributable to it (*supra*, para. 120). Let it be said, moreover, that the victims were killed by stab wounds to the neck and thorax which increased their suffering, and in some cases they were even decapitated. This was a pattern and common denominator in most of the murders connected with the instant Case (*supra*, para. 93).

135. With regard to the other victims who were placed at the disposal of the judicial authorities, the Court notes that in the case of the Mr. Vásquez and Mr. Angárta-Ramírez, the medical examiner found injuries, grazes and bruises attesting to cruel, inhuman or degrading treatment while they were in detention. Concerning the other persons, Ms. Torres-Gil, Mr. Montes-Letona and Mr. Montenegro, the Court considers that there is insufficient evidence, although some of them claimed to have been subjected to such treatment.

136. Consequently, the Court finds that Guatemala violated Article 5 (1) and 5 (2) of the American Convention and the obligations set forth in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Ms. Ana Elizabeth Paniagua-Morales, Mr. Julián Salomón Gómez-Ayala, Mr. William Otilio González-Rivera, Mr. Pablo Corado-Barrientos, Mr. Manuel de Jesús González-López, Mr. Augusto Angárta-Ramírez and Mr. Oscar Vásquez.

XIV VIOLATION OF ARTICLE 8

137. The Commission alleged that Guatemala violated the right to a fair trial in failing to respect the right of the victims and their relatives to be heard by a competent, independent and impartial judge or tribunal in order to establish their rights. According to the Commission, owing to Judge Trejo's kidnapping and the threats he received, he could not fulfill the requirements established in Article 8 of the American Convention, as proven by the succession of events in the instant Case. The Commission considered it the duty of the State to ensure the existence of effective judicial remedies and measures to *"restore the independence and impartiality of the Seventh Court following Judge Trejo's abduction."* In the Commission's view, in failing to investigate Judge Trejo's abduction and to replace him in his functions, Guatemala failed to observe its obligation to provide an effective judicial remedy.

138. Likewise, the Commission claimed that the domestic courts' decision to release the suspects was unjustified, arbitrary and contrary to the evidence on record. According to the Commission, recourse to a court of appeal is the *"vehicle whereby the legality of judicial decisions that affect the individual's fundamental rights and freedoms is examined,"* by seeing that the courts of first instance ensure that the proceeding is duly implemented. The Commission considered that no adequate response was given to the appeal filed against the decision to release the suspects, there being no evidence that the Chamber of Appeals pondered or weighed its decision, nor that it considered the kidnapping of then Judge Trejo-Duque to be an important aspect in the analysis of the appeal lodged.

139. The Commission also considered that the State violated its obligation to conduct, with the means at its disposal, a serious investigation of the violations committed, identify and punish those responsible, and ensure appropriate reparations to the victims. Even though the State conducted an investigation, following Judge Trejo-Duque's kidnapping, both the Department of the District Attorney and the judicial authorities allowed the process to stagnate and yield no result.

140. In its answer to the application, the State denied that it violated the right to a fair trial enshrined in Article 8 of the Convention, inasmuch as two of the victims brought a criminal action and made formal accusations within the process, which is still open in order to clarify the facts and punish those responsible. Likewise, there has been no denial of justice in this case, since the investigation was promoted by the State without any restriction and is still being promoted officially; the State was also concerned enough to seek radical change in the administration of criminal justice when it introduced the new Code of Penal Procedure by which the case is governed today.

141. In its brief of rejoinder, the Commission alleged that the effective suspension of the judicial inquiry silenced the victims of "*execrable crimes and denied them an impartial hearing ...*", that it had taken note of the reforms in Guatemala's criminal court system but did not consider them germane to this case because the entry into force of new provisions could not be seen as a solution for violations committed seven years earlier and does not prove that justice is accessible to the victims and their relatives.

142. In its brief of final arguments, the Commission said that there had been multiple violations of Article 8 of the Convention: it deemed it proven that members of the Treasury Police obstructed, and did not cooperate as it should in the investigation, and that Judge Trejo-Duque's decision of July 27, 1988 was patently arbitrary and unjustified and was not the decision of an impartial judge, owing both to the Judge's personal circumstances and those existing in Guatemala in 1988, when, according to the Commission, the judicial independence necessary for investigating cases involving State security agents did not exist.

