

REPORT No. 56/12
CASE 12.775
MERITS
FLORENTÍN GUDIEL RAMOS, MAKRINA GUDIEL ÁLVAREZ ET AL
GUATEMALA

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March 21, 2012

I. SUMMARY

1. On December 9, 2003, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission”, “the Commission” or “the IACHR”) received a petition presented by Claudia Samayoa and Makrina Gudiel Álvarez (hereinafter “the petitioners”), representing Florentín Gudiel Ramos and Makrina Gudiel Alvarez (the “alleged victims”) against the State of Guatemala (hereinafter “State”, “Guatemalan State” or “Guatemala”) due to the facts surrounding the murder on December 20, 2004, of Florentín Gudiel Ramos the former member from the *Unidad Revolucionaria Nacional de Guatemala* (URNG) and community leader in the village of Cruce de la Esperanza. The petition alleges that Florentín Gudiel, who was the father of Miguel Gudiel Alvarez. Miguel Gudiel Alvarez was forcibly disappeared during the armed conflict in Guatemala and his case (José Miguel Gudiel Álvarez, Case12,590) is currently under the jurisdiction of the Inter-American Court. Specifically, the petitioners allege that the State of Guatemala is responsible for not protecting the life of Florentín Gudiel who was threatened in 2003 by a former Guatemalan Army “kaibil”. They claim that after the 2004 murder of Florentín Gudiel, the State has thus far failed to conduct a diligent investigation of the facts and punish those responsible, and in the absence of specific measures of protection, the families have had to move from where they lived.

2. For its part, the State contends that the case remains under investigation. Guatemala argues that according to the investigations conducted, there is no legal basis to proceed criminally against the persons the family considers responsible for the murder of Florentín Gudiel, and that despite having made the necessary investigations and establishing a line of inquiry into the Florentín Gudiel murder, it has not identified any responsible person due to the lack of eyewitnesses to the events.

3. On September 8, 2010, the Commission declared admissible the petition filed by the petitioners for the alleged violation of the right to life enshrined in Article 4 of the American Convention on Human Rights (hereinafter “Convention” or “American Convention”) in accordance with Article 1.1 thereof with respect to Florentín Gudiel Ramos, and the rights to personal integrity, judicial guarantees and judicial protection enshrined in Articles 5.1, 8 and 25 in connection with Article 1.1 thereof with respect to Makrina Gudiel Alvarez and their family members. The petitioners argued at the merits stage that the alleged facts constitute a violation of the rights protected in Articles 4, 5, 8, 16, 22, 23 and 25, all enshrined in the Convention, in conjunction with Article 1.1 thereof.

4. After analyzing the findings of fact and law presented by the parties, the Commission concluded that the State is responsible for the violation of Articles 4, 5, 8 and 25 of the American Convention on Human Rights, and, under the principle of *iura novit curia*, Article 22 and 23 thereof, as well as for breach of the general obligation to respect and guarantee the rights protected in Article 1.1 of the above treaty, to the detriment of Florentín Gudiel Ramos, Makrina Gudiel Alvarez and other family members detailed throughout this report and its conclusions.

II. PROCEEDINGS SUBSEQUENT TO ADMISSIBILITY REPORT NO. 109/10

A. Processing of case 12.775

5. After receiving the original petition, the Commission decided to request the opening of petition 1420-05 and begin the process. On September 8, 2010, after substantiating the admissibility process, the Commission declared the case admissible by the adoption of Report No. 109/10¹. On September 16, 2010 the Commission transmitted the Admissibility Report to the parties and granted a period of three months for the petitioners to present their arguments on the merits. In the same communication, the Commission placed itself at the disposal of the parties in order to reach a friendly settlement, and requested that they respond in promptly if interested. In a communication dated October 22, 2010, the petitioners stated their desire not to have a friendly settlement.

6. The observations on the merits of the petitioners were received on January 12, 2009 and those of the State were received on June 17, 2011. In addition, the IACHR received information from the petitioners on the following dates: October 27, 2010, February 14, 2011, August 8, 2011 and on January 18, 2012. These communications were transmitted to the State. Moreover, the Commission received observations from the State on November 4, 2010, February 10, 2011 and October 29, 2011. These communications were forwarded to the petitioners.

III. POSITIONS OF THE PARTIES

A. The petitioners

7. At the merits stage the petitioners argued that Guatemala is responsible for the violations of the rights protected by Articles 4, 5, 8 and 25 of the Convention. Further, the petitioners alleged violations of Articles 16, 22 and 23 in relation to the facts concerning the murder of Florentín Gudiel Ramos.

8. The petitioners averred that Florentín Gudiel Ramos was a community leader in Santa Lucia Cotzumalguapa (hereinafter Santa Lucia), specifically in the Village of Cruce de la Esperanza. They averred that he was a carpenter and decommissioned from the "URNG". During his lifetime, Florentín Gudiel Ramos constructed housing for the demobilized of the Guillermo Toriello Foundation, the Foundation of the Cooperative "Horizons" and the School "República de México". The petitioners noted that the United Nations System in Guatemala named Gudiel an "Anonymous Hero" in 2002, and that, together with his family, Mr. Gudiel sought justice before the Commission for the forced disappearance of his son Jose Miguel Gudiel Alvarez.

9. The petitioners stated that by virtue of the frequent attacks against the catechists during the conflict, in order to save his life, Florentín Gudiel moved to Santa Lucía in search of more secure conditions. Furthermore, the petitioners indicated that the daughter of Florentin Gudiel, Makrina Gudiel Álvarez, suffered an attempted kidnapping while working in a cooperative in 1982, so she quit her job, and joined the Organización del Pueblo en Armas (ORPA).

