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## **REPORT No. 33/17**

### **CASE 11.639**

REPORT ON ADMISSIBILITY AND MERITS

ALEJANDRO YOVANY GÓMEZ VIRULA AND FAMILY  
GUATEMALA

Approved by the Commission at its session No. 2079 held on March 21, 2017  
161<sup>st</sup> Regular Period of Sessions

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**I. SUMMARY**

1. On July 17, 1995, the Inter-American Commission on Human Rights (hereinafter "the Commission," "the Inter-American Commission," or "the IACHR") received a petition lodged by Antonio Gómez, Paula Virula, the *Guatemala Labor Education Project* and the Guatemalan Workers Union [Unión Sindical de Trabajadores de Guatemala]<sup>1</sup> (hereinafter "the petitioners"), alleging that the Republic of Guatemala (hereinafter "the State," "the Guatemalan State," or "Guatemala") bore international responsibility for the disappearance and subsequent death of Alejandro Yovany Gómez Virula, both of which occurred in March 1995.

2. The petitioners stated the Mr. Gómez, a trade union activist, was forcibly disappeared on March 13, 1995. They said that his body, with signs of having been tortured, was found six days later. The petitioners claimed that despite the complaints they filed regarding the disappearance and their finding of the corpse, the State took no specific steps to investigate the facts. They indicated that during the time that Mr. Gómez was missing, it was a forced disappearance. They added that even though there were elements linking those facts to Mr. Gómez's work as a trade unionist, the State decided to shelve the investigation file for lack of evidence. With respect to admissibility requirements, they invoked the exception established in Article 46.2.b of the American Convention.

3. For its part, the State presented various different arguments during processing of the case before the IACHR. Initially, the State maintained that an investigation had been started in order to throw light on what had happened to Mr. Gómez and identify those responsible. It added that despite the efforts undertaken, the file of the investigation had been archived for lack of evidence. Later on, the State indicated that there were no records in the Public Prosecutors' Office database in which Mr. Gómez appears as a complainant or injured party/victim.

4. After analyzing the information available, the Commission verified compliance with the admissibility requirements set forth in Articles 46 and 47 of the American Convention, concluded that the case is admissible, and determined that that the State is responsible for i) violation of the rights to life, personal integrity, and personal liberty established in Articles 4.1, 5.1, 7.1, 16, 8.1, and 25.1 of the American Convention, in conjunction with Article 1.1 of the same instrument, to the detriment of Alejandro Yovany Gómez Virula; and ii) violation of the rights to personal integrity, judicial guarantees and judicial protection established in Articles 5.1, 8.1, and 25.1 of the American Convention, in conjunction with Article 1.1 of the same instrument, to the detriment of Mr. Gómez's parents, Antonio Gómez and Paula Virula.

**II. PROCEEDINGS BEFORE THE COMMISSION**

5. On July 17, 1995, Antonio Gómez, Paula Virula, the Guatemala Labor Education Project and Unión Sindical de Trabajadores de Guatemala lodged the initial petition. On June 17, 1996, the IACHR forwarded that communication to the State with a request that it provide information on the alleged acts and on whether domestic remedies had been exhausted. The State submitted its response on September 24, 1996.

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<sup>1</sup> Subsequently, the Centro para la Acción Legal en Derechos Humanos (CALDH) established itself as petitioner.

6. On October 10, 1996, the Commission held a working meeting with the parties. The State presented communications on June 16, 1997 and November 30, 1999. The petitioners did so on March 23, 2000 and March 26, 2003. The Commission duly forwarded those communications to the other parties.

7. On July 31, 2003, the Commission informed the Guatemalan State and the petitioners that "given that during the processing of the instant petition the parties had had ample opportunities to provide information regarding the complaint and arguments regarding both its admissibility and merits," it had decided to apply Article 37.3 of the Rules of Procedure in force at the time. Consequently, the IACHR deferred discussion of admissibility until the debate and decision on the merits.

8. The petitioners submitted their additional observations on November 24, 2003. Those observations were relayed to the State on December 1, 2003. The State submitted its additional observations on Monday, December 11, 2006. Subsequently, the IACHR received communications from the State and from the petitioners, which it forwarded to the other party.

### III. POSITION OF THE PARTIES

#### A. Position of the petitioners

9. The petitioners accused the State of responsibility for the disappearance, torture, and subsequent murder of Alejandro Yovany Gómez Virula in March 1995. They said that those events had occurred because Mr. Gómez had been a trade unionist working at the time as Secretary of Finance of Unión Sindical de Trabajadores de Guatemala (UNSI TRAGUA). They said he had played a strategically important part in a labor dispute between a cross-border assembly enterprise and its former workers. They stated that, in that context, Mr. Gómez Virula had been deprived of his liberty on March 13, 1995 by unknown individuals and that on March 19, 1995 his body had been found in a gully in Zone 18 of Guatemala City. They added that at that time both relatives and the Trade Union itself had filed complaints regarding his disappearance.

10. The petitioners added that the acts against Mr. Gómez took place at a time of serious acts of harassment against trade union activists by both private enterprises and state agents. They also said that at that time such violations were not investigated and therefore went unpunished. The petitioners stressed that the context referred to has been abundantly corroborated by both internal agencies and international organizations. Specifically, they reported that eight trade unionists of UNSI TRAGUA were murdered in 1995 in circumstances that appeared to point to industrial/political motives. They said that Mr. Gómez had been the second UNSI TRAGUA trade union activist to have been forcibly "disappeared" and murdered that month.

11. With respect to admissibility, the petitioners invoked the exception established in Article 46.2.b of the American Convention. They argued that they had reported the disappearance of Mr. Gómez, and his death when his body was found. They said that, even so, no serious effort had been made to investigate the case. That had meant, they said, that the judicial file had been archived.

12. On the merits, they claimed that the State is responsible for violating Mr. Gómez's **rights to life, personal integrity, and personal liberty**. They said that Mr. Gómez had been forcibly disappeared, tortured, and finally murdered.

13. They pointed out that, due to the failure to investigate, it could not be determined whether the State had directly participated in the disappearance, torture, and subsequent murder of Mr. Gómez. Nonetheless, they claimed, Mr. Gómez's death revealed many of the features typical of extrajudicial executions perpetrated by State agents during the armed conflict in Guatemala. They stated that even if it did not participate directly, the State was responsible for not having guaranteed those rights, because it had not taken the steps needed to prevent such acts from occurring.

14. As regards the **right to freedom of association**, the petitioners pointed out that, following his forced disappearance, Mr. Gómez had been prevented from exercising that right. They stated that Mr.

Gómez's death was no isolated incident, but rather part of a pattern of attacks on trade unionists. They pointed out that, because of that, the State had violated Mr. Gómez's right to freedom of association.

15. As regards the **right to protection of the family**, the petitioners said that Mr. Gómez's inner family circle had been destroyed. They said that Mr. Gómez's parents had suffered enormously from what had happened and their suffering had been exacerbated by impunity.

16. With regard to rights to **judicial guarantees and judicial protection**, the petitioners pointed out that, even though they had reported Mr. Gómez's disappearance, the State had not taken any steps to ascertain his whereabouts. They said that six days after he had disappeared, Mr. Gómez's body had been found. They said it had been found by chance by someone who had been walking in a district in Guatemala City and had found a corpse, which was later identified as that of Mr. Gómez.

17. The petitioners said that it was after that that they had filed complaints with State authorities, reporting that he had been murdered. They said that the only inquiries that had been made had been interviews with family members and members of the Trade Union. They said that this case was part of a pattern of systematic refusal to investigate human rights violations against trade unionists. They explained that the judicial file had been archived shortly after the investigations had begun due to a supposed lack of evidence for identifying the perpetrators. They alleged that, as a result, the facts of the case have gone completely unpunished.

## **B. Position of the State**

18. Regarding the admissibility of the case, the State argued that the requirements of Article 44 of the American Convention have not been met. They say that this is because the initial petition failed to state that the alleged perpetrators of the disappearance, acts of torture, and murder of Mr. Gómez were State agents.

19. As regards the merits of the matter, the State did not recognize the context alleged by the petitioners. The State explained that the behavior described by the petitioners did not constitute evidence of a reiterated practice fitting the circumstance surrounding the murder of Mr. Gómez.

20. The State presented various different arguments during proceedings before the IACHR. Initially, the State maintained that an investigation had been started in order to throw light on what had happened to Mr. Gómez and identify those responsible. It stated that "new evidence is expected to be provided to permit the identification and punishment of those [responsible]."

21. In its writ of November 1999, the State acknowledged that information had not been gathered to single out those responsible for the death of Mr. Gómez and said that the Public Prosecutors' Office had archived the case.

22. In its written communication of December 11, 2006, the State indicated that "from the start, those suspected, on the basis of statements made by both family members of the victim and witnesses, of having committed the crime were " two Korean citizens. The State indicated that those two persons "were the owners of the assembly plant (...) with whom, according to witnesses, [Mr. Gómez] had frequently quarreled." The State reported that another person had also been interviewed who, according to Mr. Antonio Gómez (Alejandro Gómez's father) had threatened him because he [Alejandro] had been his wife's lover.

23. The State maintained that there was no evidence of State agents having been involved in the facts of the case. It said that civilians had always been named as possible perpetrators. It added that "the changes in the information as to who should be considered a suspect in the murder of Mr. (...) Gómez Virula illustrated the difficult the Public Prosecutor's Office had had in singling out a specific individual."

