

ORGANIZATION OF AMERICAN STATES

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

*APPLICATION TO THE INTER-AMERICAN COURT OF HUMAN RIGHTS
AGAINST THE REPUBLIC OF GUATEMALA
CASE No. 11,333 - JORGE CARPIO NICOLLE ET AL.*

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APPLICATION OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
TO THE INTER-AMERICAN COURT OF HUMAN RIGHTS
IN CASE No. 11,333 - JORGE CARPIO NICOLLE ET AL.
AGAINST THE REPUBLIC OF GUATEMALA

1. The Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") submits to the Inter-American Court of Human Rights (hereinafter "the Honorable Court" or "the Court") an application against the Guatemalan State (hereinafter "the State" or "the Guatemalan State") pursuant to Article 51 of the American Convention on Human Rights (hereinafter "the American Convention"). The application addresses the arbitrary execution of Jorge Carpio Nicolle, Juan Vicente Villacorta, Alejandro Avila Guzmán, and Rigoberto Rivas González; and the violation of the right to humane treatment of the minor Sidney Shaw (hereinafter "the victims"), in events that took place on July 3, 1993, in the department of Quiché, jurisdiction of the municipality of Chichicastenango, with which the Guatemalan State violated the human rights enshrined in articles 4, 5, 8, 13, 19, and 25 of the American Convention, in relation to Article 1(1) of the same Convention.

2. Mr. Jorge Carpio Nicolle was a well-known Guatemalan journalist, founder and director of the daily newspaper El Gráfico. In addition, he was a politician, and as such participated in the founding, in 1983, of the Unión del Centro Nacional (UCN) party, of which he was the secretary general when he was executed. He was a candidate for the 1990 presidential elections in Guatemala, representing his party, but did not win. Nonetheless, he emerged as the politician most likely to win the presidency in the subsequent elections. As a journalist and politician, he also firmly and openly condemned the violent and arbitrary acts committed by the Army and the successive governments. He staunchly opposed the *autogolpe* by Jorge Serrano, carried out on May 25, 1993, and subsequently he and the deputies from his party in Congress rejected the adoption of amnesty laws that informally began to circulate on June 5, 1993, which sought to give an amnesty to the persons responsible for and to the masterminds and direct perpetrators of the *autogolpe*. One month later, during a working tour of the departments of Sololá, Huehuetenango, and Quiché, the top political leader of the UCN and his delegation was surrounded by more than 15 armed men near the place called "Molino El Tesoro," in the municipality of Chichicastenango, Quiché, and after identifying him shot him at point-blank range. In the attack, Juan Vicente Villacorta, Alejandro Avila Guzmán, and Rigoberto Rivas González were also killed, and Sidney Shaw was wounded. Some hours later, Jorge Carpio Nicolle died.

3. The criminal proceedings into the assassination of Jorge Carpio Nicolle and those who were accompanying him were affected by a series of irregularities, as regards both the obtaining and weighing of the evidence. The only person tried by the Guatemalan authorities was convicted by the trial court and absolved on appeal. More than 10 years after the extrajudicial execution of Jorge Carpio Nicolle and his companions, the crime has gone unpunished.

4. Pursuant to Article 33 of the Rules of Procedure of the Honorable Court, the Commission attaches to this application a copy of *Report 27/03*, prepared pursuant to Article 50 of the American Convention.¹ This Report was adopted by the Commission on March 4, 2003, and transmitted to the Illustrious State on March 13, 2003; the State was given two months to adopt the recommendations contained therein.² As that period expired without, in the Commission's view, the Illustrious State having adopted the recommendations in a satisfactory manner, pursuant to Article 51(1) of the American Convention the IACHR has decided to submit the matter to the contentious jurisdiction of the Honorable Court.

I. REPRESENTATION

5. In keeping with articles 22 and 33 of the Rules of Procedure of the Court, the Commission has designated Commissioner Susana Villarán and IACHR Executive Secretary Santiago Canton as its delegates in this case. Attorneys Lisa Yagel and María Claudia Pulido, senior specialists with the Executive Secretariat of the IACHR, have been designated to serve as legal advisers.

II. PURPOSE

6. The purpose of this application is to request the Honorable Court to find and declare that:

a. The Guatemalan State is responsible for the violation of the right to life of Jorge Carpio Nicolle, Juan Vicente Villacorta, Alejandro Avila Guzmán, and Rigoberto Rivas, and the right to humane treatment of Sidney Shaw, protected at articles 4 and 5, respectively, in the attack committed on July 3, 1993, by members of the Civil Defense Patrols (PAC: Patrullas de Autodefensa Civil) of San Pedro Jocopilas, in which the first four lost their lives and the last was wounded.

b. The Guatemalan State violated, to the detriment of Sidney Shaw, his right to receive special measures of protection, enshrined in Article 19 of the American Convention on Human Rights, in conjunction with the provisions of Article 1(1) thereof.

c. The Guatemalan State is responsible for violating the right to judicial guarantees enshrined at Article 8 of the American Convention by virtue of the irregularities committed by the judicial authorities during the processing the criminal case for the homicide of Jorge Carpio Nicolle, Juan Vicente Villacorta, Alejandro Avila Guzmán, and Rigoberto Rivas, and bodily injuries inflicted on Sidney Shaw.

d. The Guatemalan State is responsible for violating the right to effective judicial protection, enshrined in Article 25 of the American Convention, as well as breaching the general obligation to respect the rights, provided for at Article 1(1) of the

¹ See, Report of the Inter-American Commission on Human Rights No. 27/03 of March 13, 2003 - Case 11,333 Jorge Carpio Nicolle, Guatemala, Attachment 1.

² See, note of transmittal of Report No. 27/03 to the Guatemalan State, of March 12, 2003, which was sent on March 13, 2003, as appears in the attached certificate of transmittal. Attachment 2.

same instrument, considering that the extrajudicial execution of Jorge Carpio Nicolle, Juan Vicente Villacorta, Alejandro Avila Guzmán, and Rigoberto Rivas remains in impunity to this day.

e. The Guatemalan State is responsible for violating the right to freedom of expression enshrined in Article 13 of the American Convention, since the assassination of Jorge Carpio Nicolle was aimed at silencing the press in its role as critic, and in that the failure to investigate and criminally sanction the direct perpetrators and masterminds of the assassination of Jorge Carpio Nicolle, in keeping with Guatemalan legislation and domestic procedures, entails a violation of the right to publicly and freely inform and express oneself through the press.

III. JURISDICTION OF THE COURT

7. The Honorable Court has jurisdiction to take cognizance of the instant case considering that the Republic of Guatemala ratified the American Convention on Human Rights on May 25, 1978, and accepted the contentious jurisdiction of the Honorable Court on March 9, 1987; and inasmuch as the events referred to in this application took place after that date.

8. Under Article 62(3) of the American Convention, the Honorable Court has jurisdiction to hear all cases concerning the interpretation and application of the provisions of the Convention that are submitted to it, provided that the States parties to the case recognize or have recognized such jurisdiction.

IV. PROCESSING BY THE COMMISSION

9. On July 12, 1994, the Commission received a complaint submitted by "Mrs. Marta Arrivillaga de Carpio, Mrs. Karen Fischer de Carpio, the Human Rights Office of the Archdiocese of Guatemala City, the Center for Justice and International Law, Human Rights Watch/Americas, and the International Human Rights Law Group against the Republic of Guatemala for the alleged violation of rights enshrined in the American Convention. On July 12, 1994, the Commission, in keeping with the Regulations in force at that time, opened case 11,333, and on July 29, 1994, and transmitted the pertinent parts of the complaint to the Guatemalan State, requesting that it provide information on the facts alleged within 90 days. On November 2, 1994, the State responded to the request for information through a document that was forwarded to the petitioners on November 10, 1994; they were given 45 days to present their observations on the State's answer. During the processing of the case before the Commission, the petitioners continued to submit information from time to time, which was duly forwarded to the State, applying the principle of contradiction.³

10. By communication of August 27, 1996, the Commission addressed the petitioners and the State, expressing interest in seeing the case addressed through a friendly settlement. On that occasion, it gave the parties 30 days to state their views in

³ See IACHR, Report on the Merits 27/03, Chapter on "Trámite ante la Comisión" ("Processing by the Commission"), Attachment 1.

this respect. On September 27, 1996, the petitioners indicated to the Commission that they would be interested in participating in such an effort to achieve a friendly settlement.

11. On October 6, 1999, the petitioners addressed the Commission, presenting a report on the case and requesting, on that occasion, that the Commission prepare the report on the merits under Article 50 of the American Convention. On October 19, 1999, the Commission addressed the State, sending the pertinent parts of the information submitted by the petitioners, and gave the State 30 days to present its views thereon. On November 30, 1999, the State presented the Commission a report on the additional information provided by the petitioners.

12. On October 30, 2001, the Commission, in keeping with its new Rules of Procedure, decided to open the case and to defer its decision on admissibility until the debate and decision on the merits, applying Article 37(3) of its Rules of Procedure.

13. On April 3, 2002, the petitioners addressed the Commission, providing additional documentation and information on the case. By communication of April 30, 2002, the Commission forwarded the State the pertinent parts of that information, and gave it two months to submit its additional observations on the merits, in keeping with Article 38(1) of the current Rules of Procedure of the IACHR. In a communication of July 12, 2002, the Guatemalan State presented its brief in response to the additional information provided by the petitioners in April.

14. On March 4, 2003, during its 117th regular session, the Commission, after analyzing the positions of the parties and considering the effort to reach a friendly settlement to have ended, adopted Report on Admissibility and the Merits No. 27/03, pursuant to Article 50 of the Convention. In its Report, the Commission ruled on the admissibility of the case, declared its competence to take cognizance of the merits issues, and concluded that it is admissible in keeping with the requirements of articles 46 and 47 of the American Convention. As for the merits, it concluded that:

By the extrajudicial execution of Jorge Carpio Nicolle, Juan Vicente Villacorta, Alejandro Avila Guzmán, and Rigoberto Rivas González, and the grievous injuries inflicted on Sidney Shaw by members of the Civil Defense Patrols of San Pedro Jocopilas on July 3, 1993, the Guatemalan State violated the rights to life and to humane treatment, the rights of the child, and the right to freedom of expression enshrined in articles 4, 5, 19, and 13 of the American Convention, respectively.

In addition, that the Guatemalan State violated articles 8(1) and 25 of the American Convention on Human Rights, in conjunction with Article 1(1), to the detriment of Sidney Shaw and the next-of-kin of Jorge Carpio Nicolle, Juan Vicente Villacorta, Alejandro Avila Guzmán, and Rigoberto Rivas González.

15. Based on the foregoing conclusions, the IACHR made the following recommendations to the Illustrious Guatemalan State:

1. To carry out a thorough, impartial, and effective investigation into the facts alleged so as to prosecute and punish the perpetrators of the human rights violations committed to the detriment of Jorge Carpio Nicolle, Juan Vicente Villacorta, Alejandro Avila Guzmán, Rigoberto Rivas González, and Sidney Shaw.

2. To adopt the measures necessary so that Sidney Shaw and the next-of-kin of Jorge Carpio Nicolle, Juan Vicente Villacorta, Alejandro Avila Guzmán, and Rigoberto Rivas González may receive adequate and prompt reparation for the violations established herein.

3. To adopt the measures necessary to prevent similar events from occurring in the future, in keeping with the duty of prevention and the obligation to ensure the fundamental rights recognized in the American Convention.

16. On March 13, 2003, the Commission forwarded the State confidential report No. 27/03, and asked that the State inform the Commission within two months from the transmittal of the note on the measures adopted to comply with the Commission's recommendations. The State did not provide information on compliance with the Commission's recommendations.

17. On March 13, 2003, the Commission, pursuant to Article 43(3) of its Rules of Procedure, notified the petitioners that the report had been adopted and was being transmitted to the State, and were asked to present their position regarding referral of the case to the Court within one month.