10. The petitioners indicated that while Florentín Gudiel Ramos was away from Santa Lucia, on September 22, 1983, Jose Miguel Gudiel Ramos, one of the sons of Florentín Gudiel who had also joined the ORPA, was kidnapped and disappeared by the Guatemalan military. Due to this kidnapping and subsequent disappearance of Jose Miguel Gudiel Ramos, the family fled to Mexico, they remained in exile until 1997, when they returned to Guatemala in the company of the United Nations Mission Guatemala (MINUGUA) as part of the agreement of dignified return. They averred that on his return to Santa Lucia, Florentin Gudiel Ramos engaged in several activities for the benefit of the community of the Aldea Cruce de la Esperanza. The petitioners stated that Florentín Gudiel Ramos founded the school "República de México"; he collaborated

¹ IACHR, Report 109/10, Petition 1420-05, Admissibility, Florentín Gudiel Ramos, Makrina Gudiel Álvarez et al, Guatemala, September 8, 2010.

with the Office of Human Rights and participated in a project to record the lives of people disappeared and murdered during the conflict.

11. The petitioners averred that after the 2003 elections in which the URNG won the mayoral election for the Municipality of Santa Lucia, Makrina Gudiel received a phone call from Miguel Azurdia, a former Army *kaibil* Guatemala, who was being removed as Chair of the Education Committee for the School of "República de México" following an audit related to the handling of funds. The petitioners averred that in the call Miguel Azurdia threatened to kill her, her son and her father, Florentín Gudiel Ramos. Moreover, the petitioners indicated that in December 2003, a man named Mario Pacheco who was identified as an infiltrator in the URNG sent a death threat to Makrina Gudiel. The petitioners noted that the threat was reported to MINUGUA.

12. The petitioners averred that in 2004 Florentín Gudiel Ramos was elected Mayor of the Aldea Cruce de la Esperanza. They point out that in this year, Florentin Gudiel clashed with Miguel Estrada, a former military commissioner, a supporter of the Guatemalan Republican Front (FRG) and former government official. The petitioners averred that Estrada knew they were refugees and intended to create conditions of social rejection against his family.

13. The petitioners alleged that a few days before his assassination, Florentín Gudiel Ramos testified in the case of forced disappearance of Miguel Gudiel Ramos before the Commission against the State of Guatemala. They also claim that days before his death Florentín Gudiel clashed with workers of a company, who were performing construction that would destroy the channel through which the water to the community of Aldea Cruce de la Esperanza passed.

14. The petitioners noted that neighbors alerted the Gudiel family that in the back part of their property, a pick-up truck arrived with armed men who remained outside their house all night. The petitioners stated that the Gudiel family canvassed their property and found cigarette butts from the people who had been outside of their house. The petitioners averred that several neighbors confirmed the presence of armed men hidden in a cane field near the house of Florentín Gudiel and, on one occasion, an armed man wearing balaclava came to his home. The petitioners further indicated that the Gudiel Álvarez family heard bursts of gunfire on the highway near their home and that on a night in November of 2004, five armed men wearing balaclavas got out of a van and surrounded the residence of the family Gudiel Alvarez.

15. The petitioners averred that on September 20, 2004 Mr. Gudiel rode a bike in the county seat of Santa Lucia and returned home after running some errands, including visiting the community of El Rosario to continue to seek information on disappeared persons during the internal armed conflict. On his return, he was attacked by two people on bicycle, who shot him in the back and the head. The petitioners stated that four days after the fact, Makrina Gudiel learned that the crime involved a grey pick up truck, which was waiting for the assassins at the entrance of Aldea Miriam I, which is a village adjacent to Aldea Cruce de la Esperanza, the place where Florentin Gudiel lived. Furthermore, the petitioners reported that near the crime scene there were people who indicated to the son of Florentín Gudiel that the actual perpetrators were still close by.

16. The petitioners averred that the day of the funeral, the community requested that the body be allowed to pass by the School to receive honors. In that place, the children of the military commissioners gave their condolences to the family and said "really, it was not us". The petitioners also reported that at the entrance of the cemetery Messrs. Estrada and Azurdia were laughing. Furthermore, the petitioners stated that on that night of the wake, 5 to 7 heavily armed people who were led by a suspected *kaibil* arrived in vehicles and took up attacking positions outside the residence of the family.

17. The petitioners averred that during the nine days after the murder, people who participated in the prayers of the Catholic rite began to receive threats. They state that on December 22nd and 23rd, 2004, armed men showed up in a vehicle in front of the house, wearing FRG shirts. Also, they state that Miguel Azurdia was seen coming in a vehicle with two armed men. The petitioners indicate that a cleaning person at the home where the murder occurred saw 9 armed men dressed in black. They say that between the 23rd and 24th of December 2004, a daughter of Florentin Gudiel, Beatriz Gudiel, observed a man with a FRG shirt

carrying a blade in his hand and walking quietly. They claim that when the man saw that he was being watched, he turned and made a signal to another person that was carrying a weapon. The petitioners averred that when one of the individuals passed in front of the house of Beatrice Gudiel, he greeted her with derision.

18. The petitioners stated that due to the above facts, at the end of the ninth day ("la novena") after his murder, the family of Florentín Gudiel Ramos left their homes in Santa Lucia with the accompaniment of the Municipal Traffic Police.

19. The petitioners alleged that on January 14, 2005, during Makrina Gudiel Alvarez's trip from Santa Lucia to Escuintla, she suffered an assassination attempt when unidentified men doused the van she was traveling in gasoline in order to burn it. The petitioners also reported that on November 3, 2005, local people told the Gudiel Álvarez family that two men on a motorcycle had come to the Village of Cruce de la Esperanza asking for Maria Agripina Alvarez, widow of Florentín Gudiel.

20. The petitioners indicated that due to the failure to conduct a diligent investigation of the facts, as well as to the impunity and the risk to which they were exposed, members of the Gudiel Alvarez family decided to flee Santa Lucia in search of better security conditions. Accordingly, the petitioners averred that Beatriz Gudiel Alvarez and her family have been hidden elsewhere in Guatemala, and Maria Agrippina Alvarez, her daughter Makrina Gudiel and her children fled to Mexico. They noted that Makrina Gudiel returned to Guatemala in 2006. However, none of the family has returned to Santa Lucia to date.