143. The Commission went on to say that the domestic proceeding was not conducted within the "*reasonable time*" required by the American Convention, since no final decision has yet been reached nor have those responsible been punished; on the contrary, the case is still at the initial investigation stage. The Commission pointed out that the judicial proceeding has not even been initiated in the cases concerning Judge Trejo-Duque's kidnapping and the kidnapping and murder of Mr. Erik Leonardo Chinchilla and Mr. Carlos Morán-Amaya.

144. The State pointed out in its brief of final arguments that no potentially useful remedy had been filed in the case of the victims who lost their lives, since they were in the hands of criminals and not in those of State authorities.

145. Regarding the victims who survived their captivity, Guatemala claimed that *habeas corpus* was of no avail since they had been taken before the justice tribunals within legal processes in which all judicial guarantees were respected.

146. Likewise, it alleged that Judge Trejo-Duque was not in a position to evaluate anything which, according to Guatemalan legislation, was not in his possession, in which case he would have been guilty of perverting the course of justice. The State further pointed out that, on resuming his functions after his kidnapping, Judge Trejo-Duque discovered new evidence which probably convinced him that he should revoke the detention of the members of the Treasury Police.

147. The State also made mention of the decision of the Court of Appeal dismissing the case dismissed in the following terms "[w]hat we have here is perhaps an enormous and terrible judicial absurdity, but one that can and will be broken, and remedies are in place to achieve that end."

148. Article 8(1) of the American Convention provides that

[e]very 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.

149. With regard to that article, the Court has stated that

[f]or cases which concern *the determination of [...] rights and obligations of a civil, labor, fiscal, or any other nature*, Article 8 does not specify any minimum guarantees similar to those provided in Article 8(2) for

criminal proceedings. It does, however, provide for *due guarantees*; consequently, the individual here also has the right to the fair hearing provided for in criminal cases. (*Exceptions to the Exhaustion of Domestic Remedies (art. 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights*). Advisory Opinion OC-11/90. Series A No. 11, para. 28).

150. It has been proven that there was widespread fear among those involved in the so-called "*white van case*", corroborated by the eyewitnesses' reluctance to testify before the then judge in the case and the failure to conduct a thorough investigation into his kidnapping. The report delivered by experts Anderson (*supra*, para. 67 (m)), Mayora (*supra*, para. 67 (j)) and Molina (*supra*, para. 67 (n)) and Mr. Simon's testimony (*supra*, para. 67 (g)) corroborate this assertion.

151. The Court considered that it is neither necessary nor pertinent to examine the possible connection of Judge Trejo-Duque's kidnapping with the instant Case and the Court has simply noted that the kidnapping was not duly investigated, nor was any decision taken on the suggestion that the judge had been threatened and coerced during his captivity.

152. Likewise, in accordance with the criteria previously established by the Court with regard to the concept of reasonable time in judicial processes (*Genie Lacayo Case*, Judgment of January 29, 1997, series C No. 30, para.77; *Suárez Rosero Case*, *supra*, 71, para.72), the Court is of the view that in the instant Case the proceeding, which is still at the pre-trial ("sumario") stage, has far exceeded the principles of reasonable time set forth in the American Convention. The same is true of the case of Mr. Erik Leonardo Chinchilla, in which there is no evidence that proceedings have been initiated in the justice tribunals.

153. The considerations contained in the preceding paragraph apply exclusively to the victims who were deprived of their lives and to the judicial proceeding initiated to determine the criminal responsibility of the perpetrators of these acts, but not to the persons who also appear in this case and who were subject to ordinary criminal trials, since it has not been proven, nor does the Commission claim that, with regard to these

last in particular which have ended, there was any infringement of the judicial guarantees established in Article 8 of the Convention.

154. In this proceeding the State has produced copies of some action taken by its Agent against the decision to dismiss the case against those involved in the "white van case" who were tried in the domestic courts. Those actions, as well as the promulgation of the a new Code of Penal Procedure, are considered by the Court to be a voluntary expression of the State's will to fulfill its constitutional and conventional obligations, but does not constitute evidence that the obligation contained in Article 8(1) of the American Convention was observed in the instant Case.

155. The Court considers that the so-called "*white van case*" was not heard by an independent and impartial tribunal or within a reasonable time, and that the State did not provide the due guarantees to ensure the victims due process in determining their rights. Responsibility for this omission rests with the State, whose duty it was to make those guarantees.