18. On April 11, 2003, the petitioners provided the Commission additional information, in keeping with Article 43(3) of the Convention, in response to the request of March 13, 2003, in which they express their interest in the case being submitted to the Honorable Court.

19. On June 10, 2003, the Commission decided to submit the present case to the Honorable Inter-American Court; in so deciding, it took into consideration the lack of an answer by the State on compliance with the recommendations by the Guatemalan State, as well as the factors indicated in Article 44(2) of the Commission's Rules of Procedure.

Provisional Measures

20. On June 1, 1995, at the initiative of the petitioners, and considering the threats and acts of intimidation directed at Marta Arrivillaga de Carpio, Karen Fischer, Mario López Arrivillaga, and Angel Isidro Girón Girón, who witnessed the assassination, and Abraham Méndez García, the first prosecutor in charge of investigating the Carpio case domestically, the Commission requested that the Inter-American Court of Human Rights adopt provisional measures on their behalf.

21. In a resolution of June 4, 1995, the President of the Inter-American Court decided to request that the Government of Guatemala adopt urgent measures to protect the life and integrity of the persons mentioned. Later, on July 26, 1994, the President of the Court included, as a beneficiary of those measures, Mrs. Lorraine Marie Fischer Pivaral, the sister of Mrs. Karen Fischer, who was also being followed and subjected to constant threats.

22. On September 19, 1995, the Inter-American Court decided to affirm the measures adopted by its President. Nonetheless, later, in a resolution of June 19, 1998, based on the change in circumstances, the Inter-American Court decided to lift the provisional measures on behalf of Mario López Arrivillaga, Angel Isidro Girón Girón,

Abraham Méndez García, and Lorraine Marie Fischer Pivaral, leaving them in place only for Marta Arrivillaga de Carpio and Karen Fischer. Those measures remain in effect to this day.

V. STATEMENT OF THE FACTS

A. Context

23. In Guatemala, from 1962 to 1996, the internal armed conflict took a tremendous human, material, institutional, and moral toll. It is estimated that over 200,000 persons were arbitrarily executed or forcibly disappeared during the period, as a result of the political violence.⁴

24. There were many causes of the armed conflict. The CEH found that the

... parallel phenomena, such as structural injustice, the closing of political spaces, racism, the increasing exclusionary and anti-democratic nature of institutions, as well as the reluctance to promote substantive reforms that could have reduced structural conflicts, are the underlying factors which determined the origin and subsequent outbreak of the armed confrontation.⁵

25. The CEH concluded that the forces of the State and paramilitary groups related to them were responsible for 93% of the violations documented in its investigation, including 92% of the arbitrary executions and 91% of the forced disappearances. In addition, the CEH attributed 3% of the violations recorded to the insurgent armed groups⁶, and with respect to the remaining 4%, it was not possible to collect information on the basis of which to attribute the violation to a given sector.

26. In 1990, the process of peace negotiations began in Guatemala; it culminated in 1996. This process was aimed at ending the violent conflict that had continued for more than 34 years. The parties, the Government of the Republic of Guatemala and the URNG, with the participation of a broad Assembly of Civil Society, signed 12 agreements during that period.⁷

⁴ In its work to document the situation, the Comisión de Esclarecimiento Histórico (CEH: Commission for Historical Clarification, also known as Guatemala Truth Commission) recorded 42,275 victims of acts of violence associated with the armed confrontation. Of these 23,671 were arbitrarily executed and 6,159 were victims of forced disappearance. CEH, *Memoria del Silencio*, Tome V, Conclusiones y Recomendaciones, p. 21.

⁵ CEH, *Memoria del Silencio*, Tome V, Conclusiones y Recomendaciones, p. 24. (English translation from: <<http://shr.aaas.org/guatemala/ceh/report/english/conc1.html>>.)

⁶ The CEH applied the principles common to international human rights law and international humanitarian law to the acts of violence committed by the guerrillas, so as to accord equal treatment to the parties. CEH, Tome I, p. 47.

⁷ Framework agreement for resumption of negotiations between the Government of Guatemala and the URNG (January 1994); General agreement on human rights (March 1994); Agreement on the resettlement of the population uprooted by the armed conflict (June 1994); Agreement on the establishment of the commission for the historical clarification of the human rights violations and acts of violence that have caused suffering to the Guatemalan population (June 1994); Agreement on the identity and rights of the indigenous peoples (March 1995); Agreement on socioeconomic and agricultural conditions (May 1996); Agreement on strengthening civilian government and defining the role of the military in a democratic society (September 1996); Agreement on the final ceasefire (December 1996); Agreement on reform of the constitution and reform of the electoral system (December 1996); Agreement on reintegration of the URNG into legality (December 1996); Agreement on the timeline for implementation, compliance, and verification of the peace agreements (December 1996); Agreement on a firm and lasting peace (December 1996).

27. In 1993, when the events in question in the instant case took place, the peace negotiations had stagnated and receded, accordingly, the violence of the armed conflict, albeit in the context of peace negotiations, continued in Guatemala through the actions of structures created for counter-insurgency, such as the Patrullas de Autodefensa Civil (PAC: Civil Defense Patrols) or Voluntary Defense Committees, which made their presence felt in attacks on the civilian population, or used their power as armed groups to silence the opposition.⁸

28. In 1993, the democratic transition in Guatemala suffered a harsh blow when then-President Jorge Serrano Elías decided to assume full public power, in an event that had a major impact on Guatemala's political-institutional life. On May 25, 1993, President Jorge Serrano Elías announced to the Guatemalan people that he was dissolving the Congress of the Republic, the Supreme Court of Justice, and the Constitutional Court, and suspending the acting Attorney General. The National Police surrounded the private residences of the presidents of the Supreme Court, the Congress of the Republic, and the Human Rights Ombudsman. On that same date, with the endorsement of the Minister of Interior, President Serrano Elías issued a decree on "Temporary Rules of Government" in which he ordered the suspension of fundamental rights provided for in the Constitution of Guatemala. In addition, in practice, censorship was imposed on the radio, television, and written press.

29. The Commission has received information indicating that as of June 5, 1993, three amnesty bills were proposed informally in the National Congress that would benefit the perpetrators, accomplices, and aiders and abettors of the *autogolpe* of May 25.⁹

B. Role of Jorge Carpio Nicolle in relation to the *autogolpe* and the amnesty bills

30. Jorge Carpio Nicolle was a very well-known journalist and politician,¹⁰ with more than 30 years experience in the field of journalism when he died. He began his career as a sports journalist, but soon thereafter went to work in other areas. In 1963, he founded the newspaper El Gráfico del Jueves, which later became the daily El Gráfico, of which he was the director-general until his death.¹¹ El Gráfico became an important

⁸ See Human Rights Office of the Archdiocese of Guatemala, Informe Anual 1993, pp. 1-8. Attachment 12.

⁹ According to the statement by Mrs. Karen Fischer de Carpio, who witnessed the events, as she was Jorge Carpio Nicolle's private secretary at that time, three amnesty bills were circulating in the Congress: A general one for all political crimes and crimes related to political crimes, to benefit the perpetrators, accomplices, and aiders and abettors to the *autogolpe* of May 25, the perpetrators of political crimes, and the perpetrators of corrupt acts. This bill was retroactive and declared the dismissal of trials already begun; a second one that indicated that the amnesty would not apply to crimes for political purposes, if they had been committed against the life, safety, integrity, and freedom of persons; and a third one, which specified that the amnesty would be applicable only to the perpetrators, accomplices, and aiders and abettors of political crimes and crimes related to political crimes committed on occasion of the May 25, 1993, coup d'état. See Attachment No. 3.

¹⁰ On Jorge Carpio Nicolle as politician and journalist, see the documents and press clippings that appear in Attachment 4.

¹¹ In addition to his position with El Gráfico, Carpio held other important positions related to journalism over the years. In the 1970s, he directed an evening paper called La Tarde, whose editorial line was similar to that of El Gráfico. When that newspaper closed, he founded and was Director-General of another morning paper, La Razón, a daily newspaper with analysis. He also held leadership posts in several Guatemalan and international journalists' associations, including: the Federación de Medios Publicitarios de Centroamérica y Panamá (FEMECAP) (1974-1975); the Asociación de Medios

newspaper, known for its reliable and critical information on social, economic, and political issues in Guatemala.¹²

31. On July 14, 1983, Jorge Carpio founded the Unión del Centro Nacional political party (UCN), in response to the years of terror, repression, violence, and economic and social chaos, as a centrist political option.¹³ In 1985, Jorge Carpio competed in the first round of the general elections, finishing in second place; in the second round, the UCN consolidated its position as the leading political force in the opposition to the new government. Later, as a presidential candidate for the UCN, Carpio came in first place in the first round of the 1990 general elections. From that moment until the date of his death, he served as the secretary-general of this party, which had 40 deputies in the Guatemalan Congress, i.e. 34.48% of the members.

32. As director-general of El Gráfico, Carpio expressed his own political ideas as well as those of his political party, the Unión del Centro Nacional, through the newspaper.¹⁴ El Gráfico responded critically to the *autogolpe*. The next day, the front page featured the headline: "Decisión presidencial: restringe garantías" ("Presidential decision: Restricts guarantees").¹⁵ That issue of the newspaper contained numerous articles and reports on the events as well as the criticisms and concerns of several individuals and groups. In particular, two articles clearly presented Jorge Carpio's critical position.¹⁶

33. This issue of the paper was censored; most of the copies were seized by a combined unit of the National Police and Armed Forces. According to the petitioners, even so, 10,000 copies circulated in the southern coastal region. For the next three days the newspaper was not published. Then, it was published with the sections reserved for editorials and political cartoons blank, to protest the suspension of democratic guarantees.

34. In response to the restriction on fundamental rights after the *autogolpe*, and to the *de facto* censorship of the media, the Unión de Centro Nacional (UCN) issued a communiqué in which it condemned the *autogolpe*, rejecting the break with the constitutional order. As a result of those events, during those and subsequent days UCN members were subjected to intimidation by the police and military. In addition, the

Publicitarios de Guatemala (AMPG) (1975-1976); the Federación de Medios de Comunicación de Centroamérica (1979-1982); the Cámara Guatemalteca de Periodismo (1980-1981); the Asociación de Periódicos de Centroamérica (APCA); and the Federación de Medios (FEMECA) (1983).

¹² See editorials written by Jorge Carpio for El Gráfico including: "Que se respete, tan siquiera, la vida de nuestros niños" (March 20, 1982); "No más matanza de niños! Debe ser el clamor general" (May 20, 1982); "Incremento de la violencia en el altiplano indígena" (June 19, 1982); "La libertad de prensa y democracia" (June 5, 1982), "La estructura social Guatemalteca" (April 20, 1982); "Descentralizar es democratizar" (April 22, 1982); "Necesitamos seguridad, confianza, y un nuevo modelo Político Nacional" (June 5, 1982). These editorials were reproduced along with other writings of by Jorge Carpio in the book "Derechos Humanos y Democracia," No. 2, 1994, by the Asociación de Investigación y Estudios Sociales de Guatemala (ASIES). Attachment 5.

¹³ See, Jorge Carpio, Plan Carpio, Pacto Nacional la Ideología Centrista, p. 4, Attachment 4.

¹⁴ See, "Jorge Carpio y UCN se pronuncian," El Gráfico, May 26, 1993. Attachment 6.

¹⁵ *Id.*

¹⁶ *Id.*

petitioners stated that Jorge Carpio constantly received all kinds of pressures to support the *autogolpe*.

35. As secretary-general of the UCN, Carpio Nicolle received a series of invitations from President Serrano to give his political support to the *de facto* government. According to the petitioners, both Carpio Nicolle and the deputies from his party refused such requests. Given the lack of political support, Jorge Serrano fled the country, obeying a declaration by the Constitutional Court. On June 6, 1993, the former Human Rights Ombudsman, Ramiro de León Carpio, a first cousin of Mr. Jorge Carpio Nicolle, was sworn in as President of the Republic of Guatemala, which meant finally there had been a return to the rule of law.