21. In general terms regarding the investigation of the facts, the petitioners argued that to date the State failed to establish who is responsible and that the prosecution has failed to investigate the logical motive for the crime diligently and in a reasonable time. The petitioners believe their father's murder was the result of retaliation for his community leadership activities. They argue that the final hypothesis that the State proposed as the motive for the murder,- that Florentin Gudiel was murdered because he witnessed the murder of a youth in the area- is an unfounded hypothesis because they consider it unlikely that Gudiel had not reported such facts to the authorities or his family.

22. The factual details and the investigative process related to the murder of Florentín Gudiel Ramos will be addressed by the factual analysis of the Commission, on the basis of information provided by both parties. This section summarizes the main arguments outlined by the petitioners with regards to the rights included in this Admissibility Report.

23. Regarding the violation of the right to life, the petitioners stated that Guatemala failed in its duty of prevention because Florentín Gudiel Ramos was killed after receiving a death threat in 2003 by a former kaibil. They stated that, although the threat was reported to prosecutors, the State never investigated, so that the subsequent harassment and threats that the family no longer lived were reported to the Prosecutor. The petitioners argued that the state has failed in its duty to protect the lives of Makrina Gudiel Álvarez for the threat received in 2003 and point out that while this threat did not materialize against her, this was due to the fact that she fled from Santa Lucia. They also claimed a violation of Article 4 of the Convention because ex-military commissioners planned the execution of Mr. Gudiel.

24. Regarding the right to a fair trial and judicial protection, the petitioners indicated that there have been several unjustified periods of inactivity by the office of the prosecution and family members have had the burden of conducting investigations and presenting witnesses. The petitioners stated that the investigation suffers from irregularities in the collection of the evidence required. They highlighted the lack of interviews of key witnesses, the absence of proper treatment at the scene of the crime, the lack of reconstruction of events and the delay in carrying out important steps for investigation. They argued that the State has denied the family access to the court because they had not requested to be considered as a third party ("querellantes adhesivos"). The petitioners further indicated that the State has not provided protection for the individuals who have testified despite the risk they face.

25. Regarding the right to personal integrity, the petitioners argued that following the assassination, the subsequent harassment and displacement from Santa Lucia has caused the family members

of Floretin Gudiel's social and labor relations to be adversely affected, in addition to the psychological trauma suffered.

26. At the merits stage, the petitioners submitted the following allegations in relation to other rights they believe were affected by the action of the State of Guatemala:

27. Regarding the violation of freedom of movement and residence, the petitioners indicate that because of the fear caused by the murder, as well as the subsequent harassment, impunity and lack of effective protection by the State, some family members left Santa Lucia in search of improved safety conditions. The petitioners averred that Gudiel family members abandoned their property, jobs and projects. Also, some of the relatives who were in Mexico and wanted to return to Santa Lucia could not do so because they feared for their lives.

28. With regard to political rights, the petitioners indicate that at the time of his murder Florentín Gudiel Ramos served as Community Mayor, and was involved in various development projects in the community promoted by the municipality. They note that the Public Ministry, in addition to failing to investigate the threat received against him in 2003, has not ruled out that the motive was political.

29. With regard to the freedom of association, the petitioners averred that at the time of the murder of Florentín Gudiel Ramos, Makrina Gudiel Alvarez served as the Secretary of COCODE in the Village of Cruce de la Esperanza; Ms. Gudiel Alvarez had to abandon her activities by virtue of the fear caused by the death of her father. They alleged that in 2007, Makrina Gudiel formed an Association of Diverse Woman Leaders; nevertheless, during the process she has continued to receive threats. The petitioners noted that the State violated the freedom of association of Florentín Gudiel because his murder impeded his associative activity, generated an atmosphere of intimidation to the members of COCODE.

B. The State

30. Guatemala stated that the case is under investigation in the Unit of Crimes against Human Rights Activists that is part of the Prosecutor Office - Human Rights Section.

31. Guatemala averred that there have been several investigations by the criminal prosecutor and that such investigations continue, taking into consideration the various depositions in the case file, even though there are no eyewitnesses to the incident.

32. The State maintained that Makrina Gudiel Alvarez indicated that Messrs. Miguel Angel Azurdia and Miguel Angel Estrada are responsible for the events. Nevertheless, Guatemala states that based on the investigation, there are no legal grounds to proceed against these persons, and "there is only a presumption of it, considering that this lady was not an eyewitness of the facts." The State noted that it has interviewed people who were working near the site the day of the incident and has continuously met with relatives, and interviewed people that have been proposed by them.

33. The State averred that after the investigation performed, the investigative authority came to a probable hypothesis that Florentín Gudiel was murdered because he witnessed the killing of a person in the area. The State contends that even if able to identify one of the people who might have participated in the murder of this youth, this person was in prison at the time of the murder of Gudiel, as a suspect of other crimes.

34. The State contended that during the time of the events, there were a number of deaths caused by unknown persons with firearms. Guatemala noted that the investigation was able to identify and pinpoint the residences of four of the people who might have been involved, but further measures have failed to obtain new evidence. The State contends that the Prosecutor interviewed one of the suspects exhibiting suspicious behavior during the raid. However, due to the limited collaboration of interviewees encountered during the investigation, it has not been possible to identify those responsible for the events.

35. The State averred that at the time the records were requested by the petitioners, they had not been constituted as third parties in the process, which was the requirement for full access to the file and to intervene in the proceedings. It claimed that in May 2008, Guatemala offered to apply safety measures and special protection to Ms. Makrina Gudiel, which were not accepted by her because she felt it could put her life at greater risk.

36. Guatemala stated that it "has doubts" about the adequacy of an expert proposed by the petitioners by virtue of the fact that one of the experts was currently working for the Public Ministry of Guatemala.

37. Guatemala indicated that it has expressed, at all times, its interest and willingness to negotiate a friendly settlement, but respects the decision of the petitioners not to do. Finally, the State noted that it assumes the primary responsibility to promote, protect and make human rights effective. Consequently, it indicates that this is an opportunity to promote before the national courts the investigation of the perpetrators and orchestrators and opportunely implement the appropriate penalties.