156. The Court therefore considers that Guatemala violated Article 8(1) of the American Convention to the detriment of Ms. Ana Elizabeth Paniagua-Morales, Mr. Julián Salomón Gómez-Ayala, Mr. William Otilio González-Rivera, Mr. Pablo Corado-Barrientos, Mr. Manuel de Jesús González-López and Mr. Erik Leonardo Chinchilla.

XV VIOLATION OF ARTICLE 25

157. In its application the Commission requested the Court to rule that Guatemala violated the right to judicial protection and, consequently, Article 25 of the American Convention. That article establishes the right of every person to simple, prompt and effective recourse for protection against acts that violate his fundamental rights. According to the Commission, in this case the State denied the victims access to effective judicial remedies by, *inter alia*, "*not guaranteeing them an independent and impartial tribunal, by issuing arbitrary judicial decisions and by failing to pursue investigation of the white van crimes.*"

158. In its answer to the application, the State declared it to be false that it violated the victims' right to judicial protection and judicial guarantees, inasmuch as two of them "*brought criminal actions and made formal accusations in their capacity as subjects*" in the proceeding that is still open for the purpose of clarifying the facts and punishing those responsible, and which has progressed without obstruction. It further averred that the State's concern was manifest in its introduction of the new Code of Penal Procedure in Guatemalan legislation.

159. In its brief of final arguments, the Commission affirmed that the State denied the victims in this case and their relatives the right enshrined in Article 25 of the Convention. The Commission declared that ten years after the events the judicial proceeding is still at the pre-trial stage; no one has been found or tried; the victims' relatives have received no compensation or indemnity and, in the case of Mr. Erik Leonardo Chinchilla, no judicial process has been initiated.

160. The Commission also claimed that the general circumstances which prevailed in Guatemala rendered judicial remedies ineffective inasmuch as the investigation connected with the "*white van case*" took place in an atmosphere of terror and harrassment substantiated by the mere fact that the judge in the case was kidnapped. According to the Commission, the statements and reports of Ms. Jean-Marie Simon (*supra*, para. 67 (g)), Mr. Ken Anderson (*supra*, para. 67 (m)) and Ms. Olga Molina (*supra*, para. 67 (n)) contain sufficient evidence to conclude that Judge Trejo-Duque and the witnesses in the case were frightened, as was also evident from their statements to this Court.

161. In its brief of final arguments, the State said that all the actions of the then judge in the case were lawful; that

[p]erhaps Judge Trejo understood that the action of the Treasury Police in the case of Mr. Angárita, Ms. Torres-Gil, Mr. Montenegro, Mr. Vásquez and Mr. Montes-Letona accorded with the law. He perhaps saw that they had been taken before a court, and had perhaps also understood that the rest could be the work of criminals, drug traffickers, terrorism or any other type of crime: in other

words, what occurred to Ms. Paniagua, Mr. Gómez-Ayala, Mr. González-Rivera, Mr. Barrientos, Mr. González-López, kidnapped, murdered, injured and perhaps tortured and Erick (sic) Leonardo Chinchilla, shot dead. Perhaps Judge Trejo understood all that [...].

162. The State also affirmed that it never acquiesced in the deprivation of the victims' liberty or the murders of some of them; that those cases were duly investigated and no pressure of any kind was brought to bear on the judges that heard the case.

163. Article 25 of the American Convention provides that

1. Every person has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
2. The States Parties undertake:
 - a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
 - b. to develop the possibilities of judicial remedy; and
 - c. to ensure that the competent authorities shall enforce such remedies when granted.

164. This Court has declared that the effectiveness of habeas corpus does not depend merely on its formal existence (*Castillo Páez Case, supra* 72, paras. 82 and 83; *Suárez Rosero Case, supra* 71, para. 63). *Habeas corpus* must effectively protect persons from acts that violate their fundamental rights "even though that violation is committed by persons acting in exercise of their official functions" (Article 25(1) of the American Convention). The Court further pointed out that the provision of Article 25

constitutes one of the basic pillars not only of the American Convention, but of the very rule of law in a democratic society in the sense of the Convention.

Article 25 is closely linked to the general obligation contained in Article 1(1) of the American Convention, in assigning protective functions to the domestic law of States Parties. The purpose of habeas corpus is not only to ensure respect for the right to personal liberty and physical integrity, but also to prevent the person's disappearance or the keeping of his whereabouts secret and, ultimately, to ensure his right to life (*Castillo Páez Case, supra* 72, paras. 82 and 83; *Suárez Rosero Case, supra* 71 para. 65).