36. In terms of the amnesty bills, on June 8, a communiqué was published in *El Gráfico* in the name of Carpio Nicolle, as secretary-general of the party and in representation of the deputies of his party, expressing clear opposition to the possibility of granting an amnesty. In addition, on June 15, a note was published in the same newspaper entitled "UCN is against the Amnesty." According to the information provided by the petitioners and not controverted by the State, within the National Assembly the UCN deputies, consistent with the decision of their secretary-general, rejected the amnesty bills, which were never formally taken up by the Guatemalan Congress.¹⁷

C. Facts

37. In the following paragraphs, the Commission sets forth its conclusions as to the facts of the case, to wit:

38. First, it is fully established that on July 3, 1993, at a place known as "Molino del Tesoro," located at kilometer 141 of the route to Chichicastenango, El Quiché, the caravan in which the campaign delegation of the UCN party was traveling, including its secretary-general, Jorge Carpio Nicolle, was intercepted by a group of more than 15 heavily armed men, which, once they identified Jorge Carpio Nicolle, shot at him at point-blank range, inflicting serious wounds that caused his subsequent death.¹⁸

Through the glass on the right side I saw a large number of men appear, coming forward in a wave, bearing arms, and the flashes, it gave me the impression that they all had a flash in one hand and a weapon, all of those persons were armed, they all had new black balaclavas, of finely-woven wool, and layers of thick but transparent nylon, yellow and celeste in color ... I saw that in front of the vehicle there were also several men who were lighting up the area with the flashes, and others who also appeared from the left side of the minibus, they threatened us to get out ... they opened the sliding door of the center of the minibus where Mr. Jorge Carpio Nicolle was, they recognized him immediately and said, "you are Jorge Carpio, we're going to break you."¹⁹

¹⁷ The UCN deputies later described, in court and in the case on the assassination of Jorge Carpio Nicolle, the behind-the-scenes version of that debate, including the lobbying and the pressures to which they were subjected to pass that law. See the testimony of Manuel Eduardo Conde Orellana, Jorge Skinner Klee, Juan Ayerdi Aguilar, Héctor José Luna Trocoli, Fernando Linares Beltranena, and Alfredo Skinner Klee Arenales, which appears in Attachment 7.

¹⁸ According to the coroner's report that appears in the record, the cause of death of Jorge Carpio was the "wound penetrating his abdomen produced by gunshot," and hypovolemic shock. Attachment 8.

¹⁹ Statement by Mrs. Marta Elena Arrivillaga de Carpio to the Tenth Justice of Peace of the Criminal Branch, July 16, 1993. Attachment 9.

39. Also assassinated was Juan Vicente Villacorta, who was traveling in the same vehicle with Jorge Carpio, his wife Marta de Carpio, Mario Arturo López, Sidney Shaw Arrivillaga, and the driver, Ricardo San Pedro; and Alejandro Avila Guzmán and Rigoberto Rivas, who were traveling in a Mitsubishi pick-up, along with the minor Sidney Shaw, who was grievously wounded.²⁰ The above-named political leaders were traveling in two vehicles: a minibus that transported Jorge Carpio Nicolle, his wife Marta Arrivillaga, Sidney Shaw (father), Ricardo San Pedro, Mario López, and Juan Vicente Villacorta, and a twin-cabin pick-up truck occupied by Alejandro Avila, Rigoberto Rivas, and Sidney Shaw (son). At approximately 8:45 p.m., near a place called "Molino El Tesoro," in the municipality of Chichicastenango, Quiché, the caravan of political activists was intercepted by a group of 15 to 30 unidentified civil patrol members with balaclavas, wearing rain ponchos, and bearing weapons of various caliber.

40. According to the statement by Marta de Carpio, while one group of the assailants was in a discussion with the persons riding in the minibus, another surrounded the pick-up truck and forced the persons riding in it to get out; they executed them, with the exception of the minor Sidney Shaw, who was grievously wounded by gunshot fire. The group of assailants who surrounded the minibus in which Jorge Carpio was traveling took money in cash (1,500 quetzals) and some other objects of very little value (two knives, a watch of little value, a ring, and eyeglasses); nonetheless, they left behind the objects of value that the occupants of that vehicle had on their persons, such as the wallet and a pair of very valuable gold rings of Mrs. de Carpio. According to her statements, one of the assailants exclaimed: "You're Jorge Carpio, we're going to kill you."²¹ That was when the apparent head of the group gave the order to kill him, and the men fired three shots that wounded him in the supra-pubic region and in the left gluteus, which caused his death. Mrs. de Carpio was not wounded.

41. The Commission will show before the Court that Jorge Carpio Nicolle and his delegation were attacked by a group of men who belonged to the Civil Defense Patrol of San Pedro Jocopilas, which operated with the acquiescence of the Guatemalan Army, which had a military detachment at San Pedro Chichicastenango. The Commission will also show that the PAC in San Pedro Jocopilas answered to the command of the Guatemalan Army.

42. In terms of the investigation of the facts, the Commission seeks to establish before the Honorable Court that the preliminary inquiry into the events was carried out by the Justice of the Peace of the Municipality of Chichicastenango, in El Quiché, who performed a judicial examination on the day the events occurred, July 3, 1993.

43. On July 6 and 7, 1993, 13 persons who were members of a gang of common criminals known as the "Churuneles," who were accused of perpetrating the deeds, were arrested. The members of the criminal gang were released; however, even though there was no evidence whatsoever incriminating them, Marcelino Tuy Taniel,

²⁰ *Id.*

²¹ *Id.*

Nazario Tuy Taniel, Tomás Pérez, and Jesús Cuc Churunel were detained for 10 months for the crimes of aggravated robbery, bearing arms, and possession and manufacture of explosive materials whose use is restricted by law to the Army, under case No. 1156-93.

44. On July 7, 1993, the spokesman for the National Police, Darwin de León Palencia, was in an auto accident when traveling from San Pedro de Chichicastenango, in which he lost several of the items collected at the crime scene, including a video cassette, a black leather jacket, a watch, and other objects that he said he did not remember. In his statement he indicated that on entering the hospital he delivered the evidence to the agent on duty, asking that he take them to the General Directorate of the National Police, and that he never found out what happened to them.²²

45. In official note No. 394 of August 13, 1993, the police commissioner Ventura Alejandro García Mejía informed the Justice of the Peace that one of his men found a black backpack that contained several objects for personal use was near the crime scene, as well as nine shell casings of different caliber and three slugs. According to the police report, those items were provided to the Justice of the Peace of Chichicastenango, but in practice they were never introduced into evidence in the case.

46. On January 19, 1994, the office of the judiciary where the record in the Carpio case was supposedly located, i.e. the Archive at Santa Cruz de El Quiché, was set afire. It has been shown that the fire was no accident, for remains of Molotov cocktails were found amidst the ruins. Apparently, the record disappeared for 10 days.

47. The Justice of the Peace of San Pedro Jocopilas, Ernesto Solís Chávez, reported the threats to which he was subjected by the PAC and asked to be transferred to another jurisdiction. The proceeding was heard by the First Criminal Court of First Instance of El Quiché; it was identified as case number 74-93. By recusal sua sponte submitted by the judge entrusted with the case, on May 14, 1994, the record was forwarded to the Fifth Criminal Court of First Instance of Guatemala City.

48. In May 1994, the Public Ministry informed the Fifth Criminal Court of First Instance as to the existence of the report prepared by the Department of Criminological Investigations of the National Police, which was introduced in the criminal proceeding in June 1994 by Attorney General Ramsés Cuestas Gómez. The evidence collected by the Ministry of Interior and the National Police indicated that 10 persons, most of them members of the Civil Defense Patrols, were responsible for the death of Jorge Carpio Nicolle, based on the ballistics tests and witness statements. In that report, Juan Patzán is accused of being the material perpetrator of the execution of Carpio Nicolle; at the time of his arrest for other acts a weapon was seized from him which, according to the ballistics report, was used in the crime. The ballistics study, signed by expert Oscar Abel García, established that the shell casings found at the crime scene were fired by the weapon seized from Acabal Patzán when Francisco Ajmac and Juan Patzán were murdered.²³

²² Complaint submitted by the Public Ministry prosecutor to MINUGUA on February 8, 1995. Attachment 10.

²³ *Id.*, p. 10. See testimony of Oscar Abel García, a copy of which appears in Attachment 7.

49. Based on the police investigation, it was determined that the accused are the following persons who belonged to the PAC: Francisco Ixcoy López (chief of the PAC), Carlos López Girón (former governor and candidate for deputy), Juan Gómez Lucas, Nicolás Us, Juan Chaperón Lajpop, Isidro Acabal, Lorenzo Mendoza Ordóñez, Juan Acabal Patzán, Moisés Tuyun, Pedro Chaperon Lajpop (mayor of San Pedro Jocopilas), and Francisco Grave Tum. Carlos López, Pedro Chaperón, and Francisco Ixcoy were arrested. The day of their arrest it was reported that the PAC of San Pedro Jocopilas had interrupted the Sunday mass to threaten the parish priest.²⁴ On June 6, the judge in the case released the detainees, adducing lack of evidence. The only patrol member who remained in detention throughout the proceeding was Juan Acabal Patzán.

50. On December 5, 1994, a public hearing was held in which charges were lodged against the accused for the assassination of four persons and the crime of grievous injury. The private accuser requested a change in the characterization of the crime committed against the minor Sidney Shaw to attempted murder.

51. On February 8, 1995, the Public Ministry prosecutor denounced to the United Nations Verification Mission that he has suffered harassment, intimidation, threats, and an assassination attempt due to his role in the proceedings in the Carpio case, as well as a series of irregularities committed within said proceedings, including the disappearance of a slug found inside the Mitsubishi vehicle in which Mr. Carpio Nicolle was traveling, the disappearance of the photographs of the autopsies of victims, and the disappearance of the evidence transported by the spokesman of the National Police.²⁵

52. On May 18, 1995, the Tenth Chamber of the Court of Appeals agreed to re-issue the provisional arrest order, thus characterizing the act as attempted murder, and ordered that the procedure be amended. Given that the resolution ignored all the new facts that came out during the period for receiving evidence, and continued considering the matter with references to common crime, both the private accuser and the Public Ministry appealed the ruling, and the private accuser filed a motion for clarification and amendment.²⁶

53. On August 9, 1995, the Fifth Criminal Court of First Instance dismissed the motion for clarification and amendment. Once the ruling of the Tenth Chamber was issued, the judge below, instead of implementing it with respect to amending the provisional detention order, ordered that a better ruling be handed down, and did not grant the parties new hearings to provide evidence in relation to the new characterization of the crime. In response, a motion of appeal was filed, and the Tenth Chamber of the Court of Appeals overruled the judge's decision and ordered that his action be brought into line with the corresponding procedural rules of law.²⁷

²⁴ United Nations, *Report by the Independent Expert, Mrs. Mónica Pinto, on the situation of human rights in Guatemala, submitted in accordance with Commission resolution 1995/51, E/CN.4/1996/15, December 5, 1995, para. 52. Attachment 11.*

²⁵ Complaint presented by the Public Ministry prosecutor to MINUGUA on February 8, 1995. Attachment 10.

²⁶ See copy of that judicial action, Attachment 20.

²⁷ See copy of that judicial action, Attachment 20.

54. On January 24, 1996, the First Criminal Court of First Instance issued a resolution with the new characterization of the crime and reiterated the arrest order against Marcelino and Nazario Tuy Taniel, Tomás Pérez Pérez, Jesús Cuc Churunel, and Francisco Ixcoy López, even though there was no evidence of responsibility whatsoever with respect to the first four.