IV. ANALYSIS OF THE MERITS

A. Consideration of the facts

38. Pursuant to Article 43.1 of its Rules,² the Commission will examine the allegations and evidence submitted by the parties.³ The Commission will also take into account information that is a matter of public domain, including resolutions of committees of the universal system of human rights, the IACHR reports on petitions and cases and the overall situation of human rights in Guatemala, NGO publications, laws, decrees and other normative acts in force at the time of the facts alleged by the parties.

39. The Commission notes that Guatemala stated that it had "doubts" concerning the adequacy of one of the experts who participated in an expertise offered by the petitioners by virtue of the fact that this person would work for the Office of the Attorney General. The petitioners have indicated that the expert's report preceded the start of the contractual relationship between the expert and the Office of the Attorney General. The Commission notes that the "doubts" expressed by the State do not explain why the alleged membership of the expert to the Office of the Attorney General could affect the impartiality or adequacy of the expert. In this regard, the Commission will evaluate the aforementioned expertise in conjunction with other evidence in the record.

40. Below, the Commission will arrive at a decision based on the allegations of both parties, the specific facts that have been established and the international responsibility of the State.

1. Context

a. The situation of Human Rights defenders after the Guatemalan internal armed conflict

² Article 43.1 of the Rules of Procedure of the IACHR establishes:

The Commission shall deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, the evidence presented by the parties, and the information obtained during hearings and on-site observations. In addition, the Commission may take into account other information that is a matter of public knowledge.

³ The documentary evidence was presented as an annex to the observations on the merits of the petitioners received on January 12, 2011 which was transferred to the State. The petitioners used the testimony of Mrs. Irma Elizabeth Martínez like a proof in their observations on the merits. The IACHR has not found the said testimony in the DVDs that were provided during the proceedings on the merits and transferred to the State. The petitioners used the testimony of Mrs. Irma Elizabeth Martínez like a proof in their observations on the merits. The IACHR has not found the said testimony in the DVDs that were provided during the proceedings on the merits and transferred to the State.

41. Following cessation of the internal armed conflict in Guatemala (1996),⁴ in its Fifth Report on the Situation of Human Rights in Guatemala (2001), the Commission noted that while attacks against defenders declined substantially in the period before the signing of the peace treaty, these attacks began to increase again a year after signing the treaty and have continued to increase steadily since then.⁵ Thus, in its 2003 report "Justice and Inclusion: The Challenges of Democracy in Guatemala" and in its 2004 Annual Report, the Commission confirmed that the number of threats, harassment, raids on offices and housing of human rights organizations and human rights defenders, and attacks on physical integrity and murders had been growing as part of a pattern of intimidation of human rights defenders, determined by the profile of victims, methods of intimidation, and the motivations behind them.⁶

42. With regards to the profile of human rights defenders often killed in the years after the conflict, the UN Special Rapporteur on Extrajudicial Executions reported that those who were targeted promoted economic, social and cultural rights, and pursued the truth and justice for violations human rights committed during the internal armed conflict.⁷ With respect to the identity of the perpetrators, the Commission found that in the years after the conflict, violence was associated with the existence and operation of illegal groups and clandestine security organizations with connections to organized crime and state agents and agencies, particularly with the military intelligence services.⁸ The Commission also received extensive information on clandestine groups and illegal armed units who kept links with some active or retired members of the Armed Forces.⁹ The methods of intimidation had extensive logistical support evidenced by wiretapping, provision of vehicles, use of state resources, along with a wide experience and operational capacity, reflected in its mode of action and deployment.¹⁰ Also, the motivations behind the attacks were related to political or legal developments related to the activity of the defender attacked, and in order to silence the complaint made in relation to rights violations committed during the conflict.¹¹

b. The situation in Santa Lucía Cotzumalguapa

43. Santa Lucía Cotzumalguapa (hereinafter, Santa Lucía) is a municipality in the department of Escuintla, Guatemala. Historically, the economically active population of the municipality has been composed of rural workers, and field crops such as sugarcane support productive development.¹² As a result of social

⁴ On December 29, 1996, the Firm and Lasting Peace Agreement were signed and it finished with the armed conflict. See IACHR, The Situation of Human Rights since the signature of the Agreement on the Firm and Lasting Agreement, OEA/Ser.L/V/II.111, April 6, 2011, available at <http://www.cidh.org/countryrep/guatemala01sp/cap.1.htm>

⁵ IACHR. Fifth Report on the Situation of Human Rights in Guatemala, OEA/Ser.L/V/II.111 Doc. 21 rev. April 6, 2001.

⁶ IACHR. Justice and Inclusion: The challenges of the Democracy in Guatemala, December 29, 2003, OEA/Ser.L/V/II.118, Doc. 5 rev. 1, para. 212. Available at: <http://www.cidh.oas.org/countryrep/Guatemala2003sp/capitulo3.htm>. IACHR. Annual Report 2004, Chapter V, Guatemala, OEA/Ser.L/V/II.122, Doc. 5 rev. 1, February 23, 2005, para. 55. Available at: <http://www.cidh.oas.org/annualrep/2004sp/cap.5.htm#GUATEMALA>

⁷ Human Rights Council, Report of the Special Rapporteur, Philip Alston, on extrajudicial, summary or arbitrary executions, Mission to Guatemala (21 - 25 August 2006), A/HRC/4/20/Add.2, February 19, 2007, para. 35, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/109/02/PDF/G0710902.pdf?OpenElement>

⁸ IACHR. Justice and Inclusion: The challenges of the Democracy in Guatemala, December 29, 2003, OEA/Ser.L/V/II.118, Doc. 5 rev. 1, para. 212. Available at: <http://www.cidh.oas.org/countryrep/Guatemala2003sp/capitulo3.htm>

⁹ IACHR. Justice and Inclusion: The challenges of the Democracy in Guatemala, December 29, 2003, OEA/Ser.L/V/II.118, Doc. 5 rev. 1, para. 212. Available at: <http://www.cidh.oas.org/countryrep/Guatemala2003sp/capitulo3.htm>

¹⁰ MINUGUA. Final Report, Human Rights Advisory, November 15, 2004, page.