24. In its most recent writ of February 2015, , the State indicated that there were no records in the Public Prosecutors' Office database in which Mr. Gómez appears as a complainant or injured party/victim in any judicial file.

#### **IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**

##### **A. Competence of the Commission *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae***

25. The petitioners have standing under Article 44 of the American Convention to lodge petitions. In addition, Alejandro Yovany Gómez Virula and his family members were individuals under the jurisdiction of the State of Guatemala at the time of the facts adduced. Therefore, the Commission has *ratione personae* competence to examine the petition. The Commission is competent *ratione loci* to take cognizance of the petition, insofar as it alleges violations of the American Convention that are said to have taken place in the territory of a state party to that treaty.

26. Similarly, the IACHR has *ratione materiae* competence because the petition refers to alleged violations of the American Convention. The Commission is also competent *ratione temporis* to examine the claim as Guatemala has been a state party to the American Convention since May 25, 1978, when it deposited its instrument of ratification. Therefore, the obligation of the State to respect and ensure the rights recognized in the American Convention was in force at the time that the alleged facts are said to have occurred.

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

27. Article 46(1)(a) of the American Convention provides that in order for a complaint submitted to the Inter-American Commission pursuant to Article 44 of the same instrument to be admissible, one must have pursued and exhausted domestic remedies in keeping with generally recognized principles of international law. This rule is designed to allow national authorities to examine alleged violations of protected rights and, as appropriate, to resolve them before they are taken up in an international proceeding.

28. The IACHR reiterates its view that analysis of the requirements set forth in Article 46.1.a of the American Convention should be conducted in light of the situation given at the time a pronouncement is made regarding the admissibility or inadmissibility of the petition.<sup>2</sup>

29. The Commission notes that both parties stated that the investigation into the disappearance and murder of Mr. Gómez began and was later archived for lack of evidence.<sup>3</sup> As will be shown under Proven Facts, the documents are unclear as to whether the investigation was formally archived or not. Nevertheless, what is clear is that since 1996 no inquiries have been made and that in 2004 the Public Prosecutors' Office confirmed that there were no records at all of an investigation under the alleged victim's name.

30. Under these circumstances, and bearing in mind that in violent death cases, the ideal remedy to be exhausted is criminal investigation, which must be initiated and promoted ex officio by the State, the Commission considers that the requirement that domestic remedies must be exhausted is satisfied in the instance case pursuant to Article 46.1.a of the American Convention.

##### **C. Timeliness of the petition**

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<sup>2</sup> IACHR, Report N° 15/15, Petition 374-05: Members of the Trade Union of Workers of the National Federation of Coffee Growers of Colombia. Colombia. March 24, 2015, par. 41. See, also: I/A Court HR. *Case of Wong Ho Wing v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2015. Series C No. 297, par. 25.

<sup>3</sup> Although in a subsequent written statement, the State indicated that there were no records of any investigation, taking into consideration the rest of the information provided by the parties, the IACHR is of the understanding that there had been an investigation and that it had been archived for alleged lack of evidence.

31. Article 46(1)(b) of the Convention establishes that in order for a petition to be declared admissible it must be presented within six months counted from the date on which the petitioner was notified of the final decision that exhausted remedies in the domestic jurisdiction.

32. In the instant case, the Commission notes that the exhaustion of domestic remedies occurred when the case was being examined for admissibility. In light of the above, compliance with the six months deadline is intrinsically linked to the exhaustion of domestic remedies and, therefore, the timeliness of presentation requirement must be considered met.

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

33. Article 46(1)(c) provides that the admissibility of petitions is subject to the requirement that the subject “is not pending in another international proceeding for settlement,” while Article 47(d) of the Convention stipulates that the Commission shall not admit a petition that “is substantially the same as one previously studied” by the Commission or by another international organization. In the instant case, the parties have not argued the existence of either of those circumstances, nor can they be deduced from the record.

#### **E. Colorable claim (characterization of the facts alleged)**

34. For purposes of admissibility, the Commission must decide whether the petition states facts that tend to establish a violation, as stipulated in Article 47(b) of the American Convention, whether the petition is “manifestly groundless” or whether it is “obviously out of order,” as per Article 47(c). The standard by which to assess these extremes is different from the one needed to decide the merits of a petition. The Commission must perform a *prima facie* evaluation to examine whether the complaint establishes a basis for an apparent or potential violation of a right guaranteed by the Convention and not to establish the existence of a violation. Such a review is a summary analysis that does not imply any pre-judging or anticipation of an opinion on the merits.

35. Neither the American Convention nor the Rules of Procedure of the IACHR require that the petition identify the specific rights allegedly violated by the State in a matter submitted to the Commission, though the petitioners may do so. It is up to the Commission, based on the case-law of the system, to determine in its admissibility reports which provision of the relevant inter-American instruments is applicable or could be established as having been violated, if the facts alleged are sufficiently proven.

36. The Commission considers that the petitioners' pleadings point to deeds that could constitute violation of the rights to life, personal integrity, personal liberty, freedom of association, judicial guarantees and judicial protection established in Articles 4, 5, 7, 8, 16 and 25 of the American Convention, in conjunction with the obligations established in Article 1.1 of the same instrument.

### **V. PROVEN FACTS**

37. The Commission notes that the facts alleged by the petitioners in relation to Alejandro Yovany Gómez, his immediate family, his work as a trade unionist, his disappearance, and murder were not contested by the State. The core query raised by the State is not about the facts. Rather, it has to do with the investigations conducted in Guatemala and the lack of circumstantial evidence of the involvement of State agents. The Commission will take that into account in this section for the purpose of determining the proven facts of the case.

#### **A. Regarding Alejandro Gómez and his participation in the RCA Assembly Plant Workers Trade Union**



38. The petitioners reported, and the State did not dispute the information, that at the time of the facts of the case Mr. Gómez, 24 years of age, was serving as Secretary of Finance in the RCA Assembly plant Workers Trade Union,<sup>4</sup> which was a Korean cross-border assembly plant located in Zone 18 of Guatemala City.<sup>5</sup> Regarding Mr. Gómez's immediate family, his parents were Antonio Gómez Areano and Paula Virula<sup>6</sup>.

39. Regarding the alleged victim's trade union activity prior to his disappearance, the petitioners described the following facts that, again, the State did not contest: i) In August 1994, the assembly plant had had to shut down, leaving 70 people jobless; ii) in that circumstance, the Trade Union demanded that the company pay the wages owed to workers, along with other fringe benefits and that demand led to a suit before the Guatemala Labor Tribunal; iii) at the same time as it filed suit, the Trade Union began negotiations with the company; Mr. Gómez played an active part in those meetings and was very much involved with the case; v) on July 10, 1995, the Trade Union and the company reached an agreement under which the Trade Union "found itself forced" to relinquish its demand for 600,000 quetzales for the former workers and receive only 111,000 quetzales.

**B. Regarding the disappearance of Mr. Gómez on March 13, 1995.**

40. The information available about what happened on March 13, 1995 is based mainly on the petitioners' account, which was not disputed by the State at any time during the proceedings before the Commission. Nor do different hypotheses emerge regarding these facts in either the internal investigations or proceedings to which the IACHR has had access. The Commission notes, also, that by their very nature light can only be cast on deeds such as those alleged in the instance case by means of a criminal investigation. As will be shown later, so far there is no official version of what happened.

41. Thus, the IACHR understands that there is no dispute as to the following facts described by the petitioners:

- On the morning of March 13, 1995, Mr. Gómez took part in meetings at the Trade Union's office, <sup>7</sup>the main subject of which was the conflicts between the RCA Assembly Plant and its former workers.<sup>8</sup>
- Mr. Gómez had in his possession a list of all the members of the Trade Union who were going to take part in a demonstration to protest the situation they were faced with outside the Korean embassy.<sup>9</sup>
- In the afternoon, he went home and at about 5:00 p.m. told his mother that he had a meeting with Sylvia Escobar, the Secretary General of the Trade Union. <sup>10</sup>
- Later on, he met with his friend Gustavo Cardona, whose was also a member of the Trade Union.<sup>11</sup>

<sup>4</sup> Petitioners' communication of November 24, 2003.

<sup>5</sup> Petitioners' communication of November 24, 2003.