55. On January 26, 1996, the interim judge who upon hearing the matter declared the amendment to the proceeding void, and who proceeded to carry out the steps that the order commanded be carried out, so as to produce a better ruling. That decision was appealed on March 5, 1996. The appeal was allowed, and it was agreed to continue the procedural activity from the detention of Juan Acabal Patzán.

56. On April 23, 1996, the prosecutor in the Carpio case recused the judge known as the *Juez Liquidador*, he was excused from continuing to hear the case, and the case was transferred to the Second Criminal Court of First Instance. On June 19, 1996, the prosecutor raised a doubt as to jurisdiction, and the case went to the Supreme Court of Justice.

57. On February 17, 1997, the second period for receiving evidence was decreed by the First Criminal Court of First Instance. On April 21, 1997, the corresponding public hearing was held, and on October 15, 1997, a judgment was handed down in which the First Criminal Court of First Instance decreed the absolute disqualification of the testimony of the eyewitnesses Marta Elena Arrivillaga Orantes de Carpio, Ricardo San Pedro, Sidney Collin, Sidney Shaw, Mario Arturo López, as well as Sonia Hernández and others, considering that they were from the offended party, and consequently were persons with an interest in the outcome; Marcelino Tuy Taniel and Nazario Tuy were absolved; and Juan Acabal Patzán was sentenced to 30 years imprisonment as the perpetrator of four crimes of murder in the persons of Jorge Carpio, Alejandro Guzmán, Juan Villacorta, and Rigoberto Rivas González, and of two crimes of murder in the persons of Francisco Ajmac Ixcoy and Juan Patzán Pérez, said procedure having been carried out as part of the same case.²⁸

58. On November 26, 1997, the Public Ministry appealed the judgment, as it ruled out the possibility of investigating the masterminds of the executions, and was silent as to the crimes of false testimony committed by the high-level commanders of the state security forces. The private accuser, in turn, presented an appeal pointing to a series of arbitrary acts committed in the course of the trial. In particular, it argued that even though on several occasions the name of the Army officer quartered in Chichicastenango who performed a search of the crime scene a half-hour after the facts was requested, it was never provided by the Army; that evidence and the slugs were lost; that evidentiary procedures were scheduled simultaneously in different parts of the country to the detriment of the right to defense; that false testimony was presented by Army officers, and that considerable evidence was rejected without any basis for doing so. On December 5, 1997, the private accuser presented a motion for clarification and amendment with respect to the judgment, seeking clarification of the imputability of Juan Acabal Patzán for four crimes; the disappearance of the slugs with which Carpio was killed; the arbitrary

²⁸ See copy of that judicial action, in Attachment 20.

manner in which the weapon with which he was killed was removed from the jurisdiction of Guatemala, which was acknowledged and accepted by expert Oscar Abel García Arroyo; and the failure to certify the crime of false testimony committed by the military officers indicated above.

59. On December 23, 1997, the private accuser was notified of the resolution by the First Criminal Judge of First Instance who ruled that Acabal Patzán was guilty of the crime of attempted murder in the case of Shaw Díaz.

60. On April 28, 1999, the Third Chamber of the Court of Appeals issued a judgment on appeal absolving Juan Acabal Patzán for lack of evidence and ordering his immediate release. The Public Ministry and the victims' next-of-kin filed a motion for cassation against that judgment. The Supreme Court of Justice, in a ruling of August 30, 1999, rejected the motion of cassation filed by the victims' next-of-kin.

VI. LEGAL ARGUMENTS

A. The Guatemalan State violated the rights to life and to humane treatment of Jorge Carpio Nicolle, Juan Vicente Villacorta, Alejandro Avila Guzmán, and Rigoberto Rivas González, and Sidney Shaw, enshrined in Articles 4 and 5 of the American Convention

61. Article 4(1) of the American Convention provides that "Every person has the right to have his life respected.... No one shall be arbitrarily deprived of his life." Article 5(1) of the same instrument provides: "Every person has the right to have his physical, mental, and moral integrity respected."

62. The right to life is of special importance as it is the essential predicate for the realization of all other rights. The right to life is fundamental within the system of guarantees of the American Convention, whose Article 27(2) enshrines it as one of those rights that cannot be suspended in case of war, public danger, or other threats to the independence or security of the States party.

63. Protection for this right has a dual dimension, insofar as it supposes, on the one hand, that no one can be arbitrarily deprived of life (negative obligation), while it simultaneously requires, on the other hand, that the States take all appropriate measures to protect and preserve the right to life.²⁹

64. As regards the right to life, the Inter-American Court has said:

The right to life is a fundamental human right, and the exercise of this right is essential for the exercise of all other human rights. If it is not respected, all rights lack meaning. Owing to the fundamental nature of the right to life, restrictive approaches to it are inadmissible. In essence, the fundamental right to life includes, not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence. States have the obligation to

²⁹ I/A Court H.R., *Gangaram Panday Case*, Judgment of January 21, 1994, para. 3. Dissenting opinion by Judges Picado Sotela, Aguiar Aranguren, and Cançado Trindade.

guarantee the creation of the conditions required in order that violations of this basic right do not occur and, in particular, the duty to prevent its agents from violating it.³⁰

65. The Commission notes first that under the case-law of the inter-American system of protection, in order to establish that there has been a violation of the rights enshrined in the Convention, one need not determine the guilt of the perpetrators or their intent, nor one must identify individually the agents to whom the violations are attributed. In the *Paniagua Morales* case, the Court expressly indicated that for the purpose of establishing the international responsibility of the State, it suffices to show that there has been support or tolerance by the public authorities of the breach of the rights recognized in the Convention; or that the State has failed to undertake the necessary activities, pursuant to its domestic law, to identify and, if appropriate, punish the perpetrators of such violations.³¹

66. As for the nature of the violation committed against Carpio Nicolle, in her report on the human rights situation in Guatemala, United Nations independent expert Mónica Pinto found in relation to the assassination of Jorge Carpio Nicolle that it should be "considered an extrajudicial execution, a sort of *de facto* death penalty."³² In her report Ms. Pinto took into consideration that the execution was carried out by 25 armed men covered with black ski masks who, according to the eyewitnesses, gave the order to "kill Carpio." That same conclusion was reached by the Human Rights Office of the Archdiocese of Guatemala City, which reported that Jorge Carpio Nicolle and the three persons accompanying him were executed by civil patrol members and military commissioners,³³ and indicated in its 1993 Annual Report that the Carpio case was a politically-motivated extrajudicial execution.³⁴ Based on the cases that the same Office monitored in 1993, it determined that political violence was carried out in response to a strategic plan, and it noted that one of the types of violence was taking place mainly in rural areas, with the civil patrol members as the main agents.³⁵

67. The Commission will now show that there are sufficient criteria for concluding that the members of the UCN delegation were victims of politically-motivated extrajudicial executions by members of the PAC of San Pedro Jocopilas, in particular, based on the following evidence:

68. In terms of the perpetrators responsible for the executions of Jorge Carpio and those who were accompanying him, the report by the Department of Criminological Investigations of the National Police dated May 25, 1994, submitted to the Fifth Criminal Judge of First Instance, by official note No. 2022-94, indicates that the executions of

³⁰ I/A Court H.R., *The Street-Children Case*, Judgment on the merits, November 19, 1999, para. 144.

³¹ I/A Court H.R., *Paniagua Morales Case*, Judgment on the merits, March 8, 1998, para. 91.

³² United Nations, *Informe de la Experta independiente, Sra. Mónica Pinto, sobre la situación de los derechos humanos en Guatemala, preparado de conformidad con la resolución 1993/88 de la Comisión*, E/CN.4/1994/10, January 20, 1994, para. 76. Attachment 11.

³³ Human Rights Office of the Archdiocese, *Informe Anual de 1994*, p. 21. Attachment 13.

³⁴ Human Rights Office of the Archdiocese, *Informe Anual de 1993*, p. 43. Attachment 12.

³⁵ Speech by Monsignor Juan Gerardi to the 50th Assembly of the United Nations Commission on Human Rights, Geneva, February 25, 1994. Attachment 14.

Jorge Carpio Nicolle, Juan Vicente Villacorta, Alejandro Avila Guzmán, and Rigoberto Rivas were carried out by a group of civilian defense patrol members made up of neighbors and residents of the municipality of San Pedro Jocopilas, department of El Quiché.

69. Based on that report, Nicolás Jax Us, Juan Gómez, Isidro Mendoza Acabal, Moisés Ayon Chanchavac, Juan Chaperón Lajpop, Juan Acabal Patzán, Lorenzo Mendoza Ordóñez, Francisco Grave Tun, Carlos López Girón, Francisco Ixcoy López, Pedro Chaperón Lajpop, and others, who were at the place where the events unfolded, bearing long- and short-range weapons, and traveling in three pick-up trucks, were responsible for the crimes.³⁶ In report no. 14 of September 1, 1993, classified as highly secret (*alto secreto*), the Police made a report of the interviews with 14 persons from the place, who indicated on the morning of September 3 Juan Gómez and Francisco Ixcoy, along with other individuals, left the municipal seat of San Pedro Jocopilas and carried out reconnaissance mission in the area where the UCN delegation was attacked; they reached the conclusion that Mr. Carpio's death "was pre-meditated."³⁷ In report No. 14, the Police indicated that the direct perpetrators of the executions had also participated in the assassinations of Cristóbal Sarat, Sebastián Morales, Cristóbal Tiu, and evangelical pastor Diego Velásquez. It also indicated that those individuals "have extorted residents of San Pedro Jocopilas, telling the victims that they are on the list of those who are going to be eliminated, on behalf of those who are at the top."³⁸

70. Furthermore, the Commission observes that in the public hearing of the criminal proceeding, held April 21, 1997, the Public Ministry prosecutor indicated that those responsible for the deeds were "not an isolated group of persons coming together to commit a crime, but a paramilitary group that came together to commit this type of action" and indicated that "near the place is a substation of the National Police at Chichicastenango and a military detachment, and at Los Encuentros, a short distance away, was another military patrol that remains there permanently," with which it was concluded that said paramilitary group "had military protection."³⁹

71. In addition, in a communication from the State of November 2, 1994, Francisco Ixcoy López, one of the persons accused in the police report and later by the Public Ministry, was identified as a chief of the Civil Defense Patrols.⁴⁰

72. The Civil Defense Patrols were created in the early 1980s as groups of civilians organized "coercively by the armed forces, which sought to isolate the guerrilla movement and control its communities." In April 1983, Executive Decree 222-83 recognized them legally through the creation of the Office of the National Chief for Coordination and Control of the Civil Defense Patrols. The PACs had as their main objectives organizing the civilian population against the guerrilla movements and securing

³⁶ Report by the Department of Criminological Investigations of the National Police, May 25, 1994, pp. 6 and 7. Attachment 15.

³⁷ Report No. 15 of September 5, 1993, of the National Civilian Police. Attachment 16.

³⁸ Report No. 14 of September 1, 1993, of the National Civilian Police. Attachment 16.

³⁹ Copy of the record of the public hearing of April 21, 1997, of the trial of Juan Acabal *et al.* Attachment 17.

⁴⁰ According to the statement by Mr. Rosalío Mejía Ixcoy before the judge in the case of 14 1997, Francisco Ixcoy López was commander general of the Civil Defense Patrols at the time of the occurrence. Attachment 7.

physical and psychological control over the population. The PACs also became a low-cost system for monitoring and repression that was not costly to either the Army or the State.