¹¹ IACHR. Justice and Inclusion: The challenges of the Democracy in Guatemala, December 29, 2003, OEA/Ser.L/V/II.118, Doc. 5 rev. 1, para. 187-188. Available at: <http://www.cidh.oas.org/countryrep/Guatemala2003sp/capitulo3.htm>

¹² Secretariat of Planning and Programming of the Presidency (SEGEPLAN). Planning and territorial ordinance, Municipality of Santa Lucía, Conclusion of the economic dimension. Available at: [http://sistemas.segeplan.gob.gt/sideplanw/SDPPGDM\\$PRINCIPAL.VISUALIZAR?piD=ECONOMICA_PDF_502](http://sistemas.segeplan.gob.gt/sideplanw/SDPPGDM$PRINCIPAL.VISUALIZAR?piD=ECONOMICA_PDF_502)

mobilization used to address the grave injustices committed by landlords, the pastoral work had a significant presence in the promotion of community organization.¹³

44. During the period of the armed conflict in Santa Lucia, military commissioners operated the system to gather information on the activities of the peasants in order to exercise control of the area.¹⁴ The Commission for Historical Clarification (CEH) stated that the military commissioners had the power to decide whether to execute people.¹⁵

45. During the conflict, dozens of catechists were killed in Escuintla. The CEH said it had knowledge of murders of priests in the municipality of Santa Lucia¹⁶ and indicated the practice of forced disappearance of persons in the department of Escuintla¹⁷ and the forced displacement of entire families in that area throughout the duration of the conflict.¹⁸

46. After the conflict, a candidate of the URNG¹⁹ won the mayoral race for the Municipal Government of Saint Lucia in 2003. The URNG was a signatory of the Peace Accords. The URNG government encouraged the development of Community Councils Development (COCODES) that served rural community organizations and advocacy groups.²⁰ According to information available, some people who exercised power in the past and were linked to the apparatus of repression during the internal armed conflict, continued to operate after the conflict.²¹ Between 2004 and 2007, in addition to the murder of Florentín Gudiel Ramos, several assassinations of social leaders in Santa Lucia occurred; some of the victims were associated with the URNG.²²

¹³ CEH, Guatemala Memory of Silence, Annex I, Volume 1, Illustrative case No. 56. Available at: <http://shr.aaas.org/guatemala/ceh/mds/spanish/anexo1/vol1/no56.html>. See also, Annex 7, Testimony of Guido Louis De Schirjver..

¹⁴ The CEH pointed out that in the area of Santa Lucia during the seventies, "the Army started to look for support on the residents of the communities, known as military commissioners, to gather information on the activities of the farmers." CEH. Guatemala Memory of Silence, Annex I, Volume 1, Illustrative case No. 74. Available at: <http://shr.aaas.org/guatemala/ceh/mds/spanish/anexo1/vol1/no74.html>. The Commission knew about the participation of the military commissioners in the Santa Lucia area. The Commission indicated having received information that on "January 30, 1993, military commissioners captured hundreds of young men in Santa Lucia, Escuintla and neighboring towns". See IACHR. Fourth Report on the situation on human rights in Guatemala, OEA/Ser.LV/II.83, Doc. 16 rev., June 1, 1993, Chapter V, available at: <http://www.cidh.oas.org/countryrep/Guatemala93sp/indice.htm>.

¹⁵ CEH. Guatemala Memory of Silence, Chapter II, Volume 2, the extrajudicial executions. Available at: <http://shr.aaas.org/guatemala/ceh/mds/spanish/cap2/vol2/ejec.html>

¹⁶ The CEH points out that only 4 out of the 17 church teachers in the Miriam village survived. Moreover, it refers to the murder of Walter Voordeckers, Belgium priest in Santa Lucia, Guatemala Memory of Silence, Annex Volume 1, Illustrative, and I case No. 56. Available at: <http://shr.aaas.org/guatemala/ceh/mds/spanish/anexo1/vol1/no56.html>

¹⁷ The CEH refers to the forced disappearance of the radio announcer and teacher José Arnoldo Guilló Martínez in Escuintla in July, 1967. CEH. Guatemala Memory of Silence, Chapter II, Volume II. The forced disappearances. Available at: <http://shr.aaas.org/guatemala/ceh/mds/spanish/cap2/vol2/desa.html#Note12>

¹⁸ The REMHI refers to the case 5042 as an example of the displacement of persons in Santa Lucia Cotzumalhuaoa. See Case 5042 (Attempt of kidnapping of the husband) Santa Lucia, Escuintla, 1984". Interdiocesan Project of Historical Recovery(REMHI), Volume I, Chapter IV, 2. The experience of the displaced persons.

¹⁹ Supreme Electoral Tribunal, Memory of the General Elections 2003, Municipality of Santa Lucia. Available at: <http://216.230.138.139/elecciones2003/SantaLuciaCotz.pdf>

²⁰ The Development Council System in Guatemala is regulated by Decree 11-2002 that refers to the "participation of the Maya, Garifuna and Xinca and non-indigenous governance to carry out the process of planning the democratic development". At communal level, this form of participation is done through the Community Development Councils. See Decree 11-2002. Article 4. Available at: [http://sistemas.segeplan.gob.gt/discode/sche\\$portal/documentos/ley_concejos_desarrollo_guatemala.pdf](http://sistemas.segeplan.gob.gt/discode/sche$portal/documentos/ley_concejos_desarrollo_guatemala.pdf).