<sup>6</sup> Original petition

<sup>7</sup> Original petition

<sup>8</sup> Original petition

<sup>9</sup> Original petition

<sup>10</sup> Original petition

<sup>11</sup> Original petition

42. The petitioners say that a witness, who, "for her own personal safety" preferred to remain anonymous, declared that she had seen Mr. Gómez and Mr. Cardona at 6:20 p.m.<sup>12</sup> on March 13, 1995. They say that said witness declared as follows:

(...) two men (...) were inside a green vehicle parked in a motorcycle garage. (...) they hit Yovany Gómez repeatedly in the face. Shortly after Yovany Gómez and Gustavo Cardona left the street, the car was seen heading in the same direction.<sup>13</sup>

43. According to a communication from the Unión Sindical de Trabajadores de Guatemala, the disappearance occurred at kilometer 6 of the highway known as Carretera al Atlántico.<sup>14</sup>

### C. Regarding the complaints filed through March 18, 1995.

44. The petitioners stated that on March 14, 1995, Mr. Gómez's parents went to the National Police to report the disappearance of their son.<sup>15</sup> They said that the police officers assured that "the matter would be quickly looked into,"<sup>16</sup> but without say what inquiries they would make.<sup>17</sup>

45. On March 16, 1995, the Trade Union sent a communication to the Ministry of the Interior,<sup>18</sup> asking for a hearing to provide information regarding Mr. Gómez's disappearance. The next day, the Trade Union sent another communication to the Ministry of the Interior.<sup>19</sup> The Trade Union indicated that the disappearance had occurred at 7:30 p.m. on March 13, 1995, at kilometer 6 of the Carretera al Atlántico.<sup>20</sup>

46. The following day, UNSITRAGUA once again sent a note along the same lines to the Ministry of the Interior.<sup>21</sup> The petitioners said that no reply was received to this or the earlier communications.<sup>22</sup> UNSITRAGUA also issued a press release asking the President of the Republic to take all necessary steps to locate Mr. Gómez's whereabouts.<sup>23</sup>

47. The petitioners stated that on March 18, 1995, Mr. Gómez's father again went to the National Police to find out how the investigation was proceeding.<sup>24</sup> They maintained that the National Police told him that:

(...) no action had been taken and the police could not assign anyone to the case until the following Monday, when the family would provide a vehicle to conduct the investigation because they (the police) did not have one.<sup>25</sup>

<sup>12</sup>

Original petition

<sup>13</sup> Original petition

<sup>14</sup> Communication from Unión Sindical de Trabajadores de Guatemala. Annex C to the original petition.

<sup>15</sup> Original petition

<sup>16</sup> Original petition

<sup>17</sup> Original petition

<sup>18</sup> Communication from Unión Sindical de Trabajadores de Guatemala. Annex C to the original petition.

<sup>19</sup> Communication from Unión Sindical de Trabajadores de Guatemala. Annex C to the original petition.

<sup>20</sup> Communication from Unión Sindical de Trabajadores de Guatemala. Annex C to the original petition.

<sup>21</sup> Communication from Unión Sindical de Trabajadores de Guatemala of March 17, 1995. Annex to the initial petition.

<sup>22</sup> Original petition

<sup>23</sup> Original petition

<sup>24</sup> Original petition

<sup>25</sup> Original petition

48. The Guatemalan State did not contest the complaints filed by family members directly with the National Police on March 14 and 18, 1995. Moreover, as indicated earlier, top State authorities -- the Ministry of the Interior -- received several communications from the Trade Union regarding what had happened.

49. From the above, the Commission considers it established that the State had knowledge of Mr. Gómez Virula's disappearance from the day after it happened and before his body was found. The petitioners pointed out that, as indicated by the police itself, no actions were taken to look for Mr. Gómez between the first complaint and the finding of the body. For its part, the State did not report any search efforts prior to the finding of the body. Nor do any indications of a search emerge from the available information. The existence of complaints filed prior to the finding of the body and the lack of attempts to ascertain Mr. Gómez's whereabouts were also referred to in public communiqués issued by the Human Rights Office of the Archdiocese of Guatemala.<sup>26</sup>

#### **D. Regarding the finding of Mr. Gómez's body on March 19, 1995.**

50. On March 19, 1995, Mr. Gómez's body was found in a gully in Zone 18 of Guatemala City,<sup>27</sup> with his head submerged in a river of raw sewage.<sup>28</sup> The petitioners said that when Mr. G's body was found, his I.D. was there as well as objects of value,<sup>29</sup> but what was not found with his body was the list of the members of the Trade Union that they said Mr. Gómez had had with him the day of his disappearance.<sup>30</sup>

51. The petitioners stated that immediately after locating Mr. Gómez's body, his family asked for a copy of the forensic report,<sup>31</sup> a request that was denied by the head of the government department concerned. All they were given were a few details over the phone.<sup>32</sup> The petitioners pointed out that later on they were able to obtain a copy of the report.<sup>33</sup> The IACHR does not have a copy of that report.

52. Nevertheless, the petitioners said that the forensic report indicates that Mr. Gómez had i) fourth degree brain and chest trauma; ii) cerebral hemorrhage (*hemorragia cerebral y cerebrosa*); iii) a fractured skull; iv) pulmonary contusion; and v) other injuries.<sup>34</sup> They said that the report concluded that he had died from fourth degree cerebral and chest trauma.<sup>35</sup> The State did not contest that information.

53. The information available indicates that Mr. Gómez's body was found by chance, not as a result of any search efforts by the State.

#### **E. Regarding the investigations into the death of Mr. Gómez**

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<sup>26</sup> Communiqué issued by the Human Rights Office of the Archdiocese of Guatemala, March 20, 1995. Annex to the initial petition.

<sup>27</sup> Communiqué issued by the Human Rights Office of the Archdiocese of Guatemala. Annex 1 to the initial petition.

<sup>28</sup> Communiqué issued by the Human Rights Office of the Archdiocese of Guatemala. Annex 1 to the initial petition.

<sup>29</sup> Petitioners' communication of November 24, 2003.

<sup>30</sup> Original petition

<sup>31</sup> Petitioners' communication of November 24, 2003.

<sup>32</sup> Petitioners' communication of November 24, 2003. Original petition

<sup>33</sup> Petitioners' communication of November 24, 2003.

<sup>34</sup> Petitioners' communication of November 24, 2003.

<sup>35</sup> Petitioners' communication of November 24, 2003.

54. The petitioners reported that the Public Prosecutors' Office opened a file on account of Mr. Gómez's death and put public prosecutor Jaime Rosales in charge of the case.<sup>36</sup> The State indicated that after identifying the body it had cited Gustavo Cardona García to make a statement as, according to the family, he had been the last person seen with Alejandro Yovany Gómez.<sup>37</sup> The State maintained that Mr. Cardona did not turn up to make a statement.<sup>38</sup>

55. On March 20, 1995, the Human Rights Office of the Archdiocese of Guatemala issued a communique, denouncing the "extrajudicial execution" of Mr. Gómez.<sup>39</sup> It stated that despite complaints filed by family members of the victim, no concrete findings had been made regarding the identity of the persons responsible.<sup>40</sup> The Office expressed its concern at "the inefficiency and unwillingness of the competent authorities to investigate into the whereabouts of trade unionist Gómez when his disappearance had been denounced by family members."<sup>41</sup> The Office demanded that State authorities "demonstrate the political will and desire to minimize impunity in Guatemala, by conducting the inquiries needed to determine the perpetrators of Mr. Gómez's death and to bring them before the Courts."<sup>42</sup>

56. The petitioners stated that on June 30, 1995, the Office of the Public Prosecutor had ordered two individuals to present themselves: Tea Ky Quing Seonng and Sam Young Lee<sup>43</sup>. The State indicated that those two persons "were the owners of the assembly plant (...) with whom (...), according to witnesses, [Mr. Gómez] had frequently quarreled."<sup>44</sup> The State did not present information as to which witnesses were interviewed.

57. The petitioners said that neither Tea Ky Quing Seonng nor Sam Young Lee presented themselves and the State took no steps to locate them expeditiously.<sup>45</sup> The State did not contest that information.

58. The State maintained that on July 7, 1995, the Department of Criminal Investigations of the National Police submitted a report to the public prosecutor at the Public Prosecutors' Office.<sup>46</sup> The State said that the report had concluded that "there was sufficient circumstantial evidence that the Korean gentlemen had been the instigators of the death of Mr. Alejandro Yovany Gómez Virula and that Mr. Edgar Octavio Cardona had participated in the deed, since he refused to provide information regarding it."<sup>47</sup>

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<sup>36</sup> Original petition

<sup>37</sup> State's communication of December 11, 2006.

<sup>38</sup> State's communication of December 11, 2006.

<sup>39</sup> Communique issued by the Human Rights Office of the Archdiocese of Guatemala , March 20, 1995. Annex to the initial petition.

<sup>40</sup> Communique issued by the Human Rights Office of the Archdiocese of Guatemala , March 20, 1995. Annex to the initial petition.

<sup>41</sup> Communique issued by the Human Rights Office of the Archdiocese of Guatemala , March 20, 1995. Annex to the initial petition.

<sup>42</sup> Communique issued by the Human Rights Office of the Archdiocese of Guatemala , March 20, 1995. Annex to the initial petition.

<sup>43</sup> Petitioners' communication of March 23, 2000.

<sup>44</sup> State's communication of December 11, 2006.

<sup>45</sup> Petitioners' communication of March 23, 2000.

<sup>46</sup> State's communication of December 11, 2006.

<sup>47</sup> State's communication of December 11, 2006.

