



Gómez López v. Guatemala, Case 11.303, Report No. 29/96, Inter-Am.C.H.R.,OEA/Ser.L/V/II.95 Doc. 7 rev. at 425 (1997).

REPORT N° 29/96

CASE 11.303

GUATEMALA

October 16, 1996

1. Petitioner Carlos Ranferí Gómez López, a Guatemalan citizen and active member of labor groups in his country, alleges that he was the victim of an attempt on his life by agents of the Guatemalan military forces on February 25, 1993, and that he was denied legal protection. In his petition he alleges the violation of several articles of the American Convention on Human Rights ("the Convention").

I. BACKGROUND

A. Allegations of fact contained in the petitioner's communications

2. On June 7, 1994 Mr. Carlos Ranferí Gómez López sent the Commission a petition against the State of Guatemala, alleging violation of rights guaranteed in the Convention. He expanded on the complaint in subsequent communications.

3. The petitioner explains in his complaint that before the events he was working as Secretary General of the Labor Union of the National Agricultural Marketing Institute, and was serving simultaneously as Assistant Secretary General of the Workers Union of Quetzaltenango (UTQ). He said that several days before the attack he received death threats by telephone, in which he was warned that he would be assassinated if he did not stop his union and social work.

4. According to the petition, a few days before the attempt on his life, Mr. Gómez López formed part of a delegation, along with international reporters, that went to El Quiché to the Communities of Peoples in Resistance (CPRs), made up of persons who had to flee their homes because of the armed conflict in the area. The purpose of the delegation was to observe living conditions in these communities, and collect testimony and complaints concerning the mistreatment they received from the Guatemalan army. Mr. Gómez López's specific task was to film and photograph conditions in the community and provide the necessary elements for a documentary to be shown in Guatemala and abroad. His filming included scenes of military action by the army to harass and intimidate members of the communities.

5. On February 25, 1993, Mr. Gómez López was returning on a public bus from the visit to the CPRs. While the bus was traveling along the Inter-American Highway, near Quetzaltenango, a group of individuals stopped the bus. These armed men were wearing ski masks, olive green uniform shirts, military hats, and civilian pants. They carried squad weapons, typical of those used by the Guatemalan army. Several of them got on the bus and forced the passengers to get off, except for Mr. Gómez López, who was sleeping in the back of the bus and had not noticed the incident. They woke him by kicking him and pulling his hair, and began to search the bag containing his camera equipment.

6. One of the men said, "This is the equipment." Another said, "You're going to die, Marxist dog," and shot him in his chest, a few inches from his heart. The one who fired the shot told the other he was sure he had killed the petitioner, because the shot was aimed at his heart. Then the men took the camera equipment, shot the tires of the bus, and fled the scene with the rest of the assailants who were waiting outside the bus.

7. According to the petition, one of Mr. Gómez López's colleagues from the Workers Union of Quetzaltenango who was riding on the bus took him in a private car to the National Police Station in Cuatro Caminos, because there was no nearby hospital or clinic. When they arrived at the police station, those who brought Mr. Gómez López asked for help from the police to take him to the nearest hospital, but the police refused. Furthermore, they threatened others who offered to take him.

8. Meanwhile, Mr. Gómez López was growing weaker and losing blood. An unidentified driver offered to take him to the hospital in Totonicapán. He arrived at the emergency room at 12:30 a.m. on February 26. He remained in the Totonicapán National Hospital for two days. During his hospital stay, members of the National Police and Army visited the facility to inquire about his condition. Nurses refused requests from the police and soldiers to be allowed to enter Mr. Gómez López's room. Fearing for his safety, fellow union members decided to move him from the hospital, although he was really not well enough to travel.

9. Mr. Gómez López was taken to the Quetzaltenango Private Hospital for X-rays. It was discovered that the bullet he received had fragmented on entering his body, causing multiple wounds in the liver and pancreas. His condition called for surgery and immediate intensive care.

10. After surgery his condition remained critical, and he required a long recovery. After he had been in the hospital for 30 days, there was an incident in which he was given in a single hour the amount of intravenous fluid that he should have received in 24 hours. This caused a strong reaction, and he had to be transferred to the intensive care unit. After this episode, Mr. Gómez López felt that he was no longer safe in Guatemala. On April 5 he was taken from Quetzaltenango to Guatemala City. There he remained in the hospital for two days and left for the airport with the intention of going to Chicago to continue his treatment.

11. Accompanied by a doctor, Mr. Gómez López arrived at the airport. After passing through customs and immigration, he was detained by customs agents who threatened him, saying his visa and passport were false. It was only through the insistence of the accompanying doctor that Mr. Gómez López received permission to board the plane.

12. Upon arrival in the United States on April 8, 1993, he was admitted at Cook County Hospital in Chicago, Illinois where he was treated for 22 days. After his release on April 30, he moved into a center for refugees in Chicago. He remained there for two months and eight days.

13. During this time Mr. Gómez López remained in excruciating pain and anxiety as a result of his surgery, and could not resume a normal life. He required the help of nurses for his basic needs, including feeding, going to the bathroom, and going to bed.

14. After Lic. Ramiro de León Carpio was inaugurated as President of Guatemala, Mr. Gómez López decided to return to his country. He arrived on July 2, 1993, accompanied by Mr. William Wagner, a U.S. social worker and volunteer at the Kovler Center for Treatment of Torture Survivors.

15. According to the petitioner, during the 20 days he stayed in Guatemala the house where he was living and the union office were under constant surveillance by cars with tinted windows and no license plates and by unknown persons in civilian attire. William Wagner saw soldiers on guard from the roof of the house where they were staying. In addition, between July 8 and 11, armed men in military vehicles, some in military camouflage uniforms, parked in front of Mr. Gómez López's house every day, gunning their motors in a menacing fashion at various times during the day.