²¹ Annex 1, Testimony of Julio Armando Paz Espinoza, December 5, 2010. The CEH indicates that, during years, the military commissioners kept applying the level of authoritarianism reached during the bloodiest stage of the confrontation. Testimonies of the CEH indicate that during this stage, the former chiefs commissioners were "tranquil, [because] they know they can do whatever they want, they are authorities [...]". CEH. Guatemala Memory of Silence, Chapter II, Volume I The Military commissioners. Available at: <http://shr.aaas.org/guatemala/ceh/mds/spanish/cap2/vol1/cmil.html>

²² Among them, in the Parceling of "El Naranjo", the following members of COCODES in that area: Moisés Ajbaj, murdered on September 15, 2005 and his son Francisco Moisés Ajbaj, murdered on April 22, 2006; Víctor Manuel Rejino, murdered on May 30, 2006; Nemesio Yanes, murdered on May 19, 2006; Juan José Atz, community vice mayor murdered on September 2, 2006. Continues...

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2006; Felipe Álvarez Tobías, murdered on December 8, 2007. Annex 1, Testimony of Julio Armando Paz Espinoza, mayor of Santa Lucía (2004-2008), December 5, 2010. See also Letter of Human Right First to the Attorney General and chief of the Prosecutor office of Guatemala December 20, 2007. Available at: <http://www.humanrightsfirst.org/wp-content/uploads/pdf/071220-hrd-dan-guatemala-allvarez-spanish-public.pdf>

2. The work of Florentin Gudiel Ramos as a human rights defender

47. Florentín Gudiel Ramos, a carpenter and a demobilized member of the Guatemalan National Revolutionary Unity (URNG),²³ was born on October 16, 1930 in the department of Jutiapa²⁴ and was a community leader in Santa Lucia. His work was recognized by the UN System Mission in Guatemala, which granted him the accommodation of “unsung hero” in 2002.²⁵ At the time of his death, Mr. Gudiel Ramos was serving as Mayor of the village of Cruce de la Esperanza²⁶ and together with his family sought justice for the disappearance of his son José Miguel Gudiel Alvarez (victim in case 12,590 “Death Squad” currently before the Inter-American Court).²⁷

a. The community work of Florentin Gudiel during the conflict and the flight of the Gudiel Alvarez family to Mexico

48. The available information indicates that Florentín Gudiel Ramos initiated several activities in the community for the benefit of education and housing of the inhabitants of the municipality of Santa Lucia before and during the years of armed conflict. According to several witnesses, Mr. Gudiel Ramos served as a catechist of the parish of Santa María Cotzumalguapa, from which he promoted the savings and credit cooperative “Horizontes”²⁸ and implemented a project for upgrading of housing in the communities of “el Naranjo” and “las Playas”.²⁹

49. According to his family members, during the armed conflict Florentín Gudiel learned of attacks and harassment of congregants of the family’s parish.³⁰ Some of the attacks reported by relatives of Gudiel are consistent with the findings of the CEH, such as the threats that were painted on the walls of the parish signed by the Anti-Secret Army (ESA) and the murder of the Belgian priest Voordeckers from the Parish of Santa Lucia, which was described by the CEH as representative of the hostility directed towards pastors who supported the organization of agricultural workers.³¹ In addition to the above, according to his family members, Florentín Gudiel learned of a series of harassments, and this knowledge placed him in a precarious situation.³² Therefore, Florentin Gudiel left Santa Lucia and fled to the capital in search of safety.³³

²³ Annex 2, Special permit for one way trip back to Guatemala for the members of the international structures of URNG, in compliance with the “Agreement on the basis for the incorporation of the Guatemalan National Revolutionary Unity”, official listing of return 01-1, August 9, 1997. See also: Annex 3, Beneficiary ID of the UN Mission in Guatemala (MINUGUA), August 13, 1997.

²⁴ Annex 4, Identity documents of Florentín Gudiel Ramos.

²⁵ Annex 5, Diploma of Anonymous Heroes, 2002.

²⁶ Annex 6, Internal file of the investigation, Municipality of Santa Lucia, Department of Escuintla, response to the letter MP001/2005/33263, November 21, 2006, page 278.

²⁷ IACHR, Case 12.590 José Miguel Gudiel Álvarez et al, Military Diary. Letter of submission and Merits Report, February 18, 2011. Available at: <http://www.cidh.oas.org/demandas/12.590Esp.pdf>

²⁸ Annex 7, Deposition of Guido Louis De Schirjver, December 1, 2010. See also, Annex 8, Written testimony of Makrina Gudiel, Who was Florentín. His origin, life, and causes of death, December 12, 2010.

²⁹ Annex 6, Internal file of investigation, Deposition of Makrina Gudiel Alvarez before the office of the District Prosecutor, February 10, 2005, page 5.

³⁰ Annex 8, Testimony of Makrina Gudiel, Who was Florentín. His origin, life, and causes of death, December 12, 2010. See also Annex en DVD 1, Deposition of Agripina Álvarez, received by the IACHR on February 14, 2011 y sent to the state on March 8. Regarding the membership of Gudiel to the Parish of Santa Lucia, See Annex 9, Parish of Santa Lucia, Catholic ID of Florentín Gudiel and Agripina A. de Gudiel.

³¹ Guatemala Memory of Silence, Annex I, Volume 1, Illustrative case No. 56. Available at: <http://shr.aas.org/guatemala/ceh/mds/spanish/anexo1/vol1/no56.html>.