59. The State reported that on August 10, 1995, an arrest warrant was issued against Mr. Cardona as a suspect in the death of Alejandro Gómez, because Mr. Cardona had not complied with the citation to make a statement.<sup>48</sup>

60. The State reported that on August 25, 1995, Mr. Cardona appeared before the Judge of the Sixth Criminal Court of First Instance.<sup>49</sup> The State maintained that Mr. Cardona first stated that Alejandro Gómez had had "some problems in the neighborhood,"<sup>50</sup> but went on to say the following regarding the day of Alejandro Gómez's disappearance:

That they went by the factory where they had formerly worked and that in front of it there had been a blue Hiunday (sic) vehicle with polarized windows and that a man had come out of the factory and begun to punch and kick the now deceased victim. He [Tr. Cardona] hit him with a beer can to make him let go of his friend and when the man let him go he began to chase after him [Tr. Cardona], who ran and hid among people at a bus stop. That he had then gone back but Yovani was no longer there.<sup>51</sup>

61. The State said that later on it was determined that Mr. Cardona's real name was Edgar Octavio Cardona García.<sup>52</sup> For their part, the petitioners said that after that appearance the State did nothing to advance the case for a very long time.<sup>53</sup> They maintained that only on July 31, 1996 did the Attorney General request that "priority be attached to the [matter]."<sup>54</sup>

62. The State reported that on August 12, 1996, the Public Prosecutors' Office "received" the file and took a statement from Mr. Gómez's father.<sup>55</sup> It added that the lawyer in the trade union where Mr. Gómez had worked was also cited to give a statement<sup>56</sup>, but that said person did not go and testify.<sup>57</sup> In addition, the State declared that "among the actions undertaken to locate the aforementioned Korean citizens, it was discovered that there was no mention of them in migration control records."<sup>58</sup>

63. The State indicated that "all these difficulties faced by the Public Prosecutors' Office, as well as the discrepancy between the witnesses' versions as to the persons suspected of having instigated and/or perpetrated the crime, and the failure to appear of persons cited to make a statement" had led to the archiving of the proceedings,<sup>59</sup> pursuant to Article 327 of the Code of Criminal Procedure, which establishes the following:

Article 327. Archiving: When the accused has not been identified or has been declared in contempt of court, the Public Prosecutors' Office [*Ministerio Público*] shall order, in writing, that the proceedings be archived, without prejudice to continuation of proceedings against other defendants.

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<sup>48</sup> State's communication of December 11, 2006.

<sup>49</sup> State's communication of December 11, 2006.

<sup>50</sup> State's communication of December 11, 2006.

<sup>51</sup> State's communication of December 11, 2006. Taken from the: Statement made on August 25, 1995 before the Judge of the Sixth Criminal Court of First Instance.

<sup>52</sup> State's communication of December 11, 2006.

<sup>53</sup> Petitioners' communication of November 24, 2003.

<sup>54</sup> Petitioners' communication of November 24, 2003.

<sup>55</sup> State's communication of December 11, 2006.

<sup>56</sup> State's communication of December 11, 2006.

<sup>57</sup> State's communication of December 11, 2006.

<sup>58</sup> State's communication of December 11, 2006.

<sup>59</sup> State's communication of December 11, 2006.

In this case, the other parties shall be notified of the order and they may object to it before the judge overseeing the investigation, pointing out the evidence that could feasibly be investigated or identifying the accused. The judge may revoke the decision, pointing out the evidence to be looked into to continue the investigation or identify the accused.<sup>60</sup>

64. The State pointed out that no objection was filed with the judge overseeing the investigation against the decision by the Public Prosecutor's Office to archive the case.<sup>61</sup>

65. On May 9, 1997, the Sixth Court of First Instance for Drug-trafficking and Crimes against the Environment issued a decision stating as follows:<sup>62</sup>

As regards the archiving requested by the Public Prosecutors' Office, you are hereby informed that in accordance with the norm cited as legal grounds,<sup>63</sup> when identification of the accused is not achieved, archiving shall be ordered by the Public Prosecutors' Office, not the overseeing court.<sup>64</sup>

66. The State pointed out that on May 22, 1997 the Judge overseeing the case dismissed the request by the Public Prosecutors' Office to archive the file of the case.<sup>65</sup> He did so since "the time that has elapsed since the occurrence of the deed complained of is no ground for the investigation not to continue."<sup>66</sup>

67. In its communication of June 13, 1999, the State pointed out that it had consulted the public prosecutor in the case, Jaime Rosales, on the status of the investigation process.<sup>67</sup> The State maintained that the public prosecutor reported that "there is no evidence that may point to the participants in the deed" [*sujetos activos del hecho*].<sup>68</sup> The State maintained that due to the decision by the overseeing judge in May 1997, the investigation "is continuing and new evidence is expected to be provided to permit the identification and punishment of those responsible."<sup>69</sup>

68. On December 17, 2014, the Public Prosecutors' Office sent a communication to COPREDEH stating that "there are no records of Mr. [Gómez] as either plaintiff or injured party nor is there any record of the file [MP-232-95] in the [database]."<sup>70</sup>

#### **F. Pronouncements on violations of the human rights of trade unionists in Guatemala in the 1990s.**

<sup>60</sup> Code of Criminal Procedure of Guatemala.

<sup>61</sup> The State's communication of December 11, 2006.

<sup>62</sup> The Sixth Court of First Instance for Drug-trafficking and Crimes against the Environment issued a ruling. Attached to the State's communication of June 16, 1997.

<sup>63</sup> Articles 150, 160, 178, and 327 of the Code of Criminal Procedure.

<sup>64</sup> The Sixth Court of First Instance for Drug-trafficking and Crimes against the Environment issued a ruling. Attached to the State's communication of June 16, 1997.

<sup>65</sup> State's communication of June 13, 1999.

<sup>66</sup> State's communication of June 13, 1999.

<sup>67</sup> State's communication of June 13, 1999.

<sup>68</sup> State's communication of June 13, 1999.

<sup>69</sup> State's communication of June 13, 1999.

<sup>70</sup> Official Letter of the Public Prosecutors' Office (*Ministerio Público*). Attached to the State's communication of February 24, 2015.

69. Various local agencies and international organizations have pronounced on the context of repression directed against trade unionists in Guatemala during the 1990s.

70. In June 1993, the IACHR issued its Fourth Report on the Human Rights Situation in Guatemala.<sup>71</sup> In that report, the Commission wrote as follows:

The existence of vigorous trade union activity in Guatemala show that there is a place for the exercise of public freedoms that allows trade unions to act and exercise their right to freedom of expression, but that space is continually under attack from attempts to restrict it in the form of arbitrary arrests, death threats, attacks on trade unionists' lives, and arbitrary dismissals of trade union leaders.<sup>72</sup>

71. In its report, the IACHR described some of the concrete acts it became aware of to the detriment of trade unionists, including death threats and various forms of harassment, and even a case similar to that alleged in this instance, which was described by the IACHR as "the kidnapping, torture, and hacking to death of trade union leader Senón Sánchez López" in October 1992. The Commission identified a link between employers' failure to honor workers' rights, the trade union response to that, and the activation of mechanisms to prevent trade unions from exercising that right of response. There were, as the IACHR pointed out, several such mechanisms, including murder.<sup>73</sup>

72. With that link in mind, the Commission noted the following with regard to *maquiladora* assembly plants:

Reliable studies reveal numerous abuses with respect to the assembly plants' failure to provide decent and legally required working conditions or pay the minimum wage; their use of child labor, compulsory overtime; the lack of sanitation; dismissals of workers' leaders, and so on. Six out of every 10 such employers force personnel to work overtime, with average working hours per week ranging from 55 to 70. Cases have even been documented of workers forced to stay in the factory from Monday through Saturday, without going out, working 80 hours a week.<sup>74</sup>

73. In 2003, the IACHR wrote in its report on Justice and Social Inclusion: The Challenges of Democracy in Guatemala, the Commission continued to observe attacks on human rights defenders, including trade unionists, as well as the impunity habitually associated with those violations. As the IACHR put it:

(...) threats and attacks on human rights defenders in Guatemala are still not punished. The cover up of the act of harassment or aggression to the defender is evident and consists, for example, in disappearing the evidence related to the facts. Impunity in these cases encourages new violations against human rights defenders, which at the same time limits their work.<sup>75</sup>

74. The United Nations Mission for Verification of Human Rights in Guatemala (MINUGUA) stated in its first annual report, in 1995, that impunity was the greatest obstacle to achieving observance of human rights in Guatemala.<sup>76</sup> In its 1998 annual report MINUGUA maintained that there were "problems with

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<sup>71</sup> IACHR, Fourth Report on the Situation of Human Rights in Guatemala, June 1, 1993.

<sup>72</sup> IACHR, Fourth Report on the Situation of Human Rights in Guatemala, June 1, 1993.

<sup>73</sup> IACHR, Fourth Report on the Situation of Human Rights in Guatemala, June 1, 1993.

<sup>74</sup> IACHR, Fourth Report on the Situation of Human Rights in Guatemala, June 1, 1993.

<sup>75</sup> IACHR, Justice and Social Inclusion: The Challenges of Democracy in Guatemala, December 29, 2003, par. 76.

<sup>76</sup> Press release "Guatemala UN ascertains impunity for violating human rights", March 14, 1995.



the actual exercise of and protection for trade union freedom."<sup>77</sup> [CHECK QUOTE] Likewise, in its 2002 annual report, MINUGUA pointed to attacks on the right to life and personal liberty of trade unionists.<sup>78</sup> It maintained that "action by State institutions to punish these crimes is seen to be limited and provides insufficient safeguards for the exercise of trade union freedom"<sup>79</sup>.