16. After these events, Mr. Gómez López decided to leave the country. On July 22, accompanied by reporters, members of the Peace Brigades and personal friends, he went to the airport and left Guatemala without incident.

17. The petitioner alleges violation of his right to legal protection. He says that his case No. 399/93, after passing several legal hurdles, remained in the District Court of Sololá, where they never took testimony from the victim or the witnesses, and did not solicit forensic and ballistic reports. He alleges that, from the case file, it is evident that there was no progress in the investigation since April 6, 1993.

18. The petitioner maintains that efforts by the Prosecutor General of the Department of Sololá during 1995 were limited and inadequate, and that the preliminary investigation carried out by the Investigations Department of the Human Rights Office also failed to advance the investigation.

19. The petitioner alleges that despite the passing of three years since a representative of the Popular Labor Action Unit filed a complaint based on the facts, and the opening of a criminal case (No. 399/93) in the Sololá District Court, legal organs of the Guatemalan Government have failed to conduct a proper investigation and make a diligent effort to clarify the facts so that the responsible parties can be identified and prosecuted.

B. Processing by the Commission -- Position of the Parties

20. The Commission acknowledged receipt of the petition on June 14, 1994 and registered the case as No. 11.303. On June 22, 1994 the petitioner sent a supplementary statement and an amicus curiae brief concerning the case.

21. Pursuant to Article 48.1 of the Convention and Article 34 of its Regulations, on June 27, 1994 the Commission transmitted the pertinent parts of the petition to the Government of Guatemala, requesting that it provide information within 90 days on the facts set forth in that communication. It also requested any information that could make it possible to determine whether domestic judicial remedies had been duly exhausted.

22. The initial response of the Government of Guatemala summarizes its version of the events that occurred on February 25, 1993 and describes the nature and status of investigations undertaken by the State concerning those events. It states that although the investigations have not concluded, they are underway. The Government therefore requests that the petition be ruled inadmissible, because there is a pending case under Guatemalan criminal law, and the petitioner has not exhausted the domestic remedies as provided in Articles 35.a and 37.1 of the Commission's Regulations. On October 17, 1994 the Commission forwarded the relevant parts of the Government's initial response to the petitioner, giving him 45 days to submit his comments thereon.

23. On December 28, 1994 the Commission transmitted the petitioner's response to the Government.

24. The Commission held a hearing attended by both parties on February 3, 1995, as provided in Article 65 of its Regulations. The petitioner, through his lawyer, reiterated his allegations and set forth the reasons that could justify application of the exceptions to the rule of exhaustion of domestic remedies. The petitioner, Carlos Ranferí Gómez López, also gave his testimony to the Commission. Representatives of the Government of Guatemala presented a different view of the facts. They said the incident was a common crime without political connotation and which was not selective in nature, because the other passengers on the bus were also robbed. They denied participation by police agents. They further alleged that the ineffectiveness of the investigations was due to the lack of cooperation by the victim, who was obliged to provide such cooperation. Therefore, they said, domestic remedies had not been exhausted.

25. On February 15, 1995 the Government of Guatemala sent a letter to the Commission informing of the results of the investigation carried out by the Investigations Department of the Human Rights Office in Sololá. On February 22, 1995 the Commission forwarded the communication to the petitioner.

26. On March 29, 1995 the Commission sent the petitioner the pertinent parts of a communication sent by the Government on March 18, 1995. With that note the Government transmitted copies of certain sections of the report prepared by the Investigations Department of the Human Rights Office.

27. On April 17, 1995 the petitioner presented his comments on the Government's communications. The Commission transmitted the pertinent parts to the Government.

28. On April 18, 1995 the Government sent a communication in which it reported that the investigation of the facts was continuing. It further reiterated its view that the petitioner was not singled out as a target in the incident, which was a common crime. It said further that the petitioner had refused to cooperate in the investigations to the point that the authorities had not been able to compel him to appear because they did not know his whereabouts. Therefore, the Government alleged that domestic remedies had not been exhausted. On May 5, 1995 the pertinent parts of the Government's communication were forwarded to the petitioner.

29. The petitioner sent his observations and on June 12, 1995 the Commission transmitted the pertinent parts to the Government. The petitioner says that the Government's assertions are inconsistent because they are not based on the evidence. He says that so far none of the investigations carried out in Guatemala have yielded satisfactory results. He says it is absurd for the Government to allege

that it does not know his whereabouts, since he could be reached through his lawyer since the case began in June 1994.

30. On July 17, 1995 the Commission sent the petitioner the response received from the Guatemalan Government. That response states that the Prosecutor General of Sololá Department undertook several initiatives. It says further that the Investigations Department of the Human Rights Office carried out a preliminary investigation and the results are contained in a special report which was given to the judge of the District Court in Sololá.

31. On October 20, 1995 the pertinent parts of the petitioner's reply were sent to the Government. The Commission asked the Government to provide information in 30 days on the steps taken by the prosecutor's office to pursue the case and to submit a copy of the report by the Human Rights Office and the statements taken by that office. As of this date, the Government has not replied to that request nor provided the information requested.

II. ANALYSIS

A. Admissibility

32. From the elements reviewed, it is clear that the Commission is competent to consider the case because the petition states facts that tend to establish violations of rights guaranteed in the American Convention on Human Rights. (Article 47.b of the Convention.)

33. Pursuant to the requirements of Articles 46.c and 47.d of the Convention, the record does not show and it has not been alleged that the petition is substantially the same as one previously studied or pending in another procedure for international settlement.