73. According to the information reported by the Archdiocesan Human Rights Office, in 1993 the PACs of San Pedro Jocopilas were known for committing abuses against the civil rights of the population in the region, in which they enjoyed sufficient political power to declare a curfew unilaterally, to demand pecuniary contributions to the patrol members, to take disciplinary measures and impose punishment, and to kidnap and torture local residents. In other words, the Voluntary Civilian Self-Defense Committees held local power in the communities, and in the specific case of San Pedro Jocopilas "the patrol members arrogated to themselves the right to impart justice, taking the law into their own hands," and were responsible for several assassinations for which their impunity was guaranteed.⁴¹

74. As regards the PAC, the Inter-American Court has established that in the early 1990s the civilian patrols operated in effect as State agents. In effect, in the *Blake Case*, the Court concluded that

the civil patrols enjoyed an institutional relationship with the Army, performed activities in support of the armed forces' functions, and, moreover, received resources, weapons, training and direct orders from the Guatemalan Army and operated under its supervision. A number of human rights violations, including summary and extrajudicial executions and forced disappearances of persons, have been attributed to those patrols.⁴²

75. In that case, the Court declared that the acquiescence of the Guatemalan State in the performance of activities involving enforcement and repression by the civil patrols allowed one to conclude that those patrols should be considered state agents, and, therefore, the acts they carried out should be imputable to the State.⁴³

76. In terms of the probative value of the police reports that determined that responsibility for the events lay with the members of the PAC of San Pedro Jocopilas, which were provided during the judicial investigation, the Commission notes that under the case-law of the Inter-American Court, such reports have value as indicia or circumstantial value.⁴⁴ The Commission observes that the report by the Department of Criminological Investigations of the National Police of Guatemala contains witness statements, identification of firearms, descriptions of places, vehicles, and events, which are sufficient, together with concurrent evidence, to allow one to form a well-founded conviction as to the facts.

77. The Commission confers equal evidentiary value on the following events which, taken together, offer sufficient basis to form a conviction as to how the events in question came about. First, the Commission observes that according to the information in

⁴¹ Human Rights Office of the Archdiocese, Informe Anual de 1993, pp. 348 and 351. Attachment 12.

⁴² I/A Court H.R., *Blake Case*, Judgment on the merits, January 24, 1998, para. 76.

⁴³ *Id.*, para. 78.

⁴⁴ I/A Court H.R., *The Street-Children Case*, Judgment on the merits, November 19, 1999, para. 70; and *Paniagua Morales et al. Case*, March 8, 1998, para. 81.

the record, Jorge Carpio, as well as several deputies from his party, and his daily newspaper El Gráfico, were subjected to warnings, pressures, harassment, and death threats due to their position on President Serrano's *autogolpe*, but in particular due to their public rejection of the amnesty bills.⁴⁵ The Commission considers those acts of harassment against Carpio and the deputies from his party; the failure of President Serrano's *autogolpe* and of the legislative initiative for amnesty – which were roundly rejected by the UCN from its top leadership; and the attack two weeks later on his party's delegation, in which Jorge Carpio and three of his followers were killed, as indicia that necessarily must be considered as a whole.

78. In this respect, the Commission has established that many of the selective extrajudicial executions perpetrated in the early 1990s were committed against victims chosen for their participation in social and political organizations or due to their position critical of governmental actions.⁴⁶ The Commission and other sources reported in due course, during this period, persistent campaigns of violence and intimidation against, among others, members of political parties and persons associated in some way with the political life of the country and journalists.⁴⁷ In many cases, the persons executed extrajudicially and/or persons close to them had been victims of prior threats.⁴⁸

79. Second, given that the series of incidents during the criminal proceeding had the sole purpose of obstructing the criminal investigation and ensuring impunity for the persons responsible for the criminal acts, the Commission considers that they are serious indicia that must necessarily be taken into account all together. In this regard, the Commission takes into consideration that prosecutor Abraham Méndez, in charge of the Carpio case, was constantly harassed, followed, and even physically assaulted, as well as the harassment of and threats made to witnesses and the Carpio family, which were not only reported by the independent expert of the United Nations, Mónica Pinto,⁴⁹ but which also gave rise to the resolutions on provisional measures adopted by the Honorable Court. In particular, the Commission considers that the assassination of police chief César Augusto Medina Mateo, who ordered the detention of the commanders and members of the PAC indicated as being the persons materially responsible for the execution of Jorge Carpio Nicolle and his companions, on October 12, 1994, as a grave indication of the participation of the civil defense groups in those executions. According to the information obtained by the Commission, Medina Mateo, who was chief of the police for the

⁴⁵ According to the information provided by the petitioners and not controverted by the State, in April 1993 the offices of the daily El Gráfico were under surveillance by a group of men wearing balaclavas who were heavily armed aboard two vehicles with polarized glass. Members of the UCN were subject to intimidation by police and military personnel. See the copies of the pages from Jorge Carpio Nicolle's appointment book corresponding to June 1, 3, and 5, 1993, provided by the petitioners to the IACHR, with the handwritten phrases "threats to deputies," "pressures against deputies," and "pressures for amnesty afternoon and night"; and of the anonymous letter directed to Carpio Nicolle weeks prior to his execution, in which he was warned that if he did not act cautiously, he could lose his life. Attachment 18.

⁴⁶ IACHR, Fourth Report on the Situation of Human Rights in Guatemala, pp. 41 and 42.

⁴⁷ IACHR, Annual Report 1990-91, pp. 482-83; *Informe CEH*, "Las Ejecuciones Arbitrarias," para. 308; Tomuschat Report 1991, paras. 117, 119. IACHR, Fourth Report on the Situation of Human Rights in Guatemala, pp. 87-88.

⁴⁸ *Id.*, paras. 224-236.

⁴⁹ United Nations, *Report by the Independent Expert, Mrs. Mónica Pinto, on the situation of human rights in Guatemala, submitted in accordance with Commission resolution 1995/51, E/CN.4/1996/15, December 5, 1995*, para. 64. Attachment 11.

department of El Quiché, had undertaken a forceful campaign to demilitarize the civilian security forces in that region.

80. In light of the foregoing, the Commission considers that there is sufficient evidence to conclude that members of the civil defense patrols (PAC) of San Pedro Jocopilas participated in the violent events in which Jorge Carpio Nicolle and the three persons accompanying him lost their lives, and in which the minor Sidney Shaw was wounded. Considering that in view of their creation, training, equipping, and operation, those Patrols can be considered state agents, the Commission concludes that through their action they triggered the international responsibility of the Guatemalan State, and hereby requests that the Honorable Court so declare. In addition, the Commission considers that said responsibility derives from the series of assassinations, threats, and acts of harassment and intimidation that have targeted judicial officers, witnesses, and the victims' next-of-kin, which, together with the manipulation and loss of evidence, have ensured impunity in this case.

81. Accordingly, based on the information provided by the parties during the processing of the case, the Commission concludes that the Guatemalan State is responsible for violating the right to life of Jorge Carpio Nicolle, Juan Vicente Villacorta, Alejandro Avila Guzmán, and Rigoberto Rivas, and the right to humane treatment of Sidney Shaw, protected by articles 4 and 5 of the American Convention, respectively.

B. The Guatemalan State violated the rights of the child to the detriment of Sidney Shaw (Article 19 of the American Convention)

82. Article 19 of the American Convention provides: "Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state."

83. Given the special situation of children, the American Convention imposes on the states an obligation to provide them special protection, which goes above and beyond the general obligation to respect the rights enshrined at Article 1(1), which, moreover, cannot be suspended under any circumstances, by mandate of Article 29 of the Convention.⁵⁰ Accordingly, international provisions⁵¹ and Article 19 of the Convention require that special measures be taken to prevent children from being victims of violence.⁵² In this respect, the Commission has noted:

⁵⁰ In this regard, in General Comment No. 17 on the rights of the child enshrined in Article 24 of the International Covenant on Civil and Political Rights, the Human Rights Committee indicated that said provision recognizes the right of all children, without any discrimination whatsoever, to the measures of protection that their condition as minors requires, from both their family and from society and the state; and it indicated that the application of this provision entails the adoption of special measures to protect children, in addition to the measures that the states must adopt under Article 2, to ensure to all persons the enjoyment of the rights provided for in the Covenant. General Comment No. 17, adopted in the 35th session of the Human Rights Committee, held in 1989.

⁵¹ In this regard, the Declaration of the Rights of the Child, proclaimed by the General Assembly in its resolution 1386 (XIV) of November 20, 1959, establishes in Principle 2: "The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration."

⁵² The United Nations Code of Conduct for Law Enforcement Officials, Article 3.

Respect for the rights of the child is a fundamental value in a society that claims to practice social justice and observe human rights. This respect entails offering the child care and protection, basic parameters that guided in the past the theoretical and legal conception of what such rights should embody. It also means recognizing, respecting, and guaranteeing the individual personality of the child as a holder of rights and obligations.⁵³

84. In addition, the Inter-American Court has indicated that on interpreting Article 19 of the American Convention, one can take into account the provisions of the Convention on the Rights of the Child, mentioning that

Both the American Convention and the Convention on the Rights of the Child form part of a very comprehensive international corpus juris for the protection of the child that should help this Court establish the content and scope of the general provision established in Article 19 of the American Convention.⁵⁴

85. The Commission understands this special duty of protection to encompass positive and negative obligations. In terms of the positive obligations, the Inter-American Court has established that the state has the duty to adopt all positive measures to ensure the full effect of the rights of the child.⁵⁵ Nonetheless, in the instant case, it is clear that the child Sidney Shaw, who at the time of the events in question was 15 years old, was not subject to such special measures of protection that he required, given his greater vulnerability due to his age.⁵⁶ To the contrary, the members of the PAC opened fire indiscriminately on all the persons who were in the vehicle with him.

86. The Commission concludes that the Guatemalan State violated, to the detriment of Sidney Shaw, his right to receive special measures of protection, enshrined in Article 19 of the American Convention on Human Rights, in connection with the provision at Article 1(1) thereof.

C. The Guatemalan State violated the rights to judicial guarantees and effective judicial protection to the detriment of the victims' next-of-kin and society as a whole (Articles 8 and 25 of the American Convention)

87. Article 25(1) of the American Convention provides:

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

Article 8(1) of the American Convention provides:

⁵³ IACHR, Third Report on the Human Rights Situation in Colombia, chapter 12, para. 1.

⁵⁴ I/A Court H.R., *The Street-Children Case*, Judgment on the merits, November 19, 1999, para. 194.

⁵⁵ I/A Court H.R., Advisory Opinion OC-17/02, *Legal Status and Human Rights of the Child*, August 28, 2002, para. 91.

⁵⁶ I/A Court H.R., *The Street-Children Case*, Judgment on the merits, November 19, 1999, para. 191.

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

88. The Inter-American Court has interpreted that provision to mean that the states parties to the American Convention are obliged to provide effective judicial remedies to the victims of human rights violations.⁵⁷ Said remedies should be substantiated in keeping with the rules of due process (Article 8(1)), all within the general obligation of the states parties to ensure the free and full exercise of the rights recognized to persons under the jurisdiction of those states (Article 1(1)). In addition, Article 25(1) of the American Convention incorporates the principle regarding the effectiveness or efficacy of procedural means or instruments aimed at guaranteeing the rights protected in the Convention. Accordingly, the non-existence of effective domestic remedies leaves the victim of a human rights violation in a defenseless situation, and justifies international protection.

89. The Inter-American Court has determined that the duty to investigate and punish any violation of the rights recognized in the Convention stems from Article 1(1) of the Convention, as a means of guaranteeing those rights.⁵⁸

90. The Commission has held that a basic purpose of any criminal proceeding is to clarify the truth of the facts investigated. The judicial investigation must be undertaken in good faith, in a diligent, exhaustive, and impartial manner, and must be geared to exploring all possible lines of investigation that make it possible to identify the perpetrators of the crime, so that they may then be prosecuted and punished.⁵⁹ In specific cases, that obligation is related to the rights to be heard by the courts and to a prompt and effective remedy, enshrined in articles 8 and 25 of the Convention.