75. In its final report, in 1999, the Commission for Historical Clarification (CEH) pointed out that during the armed conflict in Guatemala trade union leaders were among the victims.<sup>80</sup> The CEH pointed out that, citing the so-called Doctrine of National Security and anti-communism as a pretext and justification, crimes were committed such as the kidnapping and murder of all kinds of trade unionists, all of whom were labeled "subversives".<sup>81</sup>

76. Regarding the acts of violence against trade unionists, the CEH had the following to say:

In urban areas, diverse human rights violations were committed against trade union members

(...) who were directly perpetrated by agents of the State or persons acting with its protection, tolerance or acquiescence and were based on close co-operation between powerful business people and security forces. These acts were committed in order to protect business interests, in accordance with openly anti-trade union government policies.<sup>82</sup>

77. In addition, the Inter-American Court deemed it demonstrated in the *Case of García and Family v. Guatemala*, that trade union organizations "were considered 'internal enemies' in the internal armed conflict in Guatemala."<sup>83</sup> It added that during that time "there was a pattern of actions by the State aimed at capturing or eliminating the leaders of unions (...) because they opposed the State's ideology."<sup>84</sup>

78. For its part, in the *Case of Carlos Gómez v. Guatemala*, regarding attacks on a trade unionist in 1993, the IACHR pronounced as follows:

[I]t has been and continues to be Government practice in Guatemala to use official agents in acts of repression and clandestine attacks against human rights and union groups.<sup>85</sup>

79. The ILO's Commission of Inquiry, established to review Guatemala's compliance with the Freedom of Association and Protection of the Right to Organise Convention stated in its 2014 Report that:

(...) for several years it, like the Committee on Freedom of Association, has been examining allegations of serious acts of violence against trade union leaders and members of trade unions, and seeing how they have gone unpunished. (...) The Committee observes with profound concern that the allegations are extremely serious and refer to numerous murders

<sup>77</sup> MINUGUA, Report on Human Rights, 1998.

<sup>78</sup> MINUGUA, Report on Human Rights, September 2000.

<sup>79</sup> MINUGUA, Report on Human Rights, September 2000.

<sup>80</sup> Commission for Historical Clarification, Guatemala – Memory of Silence, Conclusions and Recommendations, par. 26.

<sup>81</sup> Commission for Historical Clarification, Guatemala – Memory of Silence, Conclusions and Recommendations, par. 83.

<sup>82</sup> Commission for Historical Clarification, Guatemala – Memory of Silence, Conclusions and Recommendations, par. 146.

<sup>83</sup> I/A Court HR. *Case of García and Family v. Guatemala*. Merits, Reparations, and Costs. Judgment of November 29, 2012, Series C No., par. 118.

<sup>84</sup> I/A Court HR. *Case of García and Family v. Guatemala*. Merits, Reparations, and Costs. Judgment of November 29, 2012, Series C No., par. 120.

<sup>85</sup> IACHR, Report 29/96, Case 11.303, Merits, *Carlos Gómez*, October 16, 1996, par. 67.



(58 murders have been examined by the Committee since 2004) and acts of violence against trade union leaders and members of trade unions, in a context of persistent impunity.<sup>86</sup>

80. For its part, the Human Rights Office of the Archdiocese of Guatemala stated in a communique issued in March 1995 that multiple cases had been documented of violations of the rights to liberty and life of the trade union sector in recent years.<sup>87</sup> It claimed that there had been complaints of clandestine State squads in charge of carrying out those human rights violations.<sup>88</sup>

## VI. ANALYSIS OF LAW

### A. Rights to life, personal integrity, and personal liberty (Articles 4.1<sup>89</sup>, 5.1<sup>90</sup>, 7.1<sup>91</sup>, and 16<sup>92</sup> of the American Convention in connection with Article 1(1) thereof)

81. The Commission has established that the rights to life and personal integrity are of critical importance in the Convention. Accordingly, States should not merely abstain from violating rights, but must adopt positive measures to be determined based on the specific needs of protection of the subject of law, either because of his or her personal situation or because of the specific circumstances in which he or she finds himself/herself.<sup>93</sup>

82. It follows from inter-American jurisprudence that insofar as a missing person's report is concerned the response of the State is inevitably linked to the protection of the life and well-being of the person reported missing. Whether the disappearance may have occurred at the hands of private citizens or at the hands of state agents is immaterial where duty of the State to render an immediate and exhaustive response is concerned. The Commission reiterates that "when there are reasonable grounds to suspect that a person has been disappeared, it is essential for prosecutorial and judicial authorities to take prompt and immediate action by ordering timely and necessary measures to determine the whereabouts of the victim or the place where he or she might be deprived of liberty."<sup>94</sup>

83. In the instant case, there is no dispute about the fact that Alejandro Yovany Gómez was deprived of liberty on March 13, 1995 and murdered at some still to be determined moment between then and March 19, 1995, the day his body was found. In that sense, for the Commission it stands clear that Mr. Gómez was deprived of his rights to personal liberty and life. Likewise, bearing in mind that Mr. Gómez was not murdered immediately, the Commission is of the understanding that he also underwent impairment of his personal integrity, a conclusion also supported by testimony that he was beaten at the time of his detention.

<sup>86</sup> ILO, Commission of Inquiry, Freedom of Association and Protection of the Right to Organise Convention, 1948.

<sup>87</sup> Communique issued by the Human Rights Office of the Archdiocese of Guatemala. Annex 1 to the initial petition.

<sup>88</sup> Communique issued by the Human Rights Office of the Archdiocese of Guatemala. Annex 1 to the initial petition.

<sup>89</sup> Article 4.1 of the American Convention: Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

<sup>90</sup> Article 5.1 of the American Convention: Every person has the right to have his physical, mental, and moral integrity respected.

<sup>91</sup> Article 7.1 of the American Convention: Every person has the right to personal liberty and security.

<sup>92</sup> Article 16.1 of the American Convention: Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.

<sup>93</sup> IACHR, Report No. 13/15, Case 12.349, Report on Admissibility and Merits, Mayra Angelina Gutiérrez Hernández and Family, Guatemala, March 23, 2015, par. 165. I/A Court HR. *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, par. 243.

<sup>94</sup> I/A Court HR. *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, par. 134; and *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, par. 221.

Since the possible participation of State agents in these acts is not documented in the file, analysis of the possibility of assigning international responsibility to the State needs to be based on the State's duty to provide guarantees and, in particular, to prevent [such an outcome]. The duty to investigate will be addressed later in this report.

84. As for the duty to prevent, the IACHR observes that nothing in the file before the IACHR indicates the existence of threats against Alejandro Yovany Gómez prior to March 13, 1995; nor is there information suggesting that State authorities has been alerted to the possibility of such threats. Accordingly, and as was the case in other similar cases, the Commission considers that analysis of the duty to prevent should be conducted as of the moment at which the Guatemalan State became aware that Alejandro Yovany Gómez had disappeared, that is to say, from the moment that the family filed the complaint on March 14, 1995. This takes into account that, once a complaint has been filed of the disappearances of a person under the jurisdiction of a State, that State is required to make every effort to prevent impairment of the disappeared person's personal integrity and life. Moreover, in certain cases, that duty to prevent is heightened by the specific at-risk situation of the individual in question.

85. The Commission believes that from the moment family members filed their complaint, it should have been abundantly clear to the state authorities that the victim was in a situation of extreme danger. The Commission considers that from that moment on the State knew that Mr. Gómez was at serious risk. Worth mentioning, too, is that the preventive obligation of the State was heightened by the fact that the impairment of trade unionists' rights was not only public knowledge at the time; the trade union's public complaints to the Ministry of the Interior between the moment of his disappearance and the finding of his body had, in addition, all made reference to Mr. Gómez's job as the secretary of finance of a trade union. Based on that knowledge, the State was obliged to take immediate and specific steps to ascertain Mr. Gómez's whereabouts.

86. As mentioned earlier, the complaint regarding Mr. Gómez's disappearance was filed on March 14, 1995 with the National Police. Mr. Gómez's corpse was found five days later, on March 19, 1995. In the interval, the trade union Mr. Gómez worked for sent communications to the Ministry of the Interior and the then President of the Republic requesting that steps be taken to find Alejandro Yovany Gómez.

87. Nevertheless, it transpires from the file with the IACHR that the State took no steps to look for Mr. Gómez between March 14 and 19, 1995. Nor is there any indication of a police report on the subject. On the contrary, the petitioners alleged that on March 18, police officers told Mr. Gómez's father that "no action had been taken and the police could not assign anyone to the case until the following Monday, when the family would provide a vehicle to conduct the investigation because they (the police) did not have one." The Commission notes that the State did not contest those allegations; nor did it make any argument to show that it had taken steps to look for Mr. Gómez in the five days between the denunciation of his disappearance and the finding of the body.

88. Accordingly, the Commission considers in the instant case that the failure to respond immediately and diligently in the form of a search for Mr. Gómez in the five days during which he was disappeared until the finding of his body was an unmitigated omission and therefore constituted failure to comply with the duty to protect his rights to life and personal integrity, which, as the State knew, were at risk. Moreover, considering that Mr. Gómez was deprived of his liberty before being killed, the Commission considers that the State also failed to comply with its duty to protect the victim's right to personal liberty.

89. The Commission considers that these conclusions are independent of the fact that it is not known with certainty how much time elapsed between the deprivation of Mr. Gómez's liberty and his death. Regarding this aspect, in the *Case of Velásquez Paiz v. Guatemala*, the Inter-American Court stated that analysis of compliance with the duty to prevent should refer to measures that the State could reasonably be expected to have taken under the circumstances of the specific case.<sup>95</sup> Accordingly, until the finding of the

<sup>95</sup> I/A Court HR. *Case of Velásquez Paiz et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 19, 2015. Series C No. 307, par. 109.

body, the State could be expected to have adopted immediate and diligent search measures to find and protect the victim, which, as we have just concluded, did not happen in the instant case.