34. In accordance with the procedure set forth in Article 48.1.f of the Convention, on February 7, 1995, the Commission sent a letter to the parties in which it offered its services with a view to reaching a friendly settlement of the matter. The petitioner's representative also suggested this option to the representatives of the Government on March 7, 1995. However, on April 18, 1995 the Government informed the Commission that it had no intention of submitting the case to friendly settlement.

35. Taking into account that Mr. Gómez López's case contains the elements described in Article 46.2 of the Convention, the requirement for exhaustion of domestic remedies provided in Article 46.1.a does not apply. The provisions of Article 46.2 waive exhaustion of domestic remedies, because Mr. Gómez López duly sought judicial remedies to obtain an investigation of the facts, but three years later there has been no satisfaction or specific decision concerning his rights.

36. On February 26, 1993, the day after the attempt on his life, a representative of the Popular Labor Action Unit (UASP) issued a press statement making public the incident and filed criminal suit, requesting judicial investigation of the attack. (Testimony of Nery Barrios and Luis Gonzáles; clippings from El Nacional of February 26, 1993, page 7, and Siglo Veintiuno of February 27, 1993, page 6.)

37. A criminal proceeding was opened with the Justice of the Peace in Totonicapán. The file contained a cursory police report that only presented a report of the events but no evidence. (The petitioner has submitted as evidence a notarized copy of the case file, certified by Notary Alejandro Rodríguez Barillas on January 4, 1994. Subsequently referred to as "Notarized copy.")

38. On February 27, 1993 the Justice of the Peace in Totonicapán ordered the beginning of the investigative phase of the proceeding. However, on that same day he relinquished the case, saying it was not in his jurisdiction. The case was remitted to the Justice of the Peace in Sololá. (Notarized copy.)

39. On March 15 the Justice of the Peace in Sololá received the case and also ordered the beginning of the summary phase. This required a criminal investigation of the attack. However, on March 17, that judge also withdrew from the case, on the grounds that he lacked jurisdiction, and remitted it to the Criminal Judge of the Sololá District Court. (Notarized copy.)

40. The Judge of the Sololá District Court received the case on March 29 and again ordered the initiation of the investigative proceedings. (Notarized copy.)

41. About two weeks after the judge in Sololá took the case, the public prosecutor received it through official notice and requested a legal investigation of the facts. With this request, the case was officially opened. (Notarized copy.)

42. From the time case No. 399/93 was opened in the Sololá District Court to investigate what happened to Mr. Gómez López, up until January 4, 1994, when Lic. Alejandro Rodríguez Barillas made the notarized copies of the file, no legal action was taken in the case. This means that almost twelve months after the events occurred, there were no statements taken from the victim or witnesses, nor any forensic medical report documenting the wounds sustained by Mr. Gómez López. (Notarized copy.)

43. The Government of Guatemala alleges in a communication dated July 7, 1995, that the Prosecutor General of Sololá attempted to take several investigative steps. Furthermore, the Government communicated that the Investigations Department of the Human Rights Office undertook a preliminary investigation and its conclusions appear in a special report that was presented to the Sololá District Judge.

44. However, the Government of Guatemala failed to reply to the Commission's note of October 20, 1995, in which it requested specific information concerning the investigative steps taken or planned by the public prosecutor, and a copy of the report of the Human Rights Office.

45. The Government has said that case No. 399/93 remains pending in the Sololá District Court in the investigative phase, with no decision taken on it. This means that three years have gone by since the beginning of the incidents, yet the competent organs of the Guatemalan Government have failed to conduct a proper investigation or to take the necessary steps to clarify the case and identify and prosecute the responsible parties.

46. The Inter-American Court of Human Rights has established that "the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective." (Inter-American Court of Human Rights. Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, paragraph 88 (emphasis added)). The Government of Guatemala justifies the lack of progress in the case on the grounds that Mr. Gómez López failed to fulfill his duty to cooperate with the investigation and the prosecution of the case. The Government argues that the judge's work has been hampered because of this lack of cooperation. It says that according to the legislation in force at the time of the incident (Articles 77, 165, and 174 of the Guatemalan Criminal Procedure Code) the victim is required to appear and testify, offering evidence and identifying the responsible parties and all necessary information to cooperate with the judge investigating the case, within a period of five days. The Government asserts that when this does not occur, the complaint is automatically dropped.

47. It should be noted, in the first place, that the Government of Guatemala has not provided information to confirm its assertions, and they are not supported in the file of the case. It alleges only the lack of cooperation; not the obstruction or blocking of the investigation.

48. In the second place, the legal conclusions of the Government of Guatemala are incorrect. According to Article 68 of the former Criminal Code criminal proceedings are public actions. Therefore, they are the responsibility of the public prosecutor. In cases of crimes against sexual freedom and privacy or public morals, the proceedings are public actions but require a private complaint. (Article 72.) This means that the victim must initiate the legal action. But in the case of Mr. Gómez López, whatever the charge brought in connection with the incident (attempted homicide or serious wounds), the proceeding is a public action by virtue of the nature of the offense and it is up the public prosecutor to initiate and carry through with it.

49. Provisions of Articles 77, 165, and 174 of the former Criminal Procedure Code govern the opportunity of the victim to participate officially in the public criminal

proceeding. If the injured party does not make a private accusation and bring charges in his initial statement or within five days, the private accusation is dropped. But this does not mean that the complaint is withdrawn or that the case is terminated, because the public prosecutor must continue to carry the case forward. It should be clear that the opportunity to participate in the proceeding by offering evidence and opinions is a right, not an obligation. The obligation to clarify the incident and identify the persons responsible is incumbent upon the public prosecutor and the judge, who are authorized by criminal procedure to take all necessary measures. Therefore, the justification that the Government of Guatemala invokes to attempt to avoid responsibility for the non-completion of domestic efforts is spurious.