³² Makrina Gudiel mentions that her father, Florentín Gudiel, suffered an attempt against his life in March 1980, when he was hit by a motorcycle driven by the nephew of the mayor of the municipality. In March 1982, Makrina Gudiel heard that the wife of a former military commissioner stated that Florentín Gudiel was kidnapped. She also stated that one of her father’s friends told Florentín that he appeared in one of the lists of execution of the ESA. Given the above events, Gudiel’s family left Santa Lucia in search for safe conditions. See in this sense, Annex 8, Testimony of Makrina Gudiel, Who was Florentín. His origin, life and causes of death. December 12, 2010. See also, Annex DVD 2, Deposition of Makrina Gudiel Álvarez, received by the IACHR on February

50. Meanwhile, on September 22, 1983, agents of the state security forces disappeared José Miguel Gudiel Alvarez, a member of the Organization of People in Arms (ORPA),³⁴ and son of Florentín Gudiel.³⁵ The wife of Florentín Gudiel Ramos indicates that during this time, the military raided the house they lived in at Tucun Uman.³⁶

51. The fear caused by the disappearance of Miguel Gudiel in conjunction with other harassment, forced the Gudiel Alvarez family to flee to Mexico in 1983.³⁷ The Commission referred to the disappearance of Miguel Gudiel Alvarez and the Gudiel family displacement to Mexico in the Report on the merits of the Case No. 12,590, currently before the Court.³⁸

b. Continuity of Florentín Gudiel's community work in Santa Lucia after the signing of the Peace Accords

52. In 1997, after the signing of the Peace Accords (1996) between the URNG and the government of Guatemala, the Gudiel Alvarez family returned to Santa Lucia under a return agreement for the incorporation of members of the URNG.³⁹ Upon his return, Florentín Gudiel resumed his work in the community and founded the school "Republic of Mexico."⁴⁰ According to testimony from teachers in the area, he served as chairman of the School Committee from 1996 to 2000⁴¹ and started a "telesecundaria" education program.⁴² Similarly, according to information available, Mr. Gudiel Ramos was an active member of the School Committee for the Prevention of Disability, which was in charge of diagnosing the causes of low achievement and dropouts.⁴³

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14, 2011 and sent to the State on March 8. See also Annex DVD1, Deposition of Agripina Álvarez, received by the IACHR on February 14, 2011 and sent to the State on March 8.

³³ Annex 6, Deposition of Makrina Gudiel before the office of the Prosecutor, February 10, 2005, pages 5 to 7. See also Annex DVD1, Deposition of Agripina Álvarez, received by the IACHR on February 14, 2011 and sent to the State on March 8.

³⁴ According to the CEH, the Organization for the People in Arms (ORPA) was an insurgent group that la Organización del Pueblo en Armas (ORPA) that operated in the armed struggle during the armed conflict in Guatemala. The Organization "gave priority to building a professional guerrilla force whose development was parallel to the social movements." In terms of ideology, the CEH indicates that the members of OPRA defined themselves as "Guatemalan revolutionaries with their own interpretation of the Guatemalan reality (...). Our ideological characteristic is not to define ourselves with any school of thought". See CEH, Guatemala: Memory of Silence, Chapter II: Volume 1. The Strategies of the Guerilla Organizations, paras. 767-768. Available at: <http://shr.aaas.org/guatemala/ceh/mds/spanish/cap2/vol1/quer.html>

³⁵ The CEH Report refers to the Case of Miguel Gudiel Álvarez as follows: "FORCED DISAPPEARANCE". CEH, Guatemala Memory of Silence, Tomo VIII, Cases Presented, Annex II, page 381. According to the next of kin of José Miguel Gudiel Álvarez his disappearance took place on September 22, 1983.

³⁶ Annex DVD1, Deposition of Agripina Álvarez, received by the IACHR on February 14, 2011 and sent to the State on March 8, 2011.

³⁷ IACHR, Submission letter to the Court and Report on the Merits of Case 12.590, José Miguel Gudiel Álvarez et al, Military Diary vs. Guatemala, February 18, 2011, para. 98 and 99. Available at: <http://www.cidh.oas.org/demandas/12.590Esp.pdf>. See also, Annex 10, Deposition of Florentín Gudiel Ramos, October 11, 2004.

³⁸ IACHR, Submission letter to the Court and Report on the Merits of Case 12.590, José Miguel Gudiel Álvarez et al, Military Diary vs. Guatemala, February 18, 2011. Available at: <http://www.cidh.oas.org/demandas/12.590Esp.pdf>

³⁹ Annex 2, Special permit for one way trip back to Guatemala for the members of the international structures of URNG, in compliance with the "Agreement on the basis for the incorporation of the Guatemalan National Revolutionary Unity", official listing of return 01-1, August 9, 1997. See also: Annex 3, Beneficiary ID of the UN Mission in Guatemala (MINUGUA), August 13, 1997. See also Annex 8, Testimony of Makrina Gudiel, December 12, 2010.

⁴⁰ Annex 6, Special Prosecutor, interview of Milvia Adalzisa Ajic, August 17, 2006, page 230 a 232. See also, Annex 11 request of name of "Republic of Mexico" for the Community School signed by Florentín Gudiel as the President of the Educational Committee of the Village Cruce la Esperanza, September 10, 1999.

⁴¹ Annex 6, Special Prosecutor, interview of Otilia Álvarez Arias, August 17, 2006, page 233.

⁴² Annex 6, Special Prosecutor, interview of Milvia Adalzisa Ajic López, August 17, 2006, page 230-232.

⁴³ Annex 12, Prensa Libre, Anonymous Heroes was murdered, December 22, 2004. See also, Annex 13 Letter to the Ministry of Education, March 2, 2001.

53. In 2002 in recognition of his commitment to peace building and community development, the United Nations System in Guatemala named Gudiel Florentín as an "Unsung Hero".⁴⁴ Makrina Gudiel indicates that when Florentín received this award:

"[...] military commissioners arrived and they were not happy. [...] At times my father reserved a block of time on community radio to talk about the reality and he had been recognized as a very dedicated person to human development, not only in his community but in the surrounding area, but the military harassed people and what he did caused friction."⁴⁵

54. In September 2003, the URNG was elected in the municipality of Santa Lucia.⁴⁶ According to his daughter's testimony, Florentin Gudiel Ramos strongly supported the URNG's candidate in the municipal governmental election.⁴⁷ The mayor-elect stated that Gudiel worked on a project for renovating homes as a representative of the Guillermo Toriello Foundation.⁴⁸ According to available information, he also participated in a project to build houses for families in extreme poverty.⁴⁹