165. With regard to Article 25 of the Convention, this Tribunal deems it proven that the persons who were detained and taken before the judicial authorities were the subject of regular proceedings which have now ended and in which there was no claim that they had been deprived of the means of defense. On the contrary, the victims who were detained and cruelly deprived of their lives by members of the Treasury Police of Guatemala (*supra*, para. 122), had no possibility of exercising the judicial guarantee established in that provision.

166. In effect, the remedy of habeas corpus filed on behalf of Ms. Paniagua-Morales yielded no result because from the time she was detained by members of the Treasury Police her whereabouts were unknown and she was subsequently found dead. This proves the ineffectiveness of the remedy of *habeas corpus*, which did not protect the victim from the acts which agents of the State perpetrated against her.

167. In the case of Mr. Erik Leonardo Chinchilla, it has not been proven that members of the Treasury Police were implicated in the acts that caused his death. As far as the other murdered persons are concerned, the Court deems it to have been proven that they were denied all access to the judicial remedy that would have guaranteed both their freedom and their lives. Those persons were in the hands of State agents and the State was therefore obliged to create the conditions required for any remedy to have effective results.

168. The Court concludes that the State did not fulfill its obligation to provide effective recourse for Ms. Ana Elizabeth Paniagua-Morales, Mr. Julián Salomón Gómez-Ayala, Mr. William Otilio González-Rivera, Mr. Pablo Corado-Barrientos and Mr. Manuel de Jesús González-López, in violation of Article 25 of the American Convention.

XVI VIOLATION OF ARTICLE 1(1)

169. The Commission requested the Court to find that Guatemala violated its obligations enshrined in Article 1(1) of the Convention to respect and guarantee the rights contained therein, inasmuch as that instrument requires Guatemala to determine and identify those responsible for the kidnapping, torture and execution of the victims and punish them appropriately, and to pay indemnity and make reparation to the victims or their relatives.

170. In its answer to the application, the State denied having violated the aforementioned Article, since this "*would imply failure on its part to observe the guarantees enshrined in the Convention*" and claimed that it should not be required to compensate the victims, that being something that should be decided in the domestic courts, and that they should not be required to pay costs and expenses. There were no grounds for condemning it and this implies the inadmissibility of the incidental request.

171. In its brief of final arguments, the Commission declared that the State violated the obligation contained in Article 1(1) of the Convention and that even in the unlikely event that the Court accepts that it was not State agents who perpetrated violations in this case, the State would be responsible for the impunity of those crimes. The Commission went on to say that although some individuals were implicated in the criminal process conducted in the domestic courts, no one had been tried or punished and that, to date, the victims in the case have been denied the right to be compensated and for their aggressors to be punished.

172. Article 1(1) of the 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.

173. The Court notes that there existed and still exists in Guatemala the situation of impunity with regard to the acts of the instant case, impunity meaning the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention, in view of the fact 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 defenselessness of victims and their relatives.

174. On the basis of Article 1(1) of the American Convention, the Court considers that Guatemala is obliged to organize the public authorities to guarantee persons subject to its jurisdiction the free and full exercise of human rights, as also enshrined in the Political Constitution in force (Title I, single chapter). The foregoing applies whether those responsible for the violations of those rights are members of the public authorities, private individuals, or groups.

175. The violations of the right to personal liberty and safety, to life, to physical, psychological and moral integrity and to the judicial guarantees established, are attributable to Guatemala, which has the duty to respect and ensure those rights. Guatemala is therefore responsible for failure to abide by Article 1(1) of the Convention, in connection with the declared violations of Articles 4, 5, 7, 8 and 25 thereof.

XVII

ARTICLE 63(1)

176. 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.

177. In the brief containing its application the Commission requested that the Court

[r]equire Guatemala to identify, try and punish those responsible for the violations in question in order to combat the perpetrators' flagrant impunity which undermines and erodes respect for the law [, that it r]equire Guatemala to compensate the victims for the aforementioned violations, pursuant to Article 63(1) of the Convention [and] require Guatemala to pay the costs and expenses incurred by the victims and their families in processing this case before the Inter-American Commission and the Inter-American Court, as well as reasonable fees of their attorneys ...