50. Furthermore, this rule of domestic law has also been adopted by the Inter-American Court in the Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 177, concerning the obligation to investigate, which is one of the obligations assumed by the States parties pursuant to article 1.1 of the Convention. The investigation "have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government." In this case, claims have been duly filed in Guatemala, but the Government has not fulfilled its duty to follow through on them, and has incurred in unjustified delay. The Government thus cannot allege failure to exhaust domestic remedies.

51. The petitioner attaches expert opinions on the subject which the Commission believes to be relevant. The experts concur that in Guatemala it is impossible to exhaust domestic remedies, given the lack of effectiveness and competency in the judicial system. (Sworn statement of Richard Wilson, page 5; sworn statement of Paul Soreff, paragraphs 19 and 28; sworn statement of Alice Jay, Persecution by Proxy, pages 51 and 66; sworn statement of Kenneth Anderson, Maximizing Deniability, page 5; sworn statement of Elizabeth Iglesias, Guatemala Harvard Report, pages 46, 53, 88; sworn statement of Thomas J. Barret, Justice Suspended, pages 19 and 57; see also State Department Report, page 9.)

52. Therefore, the Commission considers that Guatemala's domestic remedies are not effective or competent in this case. This means that the exceptions to exhaustion of domestic remedies found in Article 46.2 of the American Convention are applicable in the case.

53. The requirement of Article 46.1.b of the Convention, that the petition be lodged within a period of six months from the date of notification of the final judgment, does not apply because there was no definitive judgment in the suits filed. In accordance with Article 38.2 of its Regulations, the Commission considers that the petition was lodged within a reasonable time after the date on which the rights were violated. The events occurred on February 25, 1993 and the petition was filed

with the Commission on June 7, 1994. During the interval between these dates the petitioner awaited a reasonable amount of time for the results to come out of the legal investigations. Taking into account the irregularity and lack of clear understanding of the course of the investigations, this time is reasonable and does not violate judicial certainty. In any case, the Government of Guatemala has not alleged noncompliance with this requirement.

B. Merits

1. Conclusions of fact

54. The petitioner has presented important elements of proof that the Commission has carefully analyzed in drawing up its conclusions of fact.

55. Based on the sworn testimony of Carlos Ranferí Gómez López, Nery Roberto Barrios de León and Luis González (victim and eyewitnesses of the attack), and the content of the medical registers of the Private Hospital of Quetzaltenango and the newspaper article in the daily "El Gráfico" of March 20, 1993 (page 41), the Commission accepts as proven the labor union affiliation of the petitioner, the death threats he received, and the visits and activities he undertook in the CPRs. The Commission also accepts as proven the attempt against his life that occurred on February 25, 1993.

56. It is proven that on February 25, 1993 Mr. Gómez López was returning on a public bus from a visit to the CPRs, and that when the bus was on the Inter-American Highway, near Quetzaltenango, a group of individuals cut it off and stopped it. These armed men were wearing ski masks, olive green uniform shirts, military hats, and civilian pants. They carried squad weapons, such as those carried by the Guatemalan army. The evidence shows that several of them got on the bus and forced the passengers to get off, except for Mr. Gómez López, who was sleeping in the back of the bus and had not noticed the incident. They woke him by kicking him and pulling his hair, and began to search the bag containing his camera equipment. That one of the men said, "This is the equipment," and another said, "You're going to die, Marxist dog," and shot him in his chest, a few inches from his heart. It is also proven that the one who fired the shot told the other he was sure he had killed the petitioner, because the shot was aimed at the heart. According to the evidence, the men then took the camera equipment, shot the tires of the bus, and fled the scene with the rest of the attackers who were waiting outside the bus.

57. Based on the sworn statements of Carlos Ranferí Gómez López, Nery Barrios, William Wagner, and Benito Juárez, the Commission considers it proven that when they arrived at a police station, the persons accompanying Mr. Gómez López asked the police for help to take him to the nearest hospital but the police refused, saying his condition was too delicate to move him. The police also threatened other people who offered to take him.

58. This same evidence confirms that at the airport in Guatemala, when Mr. Gómez López was preparing to leave the country, he was harassed by customs agents who intercepted him and detained him, saying that his visa and passport were false. Only thanks to the insistence of the accompanying doctor was Mr. Gómez López permitted to board his flight. The fact that Government agents never initiated a criminal investigation with a view to bringing charges for falsification of documents, as the record demonstrates, demonstrates the intimidatory nature of the actions taken at the airport.

59. Finally, based upon the above-mentioned sources, the Commission believes it to be true that during the 20 days that Mr. Gómez López remained in Guatemala, the house where he was staying and the labor union office were under constant surveillance by cars with tinted windows and no license plates, and by unknown persons in civilian attire. Soldiers were seen on guard from the roof of the house where he was staying. In addition, between July 8 and 11, armed men in military vehicles, some in military camouflage uniforms, parked in front of Mr. Gómez López's house every day at various times, gunning their motors in a menacing fashion.

60. The Government has recognized the incident that took place on February 25, 1993 and basically disputes only one point of fact. It has maintained that the petitioner was not the only one robbed; other passengers were robbed as well. The Government has not proved this sufficiently, and witnesses presented by the petitioner indicate that he was the only one robbed. Therefore the Commission believes the latter version of events is true.

61. The other facts have been denied by the Government of Guatemala, but the Government has not presented any evidence to support its position.

2. Responsible parties

62. The Commission has concluded that the perpetrators of the attack on Mr. Gómez López on February 25, 1993, on the Inter-American Highway, were agents of the Government. Several elements lead to this deduction.

63. The attire of the attackers, their modus operandi, and the type of weapons used are clear indicators of a military or police action.