90. Based on the foregoing, the Commission concludes that the State of Guatemala violated the rights to life, humane treatment (personal integrity), and personal liberty recognized at Articles 4.1, 5.1, and 7.1 of the American Convention, in connection with the obligation to prevent as a component of the duty to ensure rights established in Article 1(1) of that instrument, to the detriment of Alejandro Yovany Gómez.

91. At the same time, as regards the right to freedom of association, according to the jurisprudence of the Inter-American Court, this right has two dimensions: an individual dimension and a social dimension. With respect to the individual dimension, the Inter-American Court has established that "those who are protected by the Convention [...] have the right and freedom to associate freely with other persons, without the interference of the public authorities limiting or obstructing the exercise of the respective right."<sup>96</sup> As for the right's collective dimension, the Court has maintained that in exercising the right upheld in Article 16, persons "enjoy the right and freedom to seek the common achievement of a licit goal, without pressure or interference that could alter or change their purpose."<sup>97</sup> At the same time, the Inter-American Court has established that the positive obligations to prevent and investigate violations of this right must be taken on "even in relations between private persons, if the case so warrants."<sup>98</sup>

92. In the instant case, the Commission already concluded that the State failed to comply with its duty to guarantee the rights to life, humane treatment (personal integrity), and personal liberty of Alejandro Gómez Virula, in both their prevention and protection dimensions. Under proven facts, the Commission determined that Mr. Gómez Virula was a trade union activities, particularly in his capacity as Secretary of Finance of the RCA Maquila Workers' Union and, inter alia, in connection with a labor suit against the assembly plant he was connected with. Thus, the disappearance and murder of Mr. Gómez Virula in connection with his trade union activities, as well as the broader context already described in this report of various kinds of retaliation against trade union activists in Guatemala, lead one to consider that there was significant circumstantial evidence that Mr. Gómez Virula's disappearance and murder may have been related to his activities.

93. Despite that circumstantial evidence, and as the analysis in later parts of this report shows, such circumstantial evidence was not exhaustively investigated with the due diligence needed to comply with the State's truth and justice obligations in respect of human rights violations, even if those violations are committed by private individuals. In light of the above, and given the lack of any other hypothesis regarding what happened to the victim in the framework of an investigation in keeping with the State's international obligations, the Commission considers it reasonable to infer that the disappearance and death of Alexander Gómez Virula were related to his trade union activities and that there was therefore a failure to comply with the duty to prevent [violations] in respect of his rights to life, human treatment (personal integrity), and personal liberty. That implies, in addition, failure to comply with that duty in respect of his right of freedom of association, in that there are aspects not duly investigated by the State that allow one to conclude that his role as a trade unionist was the motive for what happened.

94. Consequently, the Commission concludes that the State is responsible for violation of the right of association established under Article 16.1 of the American Convention, to the detriment of Alexander Gómez Virula.

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<sup>96</sup> I/A Court HR. *Case of Huilca Tecse v. Peru*. Merits, Reparations, and Costs. Judgment of March 3, 2005, Series C No. 121, par. 69.

<sup>97</sup> I/A Court HR. *Case of Huilca Tecse v. Peru*. Merits, Reparations, and Costs. Judgment of March 3, 2005, Series C No. 121, par. 69.

<sup>98</sup> I/A Court HR. *Case of Kawas-Fernández v. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009, Series C No. 196, par. 144. Cf. I/A Court H.R., *Case of Huilca Tecse v. Peru*. Merits, Reparations, and Costs. Judgment of March 3, 2005, Series C No. 121, par. 76; and I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007, Series C No. 167, par. 141.

**B. Right to judicial guarantees and judicial protection (Articles 8.1,<sup>99</sup> and 25.1,<sup>100</sup> of the American Convention in conjunction with Article 1.1 thereof)**

95. According to the consistent case law of the organs of the inter-American system, as a result of the protection granted by Articles 8 and 25 of the Convention, the States are obliged to provide effective judicial recourses to the victims of human rights violations that must be substantiated in accordance with the rules of due process of law.<sup>101</sup> Furthermore, the Court has held that the right of access to justice should ensure, within a reasonable time, the right of the alleged victims or their next of kin to have everything necessary done to learn the truth about what happened and to investigate, try and, as appropriate, punish those responsible.<sup>102</sup> That obligation, which relates to means rather than to results, must be assumed by the State as its own legal duty and not as a mere formality preordained to be ineffective.<sup>103</sup>

96. Thus, the State has the obligation to ensure that "each State act that comprises the investigation proceeding, and the entire investigation in itself, should be oriented at a specific purpose: the determination of the truth and the investigation, finding, arrest, prosecution and, if applicable, punishment of those responsible for the events."<sup>104</sup>

97. In addition, the investigation must be serious, impartial, and effective and directed toward ascertaining the truth and finding, arresting, trying and, where applicable, punishing the perpetrators.<sup>105</sup> The aforementioned obligation holds "regardless of what agent (even a private party) is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby rendering the State internationally responsible"<sup>106</sup> Likewise, due diligence requires that the investigating body perform all the actions and inquiries needed to achieve the sought-after outcome. Otherwise, the investigation is not effective under the terms of the Convention.<sup>107</sup>

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<sup>99</sup> Article 8.1 of the American Convention: Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

<sup>100</sup> Article 25.1 of the American Convention: 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.

<sup>101</sup> I/A Court HR. *Case of Rodríguez Vera et al. (Persons Disappeared from the Palace of Justice) v. Colombia*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 14, 2014. Series C No. 287, par. 435.

<sup>102</sup> I/A Court HR. *Case of Human Rights Defender et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2014. Series C No. 283, par. 199.

<sup>103</sup> I/A Court HR. *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, par. 131.

<sup>104</sup> IACHR, Report 85/13, Case 12.251, Admissibility and Merits, Vereda la Esperanza, Colombia, November 4, 2013, par. 242. I/A Court HR. *Case of Kawas-Fernández v. Honduras*. Merits, Reparations, and Costs. Judgment of Friday, April 03, 2009, Series C No. 196, par. 101.

<sup>105</sup> I/A Court HR. *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, par. 127.

<sup>106</sup> I/A Court HR. *Case of Espinoza González v. Perú*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2014. Series C No. 289, par. 238.

<sup>107</sup> I/A Court HR. *227; and Case of the Serrano Cruz Sisters v. El Salvador*. Merits, Reparations, and Costs. Judgment of March 1, 2005. Series C No. 120, par. 83.

98. The IACHR recalls that the obligation to investigate and punish every act that entails a violation of the rights protected by the Convention requires that not only the direct perpetrators of human rights violations be punished, but also the instigators and those who aid and abet such acts.<sup>108</sup>

99. In light of the above, analysis is needed to ascertain whether the manner in which the investigation into Mr. Gómez's death was conducted constituted a violation of the obligation to guarantee the substantive rights reviewed in the foregoing section and of the obligations derived from the rights upheld in Articles 8.1 and 25.1 of the American Convention. To that end, the IACHR will proceed to review the following aspects: irregularities in the investigation after the finding of Alejandro Gómez's body and subsequent acts carried out by State agents; ii) lack of due diligence in subsequent stages of the investigation; and iii) the matter of reasonable time allowed.

### **1. Irregularities in the investigation following the finding of Alejandro Gómez's body and subsequent acts by State agents.**

100. The Court has established that efficient and fervent determination of the truth in connection with the obligation to investigate a death must be evident as of the very first procedures.<sup>109</sup> In this area, with respect to handling of the crime scene, the identification and handling of the victim's corpse, the autopsy, and maintenance of the chain of custody of all items of forensic evidence, and bearing in mind the United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Protocol of Minnesota), States must take minimal and indispensable steps to ensure the preservation of all elements of proof and evidence that may contribute to the success of the investigation.<sup>110</sup>

101. The Court and the Commission have specified that the State authorities who conduct an investigation of this type must try, at the very least, *inter alia*: (i) to identify the victim; (ii) to recover and preserve the probative material related to the death in order to assist in any potential criminal investigation of those responsible; (iii) to identify possible witnesses and obtain their statements in relation to the death under investigation; (iv) to determine the cause, manner, place and time of death, as well as any pattern or practice that could have caused the death, and (v) to distinguish between natural death, accidental death, suicide and homicide. In addition, the crime scene must be exhaustively investigated and autopsies, as well as analyses of skeletal remains, must be rigorously performed by competent professionals, employing the most appropriate procedures.<sup>111</sup>

102. The Commission underscores that correct handling of the crime scene is a starting point for the investigation and therefore vital for throwing light on the nature, circumstances, and characteristics of the crime and the participant in the crime.<sup>112</sup> In its jurisprudence, the Court has held that a State may be liable for a failure to "order, practice or evaluate evidence that may have been vital for a proper clarification of homicides."<sup>113</sup>

<sup>108</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas* OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, par. 109. I/A Court HR. *Case of the Gómez Paquiyaui Brothers v. Peru*. Merits, Reparations, and Costs. Judgment of July 8, 2004. Series C No. 110, par. 146; *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparations, and Costs. Judgment of November 25, 2003. Series C No. 101, par. 275; and *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, par. 186; *Case of the Constitutional Court v. Peru*. Competence. Judgment of September 24, 1999. Series C No. 55, par. 123.

<sup>109</sup> IACHR Report No. 49/15, Case 12.585, Merits, Ángel Pacheco León and Family, Honduras, July 28, 2015, par. 82.