178. In the light of the foregoing, the Court considers that Guatemala must order a genuine and effective investigation to identify and, as appropriate, punish the persons responsible for the human rights violations in question.

179. Given the nature of the instant case, the Court cannot rule that enjoyment of the rights or freedoms violated be restored to the injured parties. On the contrary, it is proper for reparation to be made for the consequences of the violation of those rights and, hence, fair compensation must be established, the form and amount of which will be determined at the reparations stage.

180. The Court will require information and sufficient evidence to determine the reparations, for which purpose it orders that the appropriate procedural phase be opened. The Court entrusts the pertinent action to its President.

XVIII

181. Now, therefore,

THE COURT

unanimously,

1. Rules that the State of Guatemala violated Article 7 of the American Convention on Human Rights in relation to its Article 1(1) to the detriment of Ms. Ana Elizabeth Paniagua-Morales, Mr. Julián Salomón Gómez-Ayala, Mr. William Otilio González-Rivera, Mr. Pablo Corado-Barrientos, Mr. Manuel de Jesús González-López, Mr. Augusto Angárita-Ramírez, Ms. Doris Torres-Gil and Mr. Marco Antonio Montes-Letona.

unanimously,

2. Rules that the State of Guatemala violated Article 4(1) of the American Convention on Human Rights in relation to its Article 1(1), to the detriment of Ms. Ana Elizabeth Paniagua-Morales, Mr. Julián Salomón Gómez-Ayala, Mr. William Otilio González-Rivera, Mr. Pablo Corado-Barrientos and Mr. Manuel de Jesús González-López.

unanimously,

3. Rules that the State of Guatemala violated Articles 5(1) and 5(2) of the American Convention on Human Rights in relation to its Article 1(1), and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Ms. Ana Elizabeth Paniagua-Morales, Mr. Julián Salomón Gómez-Ayala, Mr. William Otilio González-Rivera, Mr. Pablo Corado-Barrientos, Mr. Manuel de Jesús González-López, Mr. Augusto Angárita-Ramírez and Mr. Oscar Vásquez.

unanimously,

4. Rules that the State of Guatemala violated Article 8(1) of the American Convention on Human Rights in relation to its Article 1(1), to

the detriment of Ms. Ana Elizabeth Paniagua-Morales, Mr. Julián Salomón Gómez-Ayala, Mr. William Otilio González-Rivera, Mr. Pablo Corado-Barrientos, Mr. Manuel de Jesús González-López and Mr. Erik Leonardo Chinchilla.

unanimously,

5. Rules that the State of Guatemala violated Article 25 of the American Convention on Human Rights in relation to its Article 1(1), to the detriment of Ms. Ana Elizabeth Paniagua-Morales, Mr. Julián Salomón Gómez-Ayala, Mr. William Otilio González-Rivera, Mr. Pablo Corado-Barrientos and Mr. Manuel de Jesús González-López.

unanimously,

6. Rules that the State of Guatemala must conduct a genuine and effective investigation to determine the persons responsible for the human rights violations referred to in this Judgment and, where appropriate, punish them.

unanimously,

7. Rules that the State of Guatemala is obliged to make reparation for the consequences of the declared violations and pay fair compensation to the victims and, where appropriate, to their next of kin.

unanimously,

8. Orders the initiation of the reparations phase and entrusts the pertinent action to its President.

Done in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on this eighth day of March, 1998.



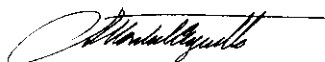
Hernán Salgado-Pesantes
President



Antônio A. Cançado Trindade



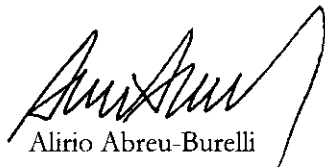
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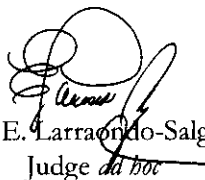
Alejandro Montiel-Argüello



Máximo Pacheco-Gómez



Alirio Abreu-Burelli

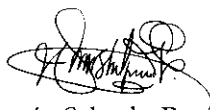


Edgar E. Larraondo-Salguero
Judge *ad hoc*

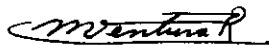


Manuel E. Ventura-Robles
Secretary

So ordered,



Hernán Salgado-Pesantes
President



Manuel E. Ventura-Robles
Secretary