64. Another indicator is the selective and arbitrary nature of the events in the attack: the requirement that all passengers get off the bus except Mr. Gómez López; the lack of intent to rob, this being shown by the fact that the attackers had no need to awaken Mr. Gómez López violently with kicks in order to rob him, and they only took Mr. Gómez López's camera equipment, not personal items such as wallet, watch, etc.; the manifest purpose of taking his camera equipment; and the political references expressed by the attackers. All these elements, added to the

occurrence of the attack right after the victim had been monitoring military activity in the CPRs, make it possible for the Commission to conclude that the crime was carried out by public agents as a reprisal, and in an effort to prevent the consequences deriving from the work and activities of Carlos Ranferí Gómez López.

65. Furthermore, the occurrences before and after the attack on Mr. Gómez López must be noted. The death threats received in an effort to persuade him to abandon his union activities, the refusal of police to help Mr. Gómez López and their threats against anyone who would help him, the harassment in the airport when Mr. Gómez López was leaving Guatemala, and the surveillance by unidentified individuals and military agents in a menacing manner after his return to Guatemala are all actions by Government agents which manifest an intent to cover up and protect the perpetrators of the attack on February 25, 1993. The Commission concludes that the perpetrators were also Government agents, and that the subsequent acts of other Government agents were an attempt to cover up the attack and protect those responsible with misguided esprit de corps.

66. The Government has denied these conclusions, alleging that the incident on February 25, 1993 was a common crime. It has maintained that the petitioner was not the only person robbed, and that other persons were robbed as well. As noted above, the Government has not adequately proved this assertion of fact. In any case, the preceding analysis indicates that the persons responsible for the incident were public agents, and that the attack was directly against the petitioner.

67. Leaving aside the incident itself and its proof, the intervention of Government agents is confirmed by the fact that it has been and continues to be Government practice in Guatemala to use official agents in acts of repression and clandestine attacks against human rights and union groups. The Court said in the Velásquez Rodríguez Case that "[i]f it can be shown that there was an official practice of disappearances . . . carried out by the Government or at least tolerated by it, and if th[is] disappearance . . . can be linked to that practice, the Commission's allegations will have been proven to the Court's satisfaction." (See Judgment of July 29, 1988, paragraph 126.) This jurisprudence is applicable in the present case. Concerning the Government practice in Guatemala, see Annual Report of the Inter-American Commission on Human Rights 1990-1991, page 449; Annual Report of the Inter-American Commission on Human Rights 1991, page 210.)

68. The Commission noted in its latest visit to Guatemala that extrajudicial executions committed by state agents "follow a pattern of selective murder of officials, and community, union, university, and human rights, and other leaders, seeking thereby to instill generalized terror and to choke off the process of constitutional and democratic opening." (See Annual Report of the Inter-American Commission on Human Rights 1994, page 186.) Carlos Ranferí Gómez López

belonged to at least one of the groups mentioned; therefore it can be concluded that he too was the victim of this behavior by public agents.

3. The domestic judicial process

69. The Government of Guatemala has said that case No. 399/93 is pending in the Sololá District Court, and that the incident involving Mr. Gómez López on February 25, 1993 is being investigated.

70. The Government also says that the prosecutor general of the Department of Sololá carried out several investigative efforts in this case. It says that the Investigations Department of the Human Rights Office also carried out a preliminary investigation and that the special report based on its findings was given to the Sololá District Court.

71. However, the Government itself notes that case No. 399/93 remains pending in the Sololá District Court in the preliminary phase, with no decision to date. This means that three years have passed since the incident occurred, yet the courts of Guatemala have not been able to conduct an adequate investigation or complete the legal procedures to solve the case and identify and prosecute the responsible parties.

C. Conclusions of Law

1. The right to life

72. Article 4 of the American Convention provides that every person has the right to have his life respected. In the present case the Commission concludes that the Government of Guatemala has not respected the right to life of Carlos Ranferí Gómez López and has thereby violated the American Convention.

73. Prior to the attempt on his life, the petitioner had received explicit death threats. During the attempt, and after taking his camera equipment, the assailants intentionally shot Mr. Gómez López with intent to kill. The petitioner has declared that after the shots he heard one of the attackers say to the other that he was sure he had killed the victim, because the shot was aimed at the heart.

74. Although the assailants failed to achieve their purpose of killing the petitioner, the attack of February 25, 1993 constitutes a clear attempt on the life of Mr. Gómez López. The shot he received nearly killed him. His risk of death could not have been greater. (See medical registers of the Private Hospital of Quetzaltenango, the certified records of the Cook County Hospital, and the testimony of Patricia Murphy and Joann Persch.)

2. The right to humane treatment

75. Article 5 of the American Convention provides that every person has the right to have his physical, mental, and moral integrity respected. The facts alleged in the present case, which the Commission has accepted as proven, constitute a violation by the Government of Guatemala of the petitioner's right to have his integrity respected in all three aspects.

76. The wound caused by the assailant's bullet is a direct attack upon the petitioner's physical integrity. It has made it necessary for Mr. Gómez López to undergo surgery several times. His delicate state of health has required much special care. He has had to endure painful rehabilitation and loss of physical capacity to perform basic functions.

77. His mental integrity has also been affected by the attack and by the events occurring before and after it. The threats of death if he did not stop his union work, the attack of February 25, 1993, the refusal of the police to help him and their threats against anyone else who tried to do so, the incident of harassment at the airport when he was preparing to leave Guatemala, and the surveillance by unidentified persons and military agents in a menacing manner upon his return to Guatemala are a series of events with a common pattern and intent: the destruction of his personality, so that he would be cowed into quitting his social work. The periodic threats, carried to the extent of an attempt--that only by luck failed to take his life--constitute cruel, inhumane and degrading treatment and have left a serious psychological scar on Mr. Gómez López.