<sup>110</sup> I/A Court HR. *Case of Human Rights Defender et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2014. Series C No. 283, par. 204.

<sup>111</sup> Cf. IACHR. Report No. 10/95. Case 10.580. Ecuador. September 12, 1995. par. 32; I/A Court H.R. *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, par. 127.

<sup>112</sup> IACHR Report No. 49/15, Case 12.585, Merits, Ángel Pacheco León and Family, Honduras, July 28, 2015, par. 87.

<sup>113</sup> I/A Court HR. *Case of Veliz Franco et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 19, 2014. Series C No. 277, par. 195.



103. Regarding the crime scene, international standards indicate that the investigators must, at the very least: photograph the scene and any other physical evidence, and the body as it was found and after it has been moved; gather and conserve the samples of blood, hair, fibers, threads and other clues; examine the area to look for footprints or any other trace that could be used as evidence, and prepare a detailed report with any observations regarding the scene, the measures taken by the investigators, and the assigned storage for all the evidence collected. The area next to the body must be sealed off and entry into it prohibited except for the investigator and his/her team.<sup>114</sup> Until that has been done, all contamination of the crime scene must be avoided. The area must be guarded 24/7. One of the greatest risks at the site where the body is found is handling of the corpse, which should only be done in the presence of professionals, who need to examine it and move it appropriately depending on the condition of the body.<sup>115</sup>

104. Likewise, due diligence in a forensic investigation of a death requires maintaining the chain of custody of all forensic evidence.<sup>116</sup> The Court has pointed out that that consists of keeping accurate written records, supplemented, where applicable, with photographs and other graphic material documenting the history of the piece of evidence as it passes through and is handled by various investigators responsible for the case.<sup>117</sup>

105. As for autopsies, they should at minimum garner information needed to identify the dead person and the time, date, cause and type of death. Certain formalities need to be followed, such as indicating the date and time at which they start, as well as the location at which they are conducted and the name of the public servant performing the autopsy.<sup>118</sup>

106. In the instant case, the IACHR reiterates that Mr. Gómez's corpse was found on March 19, 1885 in a gully in Guatemala City. The Commission also again points out that the criminal investigation did not begin with the reports of the victim's disappearance, but specifically once Alejandro Yovany Gómez's corpse had been found. That omission not only constitutes the reason for the State's international liability as discussed earlier. It also constituted a violation of the right to judicial guarantees and judicial protection.

107. Now, as regards the investigation conducted following the discovery of the body, the Commission has the following to say regarding compliance with standards described for minimal steps to be undertaken in violent death cases. The Commission stresses that the State is duty bound to place on record that such minimum steps were taken, so that the lack of any such indication with respect to this investigation leads the IACH to infer that they were not in fact undertaken.

108. First, the IACHR notes that the State did not present information regarding the establishment of an official record of the finding of Mr. Gómez's body. Even though the State is supposed to know this, the Commission has been given no information as to who found the body and under what circumstances. Nor are there any indications in connection with the criminal investigation that efforts were made to ascertain these details regarding the initial finding of the corpse.

109. Second, the Commission notes that the State also failed to provide information regarding the measures adopted to safeguard the crime scene and the evidence obtained by investigators in connection with it. In that sense, the IACHR has no certainty that efforts were made to gather and document evidence

<sup>114</sup> United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Protocol of Minnesota).

<sup>115</sup> Office of the United Nations High Commissioner for Human Rights. Model Protocol for Forensic Investigation of Deaths Suspected of Having Been Caused by Human Rights Violations, Draft MEX/00/AH/10.

<sup>116</sup> I/A Court HR. *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, par. 207.

<sup>117</sup> I/A Court HR. *Case of Human Rights Defender et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2014. Series C No. 283, par. 207.

<sup>118</sup> I/A Court HR. *Case of Veliz Franco et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 19, 2014. Series C No. 277, par. 194.

that might help with the investigation. Nor is there any proof that on-site inspections were carried out with the meticulousness needed to ascertain such details as the presence of blood stains in the vicinity of the body, hair, fibers, threads, footsteps or other traces, or marks made by a vehicle, or any other relevant evidence.

110. Third, the IACHR notes that the State did not present information regarding the autopsy performed on Mr. Gómez's body. Here, the petitioners reported that they were initially denied access to the forensic report and only later were told of the causes of Mr. Gómez's death. The Commission observes that neither an approximate time nor place of death is mentioned in the information provided by the parties. Along the same lines, the IACHR notes that although it was pointed out that Mr. Gómez's body showed signs of trauma and bruising, no forensic study of them was conducted. Nor were those injuries properly described. No mention was made of any indication, patterns, or signs that could establish whether those injuries were pre- or post mortem. Fourth, the Commission takes note that the criminal investigation was unable to determine the day and approximate time of Mr. Gómez's death.

111. In light of all the above, the IACHR considers that from the preliminary stages of the investigation onwards, the State failed to comply with its obligation to investigate with due diligence.

## **2. Lack of due diligence in subsequent stages of the investigation**

112. The Commission has established that, to be effective, investigations into human rights violations need to avoid omissions in the gathering of evidence and the pursuit of logical lines of inquiry.<sup>119</sup> In cases that involve the violent death or disappearance of a person, the Commission and the Court have held that the investigation initiated should be carried out in such a manner as guarantee proper analysis of the hypotheses as to responsibility arising from it,<sup>120</sup> and, in order to demonstrate the diligence of its inquiries, the State must show that it carried out an immediate, exhaustive and impartial investigation<sup>121</sup> in which all possible lines of inquiry have been explored in a bid to identify the perpetrators of the crime with a view to their subsequent prosecution and punishment.<sup>122</sup>

113. The Inter-American Court has held that it is not the task of the organs of the inter-American system to "analyze the hypothesis about perpetrators prepared during the investigation of the events of the ... case and determine individual responsibility, whose definition corresponds to domestic criminal tribunals, but rather evaluate the acts and omission of State agents, pursuant to the evidence submitted by the parties."<sup>123</sup>

114. However, in cases that involve the violent death or disappearance of a person, the Commission and the Court have held that the investigation initiated should be carried out in such a manner as guarantee proper analysis of the hypotheses as to responsibility arising from it,<sup>124</sup> and, in order to demonstrate the diligence of its inquiries, the State must show that it carried out an immediate, exhaustive

<sup>119</sup> IACHR, Report No. 13/15, Case 12.349, Report on Admissibility and Merits, Mayra Angelina Gutiérrez Hernández and Family, Guatemala, March 23, 2015, par. 129.

<sup>120</sup> I/A Court HR. *Case of Kawas-Fernández v. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009. Series C No. 196, par.112.

<sup>121</sup> IACHR. Report No. 51/13. Case 12.551. Paloma Angélica Escobar Ledezma et al. Merits (Publication). Mexico. par. 82; IACHR, Report on Merits No. 55/97, Juan Carlos Abella et al. (Argentina), November 18, 1997, par. 412.

<sup>122</sup> IACHR, Report No. 25/09, Merits (Sebastião Camargo Filho) Brazil, March 19, 2009, par. 109.

<sup>123</sup> I/A Court HR. *Case of Kawas-Fernández v. Honduras*. Merits, Reparations, and Costs. Judgment of Friday, April 3, 2009, Series C No. 196, par. 79.

<sup>124</sup> I/A Court HR. *Case of Kawas-Fernández v. Honduras*. Merits, Reparations, and Costs. Judgment of Friday, April 03, 2009. Series C No. 196, par.112.

and impartial investigation<sup>125</sup> in which all possible lines of inquiry have been explored in a bid to identify the perpetrators of the crime with a view to their subsequent prosecution and punishment.<sup>126</sup>

115. Furthermore, as part of the requisite due diligence in investigating violations of the rights of human rights defenders, the investigating authority should take into account the work of the defender attacked in order to identify which interests could have been harmed in the pursuit of that work in order, thus, to establish lines of inquiry and theories for the crime.<sup>127</sup> The Commission has further pointed out that the fact that the sources of the attacks may not have been State agents does not exempt the State from its obligations to protect the lives and personal integrity of trade union leaders.<sup>128</sup>

116. In its most recent report on the human rights situation in Guatemala, the IACHR continued to record the occurrence of murders of trade unionists.<sup>129</sup> The Commission pointed out that the State has an obligation to open lines of inquiry that take into account whether or not such acts were committed on account of their activities as trade unionists.<sup>130</sup>

117. The IACHR takes note of Mr. Gómez's activities relating to his work as Secretary of Finance of the RCA Assembly Plant's Workers Union. In particular, the Commission observes that, at the time of his disappearance and subsequent murder, filed a complaint with the RCA Assembly Plant for the allegedly arbitrary dismissal of 70 people. In connection with that complaint and subsequent meetings with that company, and because of the position he held, Mr. Gómez played a very prominent part.

118. In the instant case, the Commission notes that the only steps taken in the early months of the investigation were the summoning of i) Gustavo Cardona, the last person to see Mr. Gómez alive; and ii) the two (Korean) owners of the Assembly Plant. The IACHR observes that those persons did not initially appear in response to those summons and that there is no evidence that the State took any steps to ensure that they did so. The IACHR underscores the fact that those irregularities were highlighted by the Human Rights Office of the Archdiocese of Guatemala.