91. In terms of the scope of the powers of the system's organs in respect of oversight of the states' judicial activities, the Court has held that for the purposes of establishing whether the state has violated its international obligations through the actions of its judicial organs, it may examine the respective domestic proceedings as a whole, including the decisions of the appellate courts, in the understanding that the function of the international court is to determine whether all of the procedures, as well as the way in which the evidence was produced, were fair.⁶⁰

92. In the instant case, the Commission will show that during the processing of the criminal trial the judicial authorities committed a series of irregularities that not only affected the right to due process guaranteed at Article 8 of the American Convention, but that also ensured the impunity of the perpetrators responsible and impeded the realization

⁵⁷ I/A Court H.R., *Velásquez Rodríguez Case*, Preliminary Objections, para. 91; Advisory Opinion OC-9/87 of October 6, 1987, "Judicial Guarantees in States of Emergency," para. 24; *Fairén Garbí and Solís Corrales Case*, Preliminary Objections, Judgment of June 26, 1987, Ser. C No. 2 (1987), para. 92.

⁵⁸ I/A Court H.R., *The Street-Children Case*, Judgment on the merits, November 19, 1999, para. 225.

⁵⁹ IACHR, Case No. 11,481, *Monsignor Arnulfo Romero*, Report No. 37/00, April 13, 2000, para. 80.

⁶⁰ I/A Court H.R., *The Street-Children Case*, Judgment on the merits, November 19, 1999, para. 222.

of the right to the truth of the victims' next-of-kin, contrary to the provisions of articles 25 and 1(1).

93. First, as regards the disappearance of the ballistic material, the loss of the photographs of the autopsies, and the manipulation of the firearm identified by the ballistics expert as one of those used in the execution of the victims, which later ensured the absolution of one of the persons indicted, the Commission takes into consideration that the United Nations Model Protocol for a Legal Investigation of Extra_legal, Arbitrary and Summary Executions indicates that in order to meet the general objective of an investigation, in respect of evidentiary matters, the officials in charge of the inquiry have the duty to "recover and preserve evidentiary material related to the death to aid in any potential prosecution of those responsible."⁶¹

94. In addition, that Protocol prescribes that in investigating the evidence, it "must be properly collected, handled, packaged, labeled and placed in safekeeping to prevent contamination and loss of evidence."⁶²

95. The Commission considers that in the instant case the Guatemalan authorities flagrantly ignored the fundamental principles that should guide the investigations of extrajudicial executions. In effect, in the view of the Commission, the Guatemalan State violated the principles of attention to detail and timeliness, in particular in terms of preserving the evidence and the expeditious disposition and production of the evidence.

96. Second, as regards the production and weighing of the evidence, the petitioners allege that in the order of February 17, 1997, which decreed the beginning of the taking of evidence, ordered that several hearings be held the same day and at the same time, procedures that were to be performed by different courts some 200 kilometers from one another, which kept the parties from being able to oversee the evidence; that the judicial authorities refused to order and collect evidence crucial to the outcome of the investigation, without any basis whatsoever; and that in the judgment of first instance the judge ruled to disqualify absolutely the testimony of the four survivors of the attack, in violation of elementary principles of healthy criticism. As regards those irregularities, the State did not contradict the petitioners' conclusions, but merely noted that within the domestic legislation due process is regulated to protect the rights that the petitioners consider violated.

97. In this respect, the Commission considers that the irregularities described above, as well as those recounted in the section on the facts established in this report, highlight the violation of the rules that govern due process within the domestic system, and the lack of due diligence as required by the rules of the American Convention. In the view of the Commission, it is clear that the judicial authorities failed to rule as necessary in order that reasonable efforts be made to have all the necessary information, and, to the contrary, they found inadmissible important evidence that would have enabled it to have

⁶¹ United Nations, Document ST/CSDHA/12.

⁶² *Id.*

clear criteria for determining the motive of the executions and to weigh the defense witnesses, as well as to collect fundamental information on the participation of and the investigative activities carried out by different state security organs, and their results.

98. In terms of the disqualification of witnesses, the Commission considers that Article 654 of the Code of Criminal Procedure of Guatemala⁶³ expressly provides that having denounced the incident or acted as private accuser does not, in itself, constitute personal or direct interest in the matter, so as to allow one to legitimately disqualify a given item of evidence. Nor is the fact that a witness has expressed interest in seeing the situation resolved in keeping with the law tantamount to having a personal interest. In any event, the Commission observes that in the judgment, the judge does not invoke any reason or circumstance on which he bases his assessment.

99. The Commission considers that it is not appropriate to discuss whether the persons accused in the criminal proceedings should or should not be absolved.⁶⁴ What in the view of the Commission is evident is that in this case the persons responsible for the extrajudicial executions of Jorge Carpio Nicolle and his companions, and for the personal injury of the minor child Sidney Shaw, are in impunity. The judgment of the Third Chamber of the Court of Appeals of April 28, 1999, which absolved the only one of the direct perpetrators who was brought to trial, and the later decision of the Supreme Court of Justice of August 30, 1999, which rejected the motion for cassation filed by the victims' next-of-kin, brought an end to the criminal proceeding, and with it, to the possibility of prosecuting and punishing the direct perpetrators or masterminds of the execution of Jorge Carpio Nicolle and the three persons accompanying him, and the personal injury inflicted on the child Sidney Shaw.

100. The Honorable Court has defined impunity as "total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention."⁶⁵ In this respect, every 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."⁶⁶

101. Furthermore, the Commission considers that the acts of intimidation, harassment, threats, and other acts of violence against judicial officers, witnesses, and the victims' next-of-kin were determinant in ensuring such impunity. Indeed, no one has been identified or criminally sanctioned by the judicial authorities as liable for those acts, which

⁶³ Article 654 of the Code of Criminal Procedure of 1973 provided expressly that:

The following are absolute grounds for disqualification of witnesses: III. Personal interest, direct or indirect, in the matter. It will not be possible to understand that there is direct or indirect interest merely because one is an accuser or complainant, especially if at the moment of accusing or lodging a complaint the person guilty does not appear to have been determined, or because the witness asserts that he or she has an interest in seeing the matter resolved in keeping with the law or justice.

⁶⁴ In this regard, see I/A Court H.R., *The Street-Children Case*, Judgment on the merits, November 19, 1999, para. 228.

⁶⁵ I/A Court H.R., *Paniagua Morales et al. Case*, Judgment of March 8, 1998, para. 173.

⁶⁶ *Id.*

is why the Commission concludes that the Guatemalan State has violated Article 1(1) of the American Convention, as well as the right of the victims' next-of-kin to be heard and to have the effective judicial protection enshrined in Articles 8 and 25 of the American Convention.

D. The Guatemalan State violated the right to freedom of thought and expression to the detriment of Jorge Carpio Nicolle, his family, and society as a whole (Article 13)

102. The American Convention provides as follows at Article 13(1):

Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

103. The right to freedom of expression is fundamental for the development of democracy, and for the full exercise of human rights. The Inter-American Court of Human Rights has referred to the freedom of expression as "a cornerstone upon which the very existence of a democratic society rests... indispensable for the formation of public opinion."⁶⁷ The Court added:

It is also a *conditio sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.⁶⁸

104. The freedom of expression includes giving and receiving information and therefore has a dual dimension, both individual and collective.⁶⁹ Protecting the freedom of expression in its two dimensions is essential for enhancing "the free interchange of ideas needed for effective public debate within the political arena."⁷⁰

105. In the instant case the IACHR must determine whether the Guatemalan State is responsible for violating the right to freedom of thought and expression, in the broad sense understood by the inter-American case law. That right includes Jorge Carpio Nicolle's right to express himself and disseminate his ideas, as well as the complementary freedom all citizens have to receive such information free from unlawful or unjustified interference.

106. The Commission determined in previous cases that an assassination can constitute a violation of the right to freedom of expression if it can be proven that it was

⁶⁷ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights) Advisory Opinion OC-5/85, November 13, 1985, para. 70.

⁶⁸ *Id.*

⁶⁹ *Id.*, para. 30.

⁷⁰ IACHR, Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights, Annual Report of the IACHR 1994, p. 214.

committed as the result of the exercise of this right by the victim.⁷¹ Even in those cases in which it cannot be shown that the state or state agents were directly responsible for the assassination, the lack of an exhaustive investigation aimed at apprehending all those responsible for the assassination is a violation due to the chilling effect that impunity has on the population. For example, the Commission found violations of the freedom of expression in the cases of Héctor Félix Miranda⁷² and Víctor Manuel Oropeza,⁷³ two Mexican journalists assassinated apparently in reprisal for the content of their writings. The Commission found that these assassinations, in combination with the subsequent failure by the state to carry out a serious investigation, were especially grave due to the chilling effect on the citizens, generating fear in the public of denouncing the abuses and poor performance on the part of the government. In the *Miranda* case, the Commission said:

The Commission considers that such an effect can only be avoided by swift action on the part of the State to punish all perpetrators, as is its duty under international and domestic law. The Mexican State must send a strong message to society that there will be no tolerance for those who engage in such a grave violation of the right to freedom of expression.⁷⁴

107. In both cases the victims, Miranda and Oropeza, were journalists, however, the same chilling effect would have been caused in any instance when the assassination is an apparent reprisal for expressing information or opinions. This is particularly so in the case of the assassination of a political figure due to the political opinions he or she has expressed. Due to the fundamental importance of the freedom of expression in a democracy, it is essential that those directly involved in the day-to-day functioning of democracy, the public actors, can freely express and debate their opinions. The assassination of a political figure because of the opinions that he or she expressed can have the same chilling effect as the assassination of a journalist, since it directly affects those who have been chosen by the population to design policies related to the management of the state or the locality.

108. Clearly Jorge Carpio was very well known in Guatemala as a journalist and was also a political activist. As the Commission has noted before, Carpio used his newspaper *El Gráfico* as a means for expressing his and his party's political ideas. As a journalist, Carpio exercised his right to freedom of expression to denounce government abuses and to advocate for reforms. As indicated above, *El Gráfico* portrayed the *autogolpe* and the proposal before the Congress to grant an amnesty to the participants in a critical light. It is clear that Carpio's criticism of the coup, expressed through the press, and his position against the amnesty, were extremely inconvenient for some high-ranking government officials, especially in the Armed Forces. In particular, under Carpio's leadership, the UCN prevented the passage of an amnesty law that favored the military officers involved in the coup. As a result, Carpio, along with members of his party and the staff of his daily newspaper *El Gráfico*, were subject to political pressures, intimidation,

⁷¹ See, IACHR, Report No. 50/99, Case 11,739 (Mexico), April 13, 1999; IACHR, Report No. 130/99, Case 11,740 (Mexico), November 19, 1999.

⁷² IACHR, Report No. 50/99, Case 11,739 (Mexico), April 13, 1999.

⁷³ IACHR, Report No. 130/99, Case 11,740 (Mexico), November 19, 1999.

⁷⁴ Report No. 50/99, *supra*, para. 52.

and threats during the period after the coup. Carpio's assassination occurred just over a month after the failed coup, and a few weeks after the amnesty was proposed.

109. The circumstances of Carpio's death suggest a political motive, related to his expressions as set forth in the press. The attack occurred in an area heavily patrolled by the PACs, in which a military detachment was stationed; and the objects of value were not taken from the victims, demonstrating that it was not a common crime. Given that the PACs operated under the armed forces in Guatemala, and the displeasure on the part of the high-ranking Army officers with Carpio's political and journalistic positions, there was a clear motive to participate in or at least to aid and abet Carpio's assassination. The irregularities and delays during the proceeding to prosecute and punish the perpetrators support the presumption that there was a political motive. Moreover, as the Commission noted above, the extrajudicial executions fit within a general pattern of abuses of political figures and journalists that occurred at that time in Guatemala. For the foregoing reasons, the Commission finds sufficient evidence that Jorge Carpio was assassinated due to the exercise of his right to freedom of expression.