78. The episodes suffered by the petitioner have definitely affected his moral integrity. Mr. Gómez López was actively working in social groups. He was Secretary General of the Labor Union of the National Agricultural Marketing Institute, and was serving simultaneously as Assistant Secretary General of the Workers Union of Quetzaltenango. He worked in the area of social development.

79. In this capacity he was part of a delegation, with international reporters, which visited the CPRs in El Quiché, communities of persons who had to flee their homes because of the armed conflict in the area. As was noted, the purpose of the visit was to observe living conditions in these Communities, and gather statements and complaints concerning harassment by the Guatemalan army.

80. This type of activity is typical of the attitude of social commitment that Mr. Gómez López has had to postpone or abandon because of the persecution suffered in the attack of February 25, 1993 and the events that occurred before and after it. He has even had to leave his country.

81. Furthermore, the physical deterioration which Mr. Gómez López suffers as a result of his wounds has affected his self esteem. This effect constitutes significant damage to his moral integrity.

3. The right to a fair trial and judicial protection

82. Articles 8 and 25 of the American Convention establish the right of every person to a hearing by a competent tribunal for protection against violation of his rights, and the state is required to ensure minimum guarantees for determination of his rights. The Government of Guatemala has not provided the necessary elements for guaranteeing these rights, thereby violating the Convention.

83. Article 25.1 incorporates the principle--recognized in international human rights law--that the instruments or procedures for guaranteeing these rights must be effective. It is not enough for the judicial system of a state to be seized of a case; it must provide the possibility of effective recourse, in accordance with the rules of due process. (I/A Court H.R., Cases of Velásquez Rodríguez, Fairén Garbí y Solís Corrales, Godínez Cruz, Preliminary Objections, Judgment of June 26, 1987, paragraphs 91, 90, and 92, respectively.)

84. The Government of Guatemala has not given Mr. Gómez López, a victim of crimes which should be pursued de oficio, adequate or effective recourse to satisfy the minimum guarantees he is due and to make a determination concerning his rights. More than three years have passed since the events occurred, and the Guatemalan courts, from lack of will and inefficiency, have not clarified them nor established the identity of the responsible parties. Given the handling of the judicial process in the case, it is unlikely that there will be proper resolution of Mr. Gómez López's case.

85. The judicial protection afforded by the Government of Guatemala to Mr. Gómez López is clearly ineffective. This is not uncommon in judicial proceedings in Guatemala involving investigations of human rights violations. In fact, inefficient investigations in these cases result in a serious state of impunity and deny justice and reparations for harm to the victims.

86. Since 1986 the Inter-American Commission on Human Rights has made repeated reference in its annual reports to the basic inability of the Guatemalan judicial system to protect the rights of its citizens, noting that the courts are inefficient and non-functional, and that the judicial system has a serious credibility problem. (Annual Report of the Inter-American Commission on Human Rights 1986-87, page 251; Annual Report of the Inter-American Commission on Human Rights 1988-89, pages 185-187; Annual Report of the Inter-American Commission on Human Rights 1989-90, page 157; Annual Report of the Inter-American Commission on Human Rights 1990-91, page 480; Annual Report of the Inter-American Commission on Human Rights 1991-92, page 205; and reports of the Inter-American Commission on Human Rights on the Situation of Human Rights in Guatemala of 1985 and 1993, pages 55, 57, respectively and Fourth Report, pages 15, 16, 51.)

87. As a result of its on-site visit to Guatemala in 1993, the Commission observed once again that one of the most serious problems affecting Guatemalan society is impunity, which is due, among other causes, to inefficient administration of justice. The Commission confirmed that "the prevailing impunity stems in large measure from the ineffectiveness of the police, judges, prosecutors, and other personnel of the justice system in carrying out duties essential to order and security." (Annual Report of the Inter-American Commission on Human Rights 1994, page 190.)

88. The inadequate way in which Guatemala carries out investigations of human rights violations has been documented by the petitioner in the sworn statements of experts on the subject and with other texts. (Elizabeth Iglesias, Guatemala/Harvard Criminal Justice Project, Final Report; Paul Soreff; Kenneth Anderson, Maximizing Deniability: the Justice System and Human Rights in Guatemala and conclusions extracted therefrom; Thomas J. Barret, Justice Suspended: The Failure of Habeas Corpus in Guatemala; Richard Wilson, Conclusions and Recommendations for a Defense Component, Guatemala/Harvard Criminal Justice Project; Alice Jay, Persecution by Proxy; and Bonnie Tenneriello, The Administration of Injustice, Military Accountability in Guatemala and Habits of Repression, Military Accountability for Human Rights, Abuse under the Serrano Government in Guatemala.)

89. The experts concur that the present justice system in Guatemala cannot protect human rights nor provide proper judicial relief for violations of those rights. They say this failure of the justice system has virtually eliminated the possibility for a victim to request relief through domestic remedies. (Sworn statement of Paul Soreff, paragraphs 16, 19, 21, 22, 24, 28; sworn statement of Kenneth Anderson, Maximizing Deniability, pages 9, 28, 53; and sworn statement of Thomas J. Barret, Justice Suspended, page 19.)

90. The petitioner also refers to the reports by Mr. Christian Tomuschat, independent expert on human rights for the United Nations in Guatemala until 1993. In his report of December 18, 1992, Mr. Tomuschat says that machinery for prevention and punishment of crimes continues to be ineffective in Guatemala. He states that in most cases of crimes against the life and physical integrity of human beings it is impossible to gather sufficient evidence to punish the perpetrators, and that trials are usually slow and end with acquittal for lack of evidence, so that crimes remain unpunished. (E/CN.4/1991/5, paragraph 243.) Mr. Tomuschat also concludes in his two last annual reports that the current criminal justice system in Guatemala is unsatisfactory, and that the justice system in general is inefficient and flawed. (Documents E/CN.4/1992/5, paragraph 189; E/CN.4/1993/10, page 108; E/CN.4/1993/10 paragraph 174, and E/CN.4/1993/10 paragraph 187, respectively.)