119. Likewise, the IACHR notes that four months after the start of the criminal investigation, without any evidence of additional inquiries, the National Police issued a report pointing to the two owners of the Assembly Plant as the alleged instigators. Despite that, the Commission notes that no steps were taken to locate them and ensure that they would appear and participate in the proceedings. The IACHR notes that the State has justified its failure to act by pointing out that it is presumed that both individuals have fled the country.

120. That same police report also identified Gustavo Cardona -- later identified under another name -- as the alleged perpetrator of the facts "because he failed to appear and make a statement when summoned, " with no indication of any other grounds that had led the Police to that conclusion. The IACHR observes that later on a statement was taken from Mr. Cardona, who reported circumstances in which Mr. Gómez had been beaten and taken away by unknown individuals, without there being any follow-up to the information provided by this declarant.

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<sup>125</sup> IACHR, Report No. 51/13, Case 12.551, Paloma Angélica Escobar Ledezma et al. Merits (Publication), Mexico, par. 82.

<sup>126</sup> IACHR, Report No. 111/09, Case 11.324, Merits, Narciso González Medina, Dominican Republic, November 10, 2009, par. 240.

<sup>127</sup> IACHR, Report No. 56/12, Merits, Florentín Gudiel Ramos, Makrina Gudiel Álvarez et al., Guatemala, March 21, 2012, par. 126. See also IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, December 31, 2011, par. 236.

<sup>128</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, par. 268.

<sup>129</sup> IACHR, Situation of Human Rights in Guatemala, December 31, 2015, par. 231.

<sup>130</sup> IACHR, Situation of Human Rights in Guatemala, December 31, 2015, par. 231.



121. In addition, the IACHR notes that almost two years elapsed before a statement was taken from Mr. Gómez's father. A statement was also requested from the lawyer of the trade union of which Mr. Gómez was a member. Nevertheless, that person never turned up and there is no evidence of the State taking any steps to ensure that he did.

122. Later on, the Public Prosecutors' Office requested that the investigation be archived due to "the discrepancy between witnesses' versions regarding who should be suspected of perpetrating the crime and the failure of persons summonsed to appear." The Commission considers that the request to archive the case because of the existence of different versions of what happened without exhausting even basic investigative procedures, much less the possibilities of throwing light on the discrepancies, is a move incompatible with the obligation to investigate with due diligence.

123. Even though the judge overseeing the case denied the request of the Public Prosecutors' Office, there have been no signs since 1997 of any steps to investigate the disappearance and subsequent death of Mr. Gómez, throw light on the circumstances in which it occurred, and punish those responsible. This lack of effort and diligence on the part of the authorities is especially serious in light of the absence of practically any indications of investigation in the file on the case.

### 3. Reasonable period of time

124. Article 8(1) of the American Convention establishes as one of the elements of a fair trial that tribunals reach a decision on cases submitted for their consideration within a reasonable time. Accordingly, unwarranted delay may, in itself, constitute a violation of judicial guarantees.<sup>131</sup> It is for the State to explain and prove why it has required more time than would be reasonable to deliver final judgment in a specific case.<sup>132</sup> Thus, how reasonable the period of time taken is has to be assessed in relation to the total duration of the criminal proceedings<sup>133</sup> and in light of the four elements that Court has considered in its case law: (i) the complexity of the matter; (ii) the procedural activity of the interested party; (iii) the conduct of the judicial authorities, and (iv) the general effects on the legal situation of the person involved in the proceeding.<sup>134</sup>

125. As far as complexity is concerned, the State merely indicated that the two suspects in Mr. Gómez's death were fugitives from justice. In that regard, the IACHR considers that for a complexity argument to be valid the State must provide specific information directly connecting the elements of complexity invoked to the delays in the proceeding. That has not happened in this case.

126. As to the activities of the interested parties, the Commission finds nothing whatever in the record to suggest that the relatives obstructed the proceeding or could be blamed in any way for the delay. As to the conduct of the judicial authorities, the Commission has already established in this report that there was a breach of the obligation to act with due diligence in the criminal investigation. Having reached these conclusions, the IACHR does not consider it necessary to analyze the fourth element.

127. Bearing in mind the ambiguity of the information as to whether the investigation was formally archived, the Commission considers that the more than 21 year that have elapsed since the complaint was filed regarding the disappearance and subsequent death of Mr. Gómez constitutes an excessive period of time that the State has not justified. Therefore, the Commission finds that the State violated the reasonable-time rule.

### 4. Conclusion

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<sup>131</sup> I/A Court HR. *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, par. 166.

<sup>132</sup> I/A Court HR. *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, par. 142.

<sup>133</sup> I/A Court HR. *Case of López Álvarez v. Honduras*. Judgment of February 01, 2006. Series C No. 141, par. 129.

<sup>134</sup> I/A Court HR. *Case of the Massacre of Santo Domingo v. Colombia*. Preliminary Objections, Merits and Reparations. Judgment of November 30, 2012. Series C No. 259, par. 164.

128. In light of the above considerations, the Commission concludes that the State of Guatemala is responsible for violation of the rights to judicial guarantees and judicial protection recognized in Articles 8.1 and 25.1 of the American Convention, in conjunction with the obligations contained in Article 1.1 thereof, to the detriment of Alejandro Yovany Gómez, given the total lack of steps taken to find him prior to the discovery of his body, and of his parents given all the actions and omissions described in this section.

**C. Right to human treatment/personal integrity (Article 5.1 of the American Convention in conjunction with Article 1.1. thereof) to the detriment of Alejandro Yovany Gómez's family.**

129. Article 5(1) of the American Convention on Human Rights provides, "Every person has the right to have his physical, mental, and moral integrity respected." The Inter-American Court has indicated that the next-of-kin of victims of certain human rights violations may, in turn, be considered victims.<sup>135</sup> In that regard, the Court has ruled that their right to mental and moral integrity [may be] violated based on the ... particular circumstances of the violations perpetrated against their loved ones and owing to the subsequent acts or omissions of the State authorities in relation to the facts.<sup>136</sup>

130. Specifically with respect to cases where a complete and effective investigation was lacking, as in this matter, the Court has held that:

The absence of a complete and effective investigation into the facts constitutes a source of additional suffering and anguish for victims and their next of kin, who have the right to know the truth of what happened. This right to the truth requires a procedural determination of the most complete historical truth possible, including the determination of patterns of collective action and of all those who, in different ways, took part in the said violations, as well as their corresponding responsibilities.<sup>137</sup>

131. The Commission considers that the loss of a loved one in circumstances such as those described in this case, as well as the lack of a thorough and effective investigation which in turn causes pain and anguish at not knowing what happened, in themselves constitute harm to the mental and moral integrity of the members of Mr. Gómez's family. Consequently, the Commission concludes that the State violated the right to mental and moral integrity, as recognized in Article 5.1 of the American Convention, in connection with the obligations set out in Article 1(1.1) thereof, in respect of Alejandro Yovany Gómez's next of kin.

## VII. CONCLUSIONS

132. Based on the above considerations of fact and law, the Inter-American Commission concludes that the State is responsible for i) violation of the rights to life, personal integrity, and personal liberty established in Articles 4.1, 5.1, 7.1, 16, 8.1, and 25.1 of the American Convention, in conjunction with Article 1.1 of the same instrument, to the detriment of Alejandro Yovany Gómez Virula; and ii) violation of the rights to personal integrity, judicial guarantees and judicial protection established in Articles 5.1, 8.1, and 25.1 of the American Convention, in conjunction with Article 1.1 of the same instrument, to the detriment of Mr. Gómez's parents, Antonio Gómez and Paula Virula.

<sup>135</sup> IACHR. Report No. 11/10. Case 12.488. Merits. Member of the Barrios family. Venezuela. March 16, 2010. 91. IACHR. Report on Terrorism and Human Rights. par. 227; I/A Court H.R. *Case of Cantoral Huamani and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, par. 112; and *Case of Bueno-Alves v. Argentina*. Merits, Reparations, and Costs. Judgment of May 11, 2007. Series C. No. 164, par. 102.

<sup>136</sup> I/A Court HR. *Case of Vargas-Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155, par. 96.

<sup>137</sup> I/A Court HR. *Case of the Rochela Massacre v. Colombia*. Merits, Reparations, and Costs. Judgment of May 11, 2007, Series C No. 163, par. 195.

## VIII. RECOMMENDATIONS

133. In light of the foregoing conclusions,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, RECOMMENDS THAT THE STATE OF GUATEMALA:**

1. Provide full reparation for the human rights violations found in the instant report, including both material and moral dimensions. The State should adopt financial compensation measures; make reparation for the moral prejudice done to the victims, and provide rehabilitation facilities for the family members that desire them.

2. Conduct and complete a full, effective, impartial judicial investigation in a prompt manner, in order to establish the circumstances in which Alejandro Yovany Gómez disappeared and died; explore and thoroughly exhaust the logical lines of inquiry in connection with the case; and identify and, as appropriate, punish all those who participated in the acts.

3. Impose appropriate administrative, disciplinary or criminal penalties for the acts or omissions of state officials that contributed to the denial of justice and impunity regarding the facts in the case.

4. Implement "non-repetition" measures that include measures to ensure i) that investigations into denunciations of disappearances comply with the standards established in this report regarding the duty to respond immediately with efforts to determine the whereabouts of the person whose disappearance has been reported; ii) that investigations into violent deaths comply with the duty to investigate with due diligence, as described in this report; and iii) heightened capacity to investigate the deaths of human rights defenders in Guatemala, especially trade unionists, that may be related to their work.