110. The Commission concludes that the failure to investigate and criminally sanction the direct perpetrators and masterminds of the assassination of Jorge Carpio Nicolle, in keeping with Guatemalan legislation and domestic procedures, entails a violation of the right to publicly and freely inform and express oneself through the press. That is so because a large part of Carpio Nicolle's political expressions were put forth through the press outlet that he owned. The assassination was also aimed at silencing the press in its critical function, as a means for exercising the freedom of expression. In addition, the IACHR concludes that Carpio's homicide constitutes an attack on all citizens inclined to denounce arbitrary acts and abuses in society, aggravated by the impunity enjoyed by the perpetrators. Therefore, the failure to carry out a serious and thorough investigation into the facts that are the subject matter of this case gives rise to the international responsibility of the Guatemalan State for violating the right to freedom of expression of Jorge Carpio Nicolle and the right of the citizens in general to receive information freely and to learn the truth of what has happened.

VII. REPARATIONS AND LEGAL COSTS

111. Next the Commission presents to the Honorable Court its claims with regard to the reparations and legal costs that the Illustrious Guatemalan State is obligated to pay as a result of its responsibility in the human rights violations committed to the detriment of Jorge Carpio Nicolle, Juan Vicente Villacorta, Alejandro Avila Guzmán, Rigoberto Rivas, and Sidney Shaw and their next-of-kin, in keeping with all the foregoing.

112. As the persons in whom the right to reparation vests are the victims' next-of-kin, and in consideration of the new Rules of Procedure of the Honorable Court granting autonomous representation to the individual, in this brief the Commission will only develop the general criteria in relation to reparations and costs which in its view the Honorable Court should apply in this case. The Commission understands that it is up to the victims' next-of-kin and their representatives to establish their claims in keeping with Article 63 of the Convention as well as Articles 23 and related provisions of the Court's Rules of Procedure. Notwithstanding the foregoing, in the possible case that the victim's next-of-

kin do not make use of this right, the Commission requests that the Honorable Court grant it a procedural opportunity to quantify the claims. In addition, the Commission reserves the right to make observations regarding the quantification of the claims by the victims and their next-of-kin.

113. The American Convention indicates at Article 63(1) that 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."

114. The Honorable Court has indicated that Article 63(1) "codifies a rule of customary law which, moreover, is one of the fundamental principles of current international law."⁷⁵ The obligations derived from Article 63(1) are governed by international law in all pertinent aspects, and a judgment issued in conformity with this provision means that such obligations "are not subject to modification or suspension by the respondent State."⁷⁶

115. Reparations are crucial to guarantee that there is justice in an individual case. Indeed, they are the mechanism that elevates the Court's decision beyond the sphere of moral condemnation.⁷⁷ "The task of reparation is to turn the law into results, to halt the violations, and to restore the moral balance when an unlawful act has been committed."⁷⁸ The true efficacy of the law lies in the principle that the violation of a right necessitates a remedy.⁷⁹

116. The measures of reparation are aimed at providing an effective remedy to the victim and his or her next-of-kin; the essential objective is to provide "full restitution for the injury suffered."⁸⁰ When it is not possible, as in this case, to apply the rule of *restitutio in integrum* due to the irreversible nature of the injury suffered, one must set a fair compensation in "sufficiently broad" terms to compensate the damage "to the extent

⁷⁵ See, I/A Court H.R., *Aloeboetoe et al. Case*, Reparations, Judgment of September 10, 1993, Ser. C No. 15, para. 43, which cites, among others, *Velásquez Rodríguez Case*, Compensatory Damages, Judgment of July 21, 1989, Ser. C No. 7, para. 25; *Godínez Cruz Case*, Compensatory Damages, Judgment of July 21, 1989, Ser. C No. 8, para. 23. See also *El Amparo Case*, Reparations, Judgment of September 14, 1996, Ser. C No. 28, para. 14, which cites, among others, *Factory at Chorzów*, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, p. 21; and *Factory at Chorzów*, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p. 29; Reparations for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949, p. 184.

⁷⁶ See, among others, I/A Court H.R., *El Amparo Case*, Reparations, September 14, 1996, para. 15.

⁷⁷ See, Rafael Nieto Navia, *La Corte Interamericana de Derechos Humanos: Su jurisprudencia como mecanismo de avance en la protección y sus límites*, p. 14 (IIDH, San José, 1991).

⁷⁸ See Dinah Shelton, *Remedies in International Human Rights Law* (1999), p. 54.

⁷⁹ "Where there is a violation without any sanction or injury without reparation, the law enters into crisis, not only as an instrument for resolving a certain dispute, but as a method for resolving any dispute, i.e. for ensuring peace with justice." Sergio García Ramírez, "Las reparaciones en el sistema interamericano de protección de los derechos humanos," paper presented at the seminar "El sistema interamericano de protección de los derechos en el umbral del siglo XXI," San José, Costa Rica (November 1999).

⁸⁰ I/A Court H.R., *Velásquez Rodríguez Case*, Interpretation of Compensatory Damages (Art. 67 American Convention on Human Rights), Judgment of August 17, 1990, para. 27.

possible."⁸¹ That compensation has as its key objective making reparation for actual damages, both material and moral, suffered by the injured parties.⁸² The calculation of damages suffered must necessarily be proportional to "the gravity of the violations and the resulting damage."⁸³ In addition, the reparations have the additional and no less fundamental objective of preventing and deterring future violations.

117. In the instant case, considering the right of the victims and their next-of-kin to an effective remedy, the gravity of the violations and their consequences, and the objective of averting and preventing future violations, the Commission considers that the reparations necessary for the Guatemalan State to comply with its international responsibility include, among others: (1) the payment of fair compensation for the material and moral damages suffered by the victims' next-of-kin; (2) the application of measures of satisfaction and guarantees of non-repetition; and (3) the payment of legal costs and attorneys' fees for the processing of the case before the international jurisdiction.

118. In the brief of April 11, 2003, the representatives of the victims set forth, in general terms, the following aspects to be taken into account for the purposes of determining the damages caused by the events that are the subject matter of the complaint, in the following terms:

119. As for the pain suffered by Mrs. Marta de Carpio for the loss of her husband, and by Rodrigo and Jorge for the loss of their father, all of them have suffered and continue to suffer profound effects, aggravated by the State's neglect in the investigation of the facts and the impunity, all of which justifies that they be awarded moral reparations. As measures of satisfaction and non-repetition, the Carpio Arrivillaga family requests that a street in Antigua, Guatemala, or a park or school there be named after this illustrious citizen, so that future generations can know and remember him. Furthermore, Jorge Carpio was a prestigious journalist and the first graduate of the School of Political Sciences of the Universidad de San Carlos de Guatemala, thus they request that the university institute a scholarship for studying journalism and another to study political science, and that the scholarships bear the name Carpio Nicolle.

120. In terms of justice, the victims' next-of-kin call on the State to carry out a complete, impartial, and effective investigation of the facts alleged in order to prosecute and punish the direct perpetrators and masterminds of the execution of Jorge Carpio. In addition, they ask that an in-depth study be carried out of the entire criminal proceeding in order to determine all those who directly or indirectly participated so as to ensure impunity, and that subsequently an investigation against them be initiated and that they be punished. This has to be done immediately in order to prevent the statute of limitations from running.

121. In terms of material damages, the victims' next-of-kin consider that the State should make reparations for the economic losses caused by the financial collapse of the Unión del Centro Nacional party and of the newspaper El Gráfico due to the assassination.

⁸¹ *Id.*

⁸² I/A Court H.R., *Aloeboetoe Case*, Judgment on reparations, September 10, 1993, paras. 47 and 49.

⁸³ Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law, E/CN.4/Sub.2/1996/17, para. 7.

Furthermore, the Carpio Arrivillaga family incurred a series of expenses after the execution of Jorge Carpio including the burials; the fees and expenses of a private detective who contributed to the investigation; travel by Marta Arrivillaga, and by her then-daughter-in-law, Karen Fischer, to the United Nations Commission on Human Rights in Geneva, to denounce the incident and to garner international pressure to have it investigated; travel by Marta de Carpio to Washington to attend the hearings of the Inter-American Commission on Human Rights with respect to this case; payment of security agents for the family for seven years due to the stalking and acts of intimidation of which they have been victim; and expenses for the exile of the then-daughter-in-law of Mr. Carpio, Karen Fischer, and of his grandchildren, in Miami, United States, due to the threats against them.

122. In terms of legal costs, both the Carpio Arrivillaga family and their representatives consider that such costs should cover the attorneys' fees for the Guatemalan attorneys who advised and legally represented the Carpio family in respect of the criminal accusation; and the expenses of the Center for Justice and International Law for litigating the case for almost 10 years before the Inter-American Commission and now before the Inter-American Court.

The persons entitled to receive reparation

123. Article 63(1) of the American Convention requires reparation for the consequences of a violation and "that fair compensation be paid to the injured party." The persons entitled to receive such compensation are generally those directly injured by the violation in question.⁸⁴

124. In view of the nature of the instant case, the beneficiaries of the reparations ordered by the Honorable Court as a result of the violations of human rights perpetrated by the Guatemalan State, who to date have so accredited themselves before the Commission, are the following: Marta Arrivillaga de Carpio, Messrs. Rodrigo and Jorge Carpio Arrivillaga, and their children Rodrigo and Daniela Carpio Fischer, Katia María, Ana Isabel, Andrea, and Jorge Carpio Leporouski.

VIII. CONCLUSIONS

125. Based on the considerations of fact and of law contained in this application, the Commission concludes that through the extrajudicial execution of Jorge Carpio Nicolle, Juan Vicente Villacorta, Alejandro Avila Guzmán, and Rigoberto Rivas González, and the grievous injuries caused to Sidney Shaw by members of the Civil Defense Patrols of San Pedro Jocopilas on July 3, 1993, the Guatemalan State violated the rights to life and human treatment enshrined in articles 4 and 5 of the American Convention, respectively.

126. In addition, the Commission concludes:

a. That by the physical injuries caused to Sidney Shaw, who at the time was 15 years of age, the Guatemalan State violated his right to receive special measures of protection, enshrined at Article 19 of the American Convention on Human Rights, in relation to the provisions of Article 1(1) thereof.

⁸⁴ *Id.*

b. That through the irregularities committed by the judicial authorities during the processing of the criminal case for the crimes of homicide of Jorge Carpio Nicolle, Juan Vicente Villacorta, Alejandro Avila Guzmán, and Rigoberto Rivas, and infliction of bodily injuries on Sidney Shaw, the Guatemalan State violated the right to judicial guarantees enshrined at Article 8 of the American Convention.

c. That due to the failure to apply the corresponding criminal sanction for the crimes of homicide of Jorge Carpio Nicolle, Juan Vicente Villacorta, Alejandro Avila Guzmán, and Rigoberto Rivas, and bodily injuries to Sidney Shaw, the Guatemalan State both violated the right to effective judicial protection, enshrined in Article 25 of the American Convention, and breached the general obligation to respect the rights, provided for at Article 1(1) of the same instrument.

d. That the failure to investigate and criminally sanction the direct perpetrators and masterminds of the assassination of Jorge Carpio Nicolle, in keeping with Guatemalan legislation and domestic procedure, entails a violation of the right to inform and to express oneself publicly and freely through the press, to the detriment of the right to freedom of expression enshrined in Article 13 of the American Convention.

IX. RELIEF SOUGHT

127. Based on the arguments of fact and law set forth in the present application, the Inter-American Commission on Human Rights requests the Honorable Inter-American Court of Human Rights to find and declare that:

First: The Guatemalan State is responsible for violating the right to life of Jorge Carpio Nicolle, Juan Vicente Villacorta, Alejandro Avila Guzmán, and Rigoberto Rivas, as well as the right to humane treatment of Sidney Shaw, protected at articles 4 and 5 of the American Convention, respectively.

Second: The Guatemalan State violated, to the detriment of Sidney Shaw, his right to receive special measures of protection, enshrined in Article 19 of the American Convention on Human Rights, in connection with the provisions of Article 1(1) thereof.