4. Freedom of thought and speech

91. Article 13 of the Convention protects freedom of thought and expression. Article 13 specifically states that "this right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice."

92. The State agents who committed the attack of February 25, 1993 demonstrated that they had a specific goal: to obtain the camera equipment and photographs which had been taken during Mr. Gómez López's visit to the CPRs and to prevent the diffusion of those photographs by murdering Mr. Gómez López. The State agents were able to take the materials and although they failed to kill Mr. Gómez López, they attacked him physically in such a manner that they were almost able to insure his death. The activities carried out by Carlos Ranferí Gómez López during his visit to the CPRs constitute a legitimate exercise of the right to free thought and expression. Thus, the attempt on his life of February 25, 1993 constitutes a violation of the rights protected by Article 13 of the Convention.

5. Freedom of association

93. Article 16 of the American Convention provides the right of every person to associate freely for whatever purpose, and that the exercise of this right may only be limited by law. The Government of Guatemala has caused certain situations in which Mr. Gómez López has been prevented from exercising his right of free association, and reprisals have been taken against him for activities undertaken in the exercise of this right.

94. The death threats received by the petitioner are the first weapon used to try to discourage him from pursuing his union activities. They were very explicit. The threat was carried out on February 25, 1993, and subsequent events completed the circle of intimidation aimed at halting Mr. Gómez's union work.

95. The attempted murder of Mr. Gómez López in order to prevent him from continuing his union and social activities--in itself an illegal and violent act--demonstrates the lengths to which an intolerant authoritarian system can go to eliminate dissident views and ideologies.

6. Freedom of movement and residence

96. The facts to which Carlos Ranferí Gómez López has been subjected as found by the Commission have taken place in a manner which has affected Mr. Gómez López's right to freedom of movement and residence.

97. Article 22.1 of the Convention establishes that "[e]very person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law." The incidents which have affected Mr. Gómez López have had the effect of preventing his residence in Guatemala to the point that they

have forced him to leave the country to avoid serious danger to his life and moral and physical integrity.

98. The occurrence in the airport in Guatemala, when Mr. Gómez López prepared to leave the country, constitutes a particularly clear attempt to prevent the exercise of the right of all persons to freely leave any country, as expressed in article 22.2. Mr. Gómez López was intimidated by customs agents who intercepted and detained him asserting that his visa and passport were falsified. Only because of the insistence of his accompanying physician was Mr. Gómez López able to obtain permission to board his flight. Considering the factual context in which this incident occurred and there having been ordered no investigation to determine whether Mr. Gómez López had engaged in criminal falsification, the Commission considers this incident to be an act of intimidation and a violation of Carlos Ranferí Gómez López's right to leave the country.

7. The obligation to respect rights

99. The violations described above show that the State of Guatemala has not complied with the obligation assumed in Article 1.1 of the American Convention, "to respect the rights and freedoms recognized therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms."

100. As provided in Article 1.1, the first obligation of the states parties to the American Convention is to respect the rights and freedoms recognized therein.

101. In order to determine which forms of exercise of public power violate the obligation of Article 1.1 to respect rights, the Inter-American Court has ruled that "under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law," and that "any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State." (Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraphs 169, 170, 172.)

102. The Commission has accepted as proven that the attack on Mr. Gómez López that occurred on February 25, 1993 and the events before and after it were carried out by Government agents. Therefore, as provided above, the Government of Guatemala has violated the obligation of Article 1.1 to respect the rights of Carlos Ranferí Gómez López contained in the American Convention, in relation to the violation of the rights recognized in Articles 4, 5, 8, 13, 16, 22 and 25 of the American Convention.

103. The second obligation set forth in Article 1.1 is to ensure the free and full exercise of the rights and freedoms recognized in the Convention.

104. "This obligation implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate, and punish any violation of the rights recognized by the Convention." (I/A Court H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 166.)

105. The evidence in this case indicates that the Guatemalan legal system has not been able to investigate the violation of Mr. Gómez López's human rights and has not punished the responsible parties. It has not done so because it has lacked the will to do so, and because the inefficient and irresponsible nature of the judicial system has made it impossible. Therefore, the Commission concludes that Guatemala has also violated Article 1.1, because it has not guaranteed the exercise of the rights of Mr. Gómez López.

106. To justify the inefficiency of the judicial proceedings, the Government of Guatemala has alleged the non-cooperation of the petitioner in the investigation. In this connection the decision of the Inter-American Court in the Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 177, is particularly pertinent. As for the obligation to investigate, the Court notes that: "An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government."

III. RESPONSE TO THE COMMISSION'S ARTICLE 50 REPORT

107. Pursuant to Article 50 of the Convention, the Commission during its 91^o Regular session, approved Report 6/96 concerning the present case. That report and the recommendations contained therein were transmitted to the Government of Guatemala by communication of June 3, 1996 with a request that the Government inform the Commission of the measures which it had adopted to comply with the recommendations of the Commission and to remedy the situation examined within a period of 60 days. By note of May 16, 1996, the Government of Guatemala responded to Report 6/96. Also, on July 8, 1996, the Commission received from the Government a communication which attached the certified file of the case of Carlos Ranferí Gómez López processed by the Assistant Departmental Human Rights Ombudsman in Sololá.

108. The Government's central argument, as set forth in its response, is that the case of Mr. Gómez López relates to a common crime. The Government therefore asserts that it cannot accept responsibility for the facts and cannot provide compensation to the victim.

109. The Government states that, "despite the contrary conclusion reached in the Report, there exists sufficient evidence which could be considered by the Commission as proof leading to the conclusion that the facts under study demonstrate that a common crime occurred, product of delinquency, which can by no means be considered a human rights violation under international human rights law."

110. In support of this argument, the Government provides the file of the Human Rights Ombudsman's Office. It is important to consider that the Government was specifically requested to provide this file during the processing of this case before the Article 50 report was approved. Yet, the Government failed to provide it. The Commission notes that the purpose of this stage of the process is not to determine facts, which have already been proven and established in the record. Rather, at this stage of the proceedings, the Commission's duty is to consider whether the State has complied or not with the recommendations which were formulated in Report 6/96.

111. In addition, the Commission considers that the remission of the file which had been processed by the Assistant Departmental Human Rights Ombudsman's Office does not provide any new elements of proof which would significantly alter the facts already studied by the Commission, requiring the Commission to change its conclusion that Mr. Carlos Ranferí Gómez López suffered abuses committed by agents of the State as set forth in the Article 50 report. In addition, the facts and arguments set forth by this important body of the State of Guatemala do not have the weight of legal truth established in a *res judicata* decision; that type of weight may only be granted by a court of law. In any case, the facts have been sufficiently established and analyzed fully in the appropriate context. This case does not simply require a determination of what occurred on February 25, 1993, as if the events of that day constituted an isolated event, as they are treated in the file of the Human Rights Ombudsman's Office. Rather, the case also involves a succession of intimidatory acts and harassment carried out after February 25, 1993 against the victim. This series of events was proven by the petitioners and, although the Government denies these facts, it has not provided evidence which would support its petition.

112. Even if the Commission did not conclude that the acts committed against Mr. Gómez López were committed by State agents, the Government in its response also recognizes its deficiency in ensuring the safety and physical integrity in this case to the same degree it acts deficiently in relation to all crimes committed against the State's inhabitants. With this statement, the Government deprives the citizens of Guatemala of their right to have their government ensure their safety and physical integrity. Specifically, in relation to this case, the Government admits its responsibility for having failed to prevent and ensure the human rights of Mr. Gómez López, thereby incurring international responsibility for the State of

Guatemala. (I/A Court H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 172.)

113. In relation to the recommendation of the Commission whereby the State is asked to "[u]ndertake an immediate, impartial, and effective investigation of the facts set forth in the petition, to identify the responsible parties and punish them in accordance with the law," the Government respond that it is continuing with its investigations. The Government notes that it has not been able to obtain the cooperation of the victims which would be required to bring to a positive conclusion the investigation and thus requests that the Commission accepts as fulfilled this recommendation.

114. In relation to the recommendation of the Commission that the Government of Guatemala "[u]ndertake the actions necessary to determine the responsibilities for and sanction the deficiencies and delays in the judicial investigations carried out in the case of Carlos Ranferí Gómez López," the Government responded as follows:

The Government of Guatemala believes that the criteria of the Commission applied in suggesting this recommendation are very subjective given that deficiency and delay in obtaining positive results in an investigation cannot be analyzed looking only at time factors but rather one must employ a serious analysis of the case, including the circumstances in which the facts arose, physical evidence, testimony and other elements which would lead to legal certainty in determining responsibility in the case, regardless of whether this analysis takes a significant amount of time.

115. The State of Guatemala may not avoid international responsibility arguing that the case continues to be processed but that it has been difficult to continue because of the lack of cooperation of the victim. The Commission has already concluded that the proceedings in this case were deficient and the Government has not provided information establishing otherwise. The State of Guatemala is reminded that the obligation to ensure the rights recognized in the Convention consists of the obligation to act; to initiate the necessary investigations and processes and to continue with them with due diligence and with or without the assistance of the victims, because the obligation to ensure is an independent legal obligation which, by its nature, is nondelegable and unrenounceable.

116. The Commission accepts that the gathering of evidence tending to establish the commission of a crime and the determination of responsibility for that crime depend on many factors. However, time is a determining element. Among other things, proceedings carried out in a timely manner produce legal certainty and allow the conservation of evidence which if not gathered in a timely a manner might be lost or destroyed. In extreme cases, if proceedings are allowed to extend indefinitely, impunity results. Thus, the fact that the State of Guatemala nowhere in

its report provides information about advances in the investigations in this case allows the Commission to conclude that time continues to pass in this case while the crime committed against Mr. Gómez López remains unpunished.

117. The Commission considers that the State has not shown in its response to the Article 50 report that it has complied with the central recommendations made by the Commission for the resolution of the situation under examination.

Therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

CONCLUDES:

118. On the basis of the information and the observations set out in this report and taking into consideration the observations submitted by the State of Guatemala in relation to Report 6/96:

- a. That the State of Guatemala is responsible for violations of the human rights of Carlos Ranferí Gómez López, to life, personal integrity, a fair trial, freedom of association, freedom of movement and residence and judicial protection, all of which are guaranteed, respectively, in Articles 4, 5, 8, 13, 16, 22 and 25 of the American Convention on Human Rights.
- b. That the State of Guatemala has not fulfilled its obligations set out in Article 1 of the American Convention, to respect the rights recognized therein and to guarantee their full and free exercise.

RECOMMENDS:

119. The Commission recommends to the State of Guatemala that it:

- a. Undertake an immediate, impartial, and effective investigation of the facts set forth in the petition, to identify the responsible parties and punish them in accordance with the law.
- b. Make restitution for the consequences of the rights violated, including adequate compensation to Carlos Ranferí Gómez López for the damages suffered.

120. To publish this report, pursuant to Article 48 of the Commission's Regulations and Article 51.3 of the Convention, because the Government of Guatemala did not adopt measures to correct the situation denounced within the time period.