Third: The Guatemalan State is responsible for the violation of the rights to judicial guarantees and to effective judicial protection enshrined at Articles 8 and 25 of the American Convention, and for breaching the general obligation to respect the rights provided for at Article 1(1) of the same instrument due to the impunity in respect of the assassination of Jorge Carpio Nicolle, Juan Vicente Villacorta, Alejandro Avila Guzmán, and Rigoberto Rivas, and the injuries inflicted on Sidney Shaw.

Fourth: The Guatemalan State is responsible for violating the right to freedom of expression enshrined at Article 13 of the American Convention.

Fifth: Based on the conclusions of fact and law set forth in this application, the Commission calls on the Honorable Court to order the Illustrious Guatemalan State to

adopt the monetary and non-monetary reparations that the representatives of the victims' next-of-kin seek.

X. EVIDENTIARY SUPPORT

A. Documentary evidence

128. In support of the arguments of fact and of law formulated in the present application, the Commission attaches the following documentary evidence:

Attachment 1 Report by the Inter-American Commission on Human Rights No. 27/03 of March 13, 2003 – Case 11,333 Jorge Carpio Nicolle, Guatemala.

Attachment 2 Note of transmittal of Report No. 27/03 to the Guatemalan State, dated March 12, 2003, which was transmitted on March 13, 2003, as appears in the attached certificate of transmittal.

Attachment 3 Declaration by Mrs. Karen Fischer de Carpio, in hearing held November 2, 1994.

Attachment 4 Speech prepared for the Fifth Congress of the Federation of Publicity Media of Central America and Panama, "My Commitment to Guatemala," Jorge Carpio Nicolle, December 7, 1990. "Guatemala: The Press once again Contributes its Quota of Blood," article published in Siglo Veintiuno, Sunday, July 18, 1993. Several press clippings dating back to the 1970s, which illustrate the journalistic and political history of Jorge Carpio. "Jorge Carpio, his dreams, his sacrifice, and his legacy," special publication that appeared in La Revista. "Plan Carpio – National Pact for the Construction of the New Society – Bases for the Program of the Party's Government," Unión del Centro Nacional (UCN), 1991-1995. "The Centrist Ideology," Jorge Carpio. "Government Plan of the Unión del Centro Nacional," UCN, 1986-1991.

Attachment 5 Editorials written by Jorge Carpio for El Gráfico, including: "At least the lives of our children should be respected" (March 20, 1982); "No more killing of children! should be the general cry" (May 20, 1982); "Increase in the violence in the indigenous highlands" (June 19, 1982); "Freedom of press and democracy" (June 5, 1982); "The Guatemalan social structure" (April 20, 1982); "Decentralizing is democratizing" (April 22, 1982); "We need security, confidence, and a new National Political model" (June 5, 1982). Reproduced, along with other writings by Jorge Carpio, in the book "Derechos humanos y democracia," No. 2, 1994, by the Asociación de Investigación y Estudios Sociales de Guatemala (ASIES).

Attachment 6 "Jorge Carpio and UCN speak out," El Gráfico, May 26, 1993. Notes handwritten by Jorge Carpio related to the coup d'état. Note directed by Jorge Carpio on the national entity for consensus. Writing directed by the national entity for consensus to the people of Guatemala and the international community. Proposal by the Unión del Centro Nacional in the face of the country's political crisis to return to constitutionality and the rule of law. Note directed by Jorge Carpio to the members of the Unión del Centro Nacional, dated May 26, 1993. Writing on the Supreme Court of Justice.

Notes on the *autogolpe* of Jorge Serrano Elías. Steps for re-establishing the constitutional order and modifications to the current scheme. Political commitment for normalizing constitutional and institutional life, executed May 28, 1993. Communiqué issued by President Jorge Serrano Elías asking the Guatemalan people and the political parties to implement a procedure for normalizing the country's constitutional and institutional life. Statement by the Unión del Centro Nacional. Articles that appeared in El Gráfico, dated May 29, 1994. Copies of the issue of El Gráfico published Wednesday, May 26, 1993, and which then-president Jorge Serrano Elías ordered censored.

Attachment 7 Testimony by Rosalío Mejía Ixcoy, Manuel Eduardo Conde Orellana, Jorge Skinner Klee, Juan Ayerdi Aguilar, Héctor José Luna Trocoli, Fernando Linares Beltranena, and Alfredo Skinner Klee Arenales.

Attachment 8 Certificate of autopsy by coroner.

Attachment 9 Statement by Mrs. Marta Elena Arrivillaga de Carpio before the Tenth Justice of the Peace for the Criminal Branch, July 16, 1993.

Attachment 10 Complaint presented by the Public Ministry prosecutor to MINUGUA, February 8, 1995.

Attachment 11 United Nations, Report by the Independent Expert, Mrs. Mónica Pinto, on the situation of human rights in Guatemala, submitted in accordance with Commission resolution 1995/51, E/CN.4/1996/15, December 5, 1995.

Attachment 12 Human Rights Office of the Archdiocese of Guatemala, Annual Report 1993.

Attachment 13 Human Rights Office of the Archdiocese, Annual Report 1994.

Attachment 14 Speech by Monsignor Juan Gerardi to the 50th Assembly of the United Nations Commission on Human Rights, Geneva, February 25, 1994.

Attachment 15 Report of the Department of Criminological Investigations of the National Police, Homicide Section, May 25, 1994.

Attachment 16 Reports by the National Civilian Police.

Attachment 17 Copy of the record of the public hearing of April 21, 1997, in the trial against Juan Acabal *et al.*

Attachment 18 Copies of the pages corresponding to June 1, 3, and 5, 1993, of the appointment book of Jorge Carpio Nicolle and of the anonymous letter received weeks prior to his execution.

Attachment 19 Copy of the power-of-attorney by Marta Arrivillaga de Carpio, Jorge Carpio Arrivillaga, and Rodrigo Carpio Arrivillaga to CEJIL, dated April 9, 2003.

Attachment 20 Copy of the motion for cassation filed by the Public Ministry before the Third Chamber of the Court of Appeals, dated June 9, 1999. Copy of the resolution of August 30, 1999 by the Supreme Court of Justice rejecting *in limine* the motion for cassation. Copy of the motion for criminal cassation filed by Juan Ajmac Zapeta on June 24, 1999. Copy of the resolution by the Criminal Chamber of the Supreme Court of Justice rejecting *in limine* the motion for cassation filed by Juan Ajmac Zapeta, dated August 30, 1999. Copy of the official note by which Marta Arrivillaga de Carpio was notified of the resolution of October 15, 1997. Copy of the judgment issued by the First Criminal Court of First Instance, October 15, 1997. Copy of the judicial examination performed by the Justice of the Peace in the municipality of San Pedro Jocopilas, dated April 9, 1997. Copy of the briefing setting forth injuries filed by Marta Arrivillaga de Carpio, February 23, 1998. Copy of the pleading to begin the evidentiary stage of the proceeding, filed by Marta Arrivillaga de Carpio, dated October 7, 1996.

Attachment 21 Various press clippings dated July 23, 1993, December 8, 1993, January 20, 1994, January 21, 1994, January 22, 1994, January 23, 1994, January 26, 1994, March 4, 1994, April 20, 1994, June 1, 1994, June 2, 1994, June 3, 1994, June 4, 1994, June 5, 1994, June 7, 1994, June 8, 1994, June 14, 1994, May 31, 1995, July 7, 1995, December 12, 1995, and June 30, 1996.

B. Testimonial evidence

1. Marta Arrivillaga de Carpio. Wife of the victim and eyewitness to the facts. The Commission offers this witness to give testimony as to the circumstances in which the events in question occurred and on other aspects related to the object and purpose of this application.

Address: 5 calle Oriente, No. 7, Antigua, Guatemala.

2. Karen Fischer. Daughter-in-law and private secretary of Jorge Carpio Nicolle at the time of the events in question. The Commission offers this witness to give testimony as to the threats received by Jorge Carpio, the events before and after the attack in which Jorge Carpio lost his life, and the efforts made by the victim's next-of-kin in the search for justice, the threats and other acts of harassment to which the victim's next-of-kin and judicial officers involved in the investigation have been subjected, the results, as well as other aspects related to the object and purpose of this application.

Address: 19 Ave. 16-42, Zone 10, Guatemala City, Guatemala.

3. Mr. Abraham Méndez. Participated as Public Ministry Prosecutor in the judicial proceeding for the crimes of homicide of Jorge Carpio Nicolle and others. The Commission offers this witness to present testimony on the threats and other acts of harassment and aggression to which the judicial officers involved in the investigation have been subjected, the irregularities committed in the criminal proceeding for the homicide of Jorge Carpio Nicolle and the results thereof, and on other aspects related to the object and purpose of this application.

Address: 6a calle, Palacio de Justicia, Zone 1, Quetzaltenango, Guatemala

4. Deputy Fernando Linares Beltranera. Deputy for the Unión del Centro Nacional party at the time of the events in question. The Commission offers this witness to provide testimony on the political context in which the events took place, the position assumed by Jorge Carpio Nicolle as Chief of the Unión del Centro Nacional party in relation to the amnesty bills offered on behalf of the participants in the *autogolpe* carried out by President Serrano, the origin and type of pressures received by the party leaders at the time, and the political effects of the assassination of Jorge Carpio Nicolle, among other aspects related to the object and purpose of this application.

Address: 12 calle 1-25, Zone 10, Edificio Géminis 10, Torre I, Office 1601, Guatemala City.


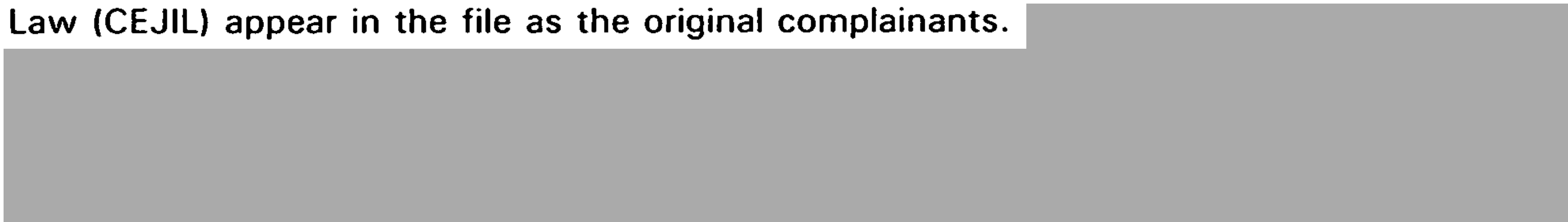
5. Mr. Alfredo Skinner Klee. Leader of the Unión del Central Nacional party at the time of the events in question. The Commission offers this witness to provide testimony on the political context in which the events took place, the position assumed by Jorge Carpio Nicolle as head of the Unión del Centro Nacional party in relation to the amnesty bills offered on behalf of the participants in the *autogolpe* by President Serrano, the origin and type of pressures received by the party leaders at the time of the events in question, and the political effects of the assassination of Jorge Carpio Nicolle, among other aspects related to the object and purpose of this application.

Address: 13 calle 2-60, Zone 10, Edificio Topacio Azul, level 7, office 701, Guatemala City, Guatemala.

XI. DATA ON THE ORIGINAL COMPLAINANTS, THE VICTIM, AND HIS NEXT-OF-KIN

129. In keeping with Article 33 of the Rules of Procedure of the Honorable Court, following are indicated the name of the original complainants, of the victim, and of his next-of-kin.

130. Human Rights Watch, the International Human Rights Law Group, the Human Rights Office of the Archdiocese of Guatemala, and the Center for Justice and International Law (CEJIL) appear in the file as the original complainants.



⁸⁵ A copy of the power of attorney executed by Marta Arrivillaga de Carpio, Jorge Carpio Arrivillaga, and Rodrigo Carpio Arrivillaga to CEJIL, dated April 9, 2003. Attachment 19.