55. On September 11, 2004, the General Assembly of the Council of Community Development (COCODE) of Cruce de la Esperanza⁵⁰ elected Florentin Gudiel Ramos as mayor. Meanwhile, Makrina Gudiel Alvarez served as Secretary of COCODE for the village of Cruce de la Esperanza in that same year. Florentín Gudiel promoted a project for drainage and paving to the Departmental Development Council⁵¹ and took steps to approve sports complex for youth recreation.⁵² According to the testimony of his daughter, at the time of his death, Florentin Gudiel was involved in a project to write the true story of Santa Lucia, which would relate the history of all those who were disappeared and killed there during the armed conflict, with the intention of taking steps to dignify⁵³ and to develop the town square in memory of the heroes and martyrs of the armed conflict.⁵⁴ Florentín Gudiel served as a contributor to the Human Rights Attorney General (Procuraduría de Derechos Humanos).⁵⁵

3. Events preceding the murder of Florentín Gudiel Ramos

⁴⁴ Annex 14, Prensa Libre, Public recognition to the social work of 19 Anonymous heroes, November 21, 2002. See also Annex 5, Diploma to Florentín Gudiel Ramos, Anonymous hero 2002.

⁴⁵ Annex DVD 2, Deposition of Makrina Gudiel Álvarez, received by the IACHR on February 14, 2011 and sent to the State on March 8.

⁴⁶ Supreme Electoral Tribunal, Memory of the General Elections 2003, Municipality of Santa Lucía. Available at: <http://216.230.138.139/elecciones2003/SantaLuciaCotz.pdf>

⁴⁷ Annex 6, Special Prosecutor, Deposition of Makrina Gudiel Álvarez, May 11, 2005. page 47-48.

⁴⁸ Annex 1, Deposition of Julio Armando Paz Espinoza, December 5, 2010.

⁴⁹ Annex 6, Deposition of Makrina Gudiel Alvarez before the office of the Prosecutor, February 10, 2005, page 5. See also Annex 15, Nuestro Diario, The crossing of hope, Don Florentín helps his community. July 21, 2003, page 23.

⁵⁰ Annex 6, Municipality of Santa Lucía, response to the Letter MP001/2005/33263, November 21, 2006 pages 278- 283. See also communication of the petitioners received in the IACHR on January 12, 2011

⁵¹ Annex 16, Project regarding drainage and paving, July 2004. See also, Annex 8, Testimony of Makrina Gudiel, Who was Florentín. His origin, life and causes of death. December 12, 2010.

⁵² Annex 17, Request for a field to construct a sports area, January 10, 2003.

⁵³ Annex DVDs 1 y 2, Deposition of Makrina Gudiel Álvarez, received by the IACHR on February 14, 2011 and sent to the State on March 8. See also, Annex 18, Prensa Libre, Los Gudiel siguen perseguidos, January 30, 2005.

⁵⁴ Annexes DVDs 1 y 2, Deposition of Makrina Gudiel Álvarez, received by the IACHR on February 14, 2011 and sent to the State on March 8.

⁵⁵ Annex 6, Special Prosecutor, Ref M.P. 16-2005, December 15, 2005, page 17.

56. According to several testimonies given to the prosecutor, Florentín Gudiel was recognized by local people for having been part of the guerrillas⁵⁶ and had disputes with Miguel Azurdia, recognized as a former member of the Army of Guatemala and Miguel Estrada, former Mayor of the village of Cruce de la Esperanza, who had held the office under the government of Guatemalan Republican Front (FRG).

57. According to some accounts, Miguel Estrada was sympathetic to and worked for the FRG.⁵⁷ Makrina Gudiel further notes that he was a former military commissioner.⁵⁸ With regards to the origin of the clashes between Gudiel and Estrada, Mayor-Elect of the URNG explains that Gudiel had various problems with Mr. Miguel Estrada who was previously the assistant mayor, because he sought to exercise powers in the Village of Cruce de la Esperanza, which as community Mayor, Florentin Gudiel was duly authorized to do.⁵⁹ According Makrina Gudiel, Mr. Miguel Estrada often "spoke ill" of Florentín Gudiel.⁶⁰

58. Also, the prosecutor was presented with some evidence that Miguel Angel Azurdia was identified as a former member of the Army of Guatemala who had a "military machismo"⁶¹ and the family members of Florentín Gudiel identify him as a former kaibil.⁶² According to Makrina Guidel, Mr. Azurdia offended her as well as Florentin by "saying that they were guerrillas."⁶³

59. According to testimony before the Prosecutor office, the clashes between Gudiel and Azurdia arose after Florentín Gudiel concluded his tenure as Chairman of the Community Self Management School. Azurdia was sworn in as new president but was dismissed before his term (2003) after the completion of an

⁵⁶ Ludin Rolando Latin Cisneros indicated in its interview that "Mr. Gudiel and his family belong to the guerrilla for a long time". Annex 6, DICRI, Letter No. 36-2009 Ref. Montenegro, February 5, 2009. page 427.

Milvia Aji López indicated that she heard "comments of the persons of the community that possibly because of having lived in Mexico...People say that in the previous years he and his family were part of the guerrilla. That is what people say." Annex 6, Special Prosecutor, interview of Milvia Adalzisa Ajic López, August 17, 2006, page 231.

According to Makrina Gudiel, Miguel Azurdia said that Florentín and his family "were guerrilla members". Annex 6, DICRI, Ref. MP60/2004/5417, April 5, 2005, page 224.

⁵⁷ Annex 6, Prosecutor office on Human Rights, Interview of Julio Paz, December 23, 2004, page 80. See also, Prosecutor Office, MO60/2004/5717, Deposition of Makrina Gudiel, February 10, 2005, page 6.

⁵⁸ Annex 8, Written testimony of Makrina Gudiel Álvarez.

⁵⁹ Annex 6, Prosecutor office on Human Rights, Interview of Julio Paz, File No. 048-2004/DI, page 80.

⁶⁰ Annex 6, Prosecutor office on Human Rights, File No. 048-2004/DI, Deposition of Makrina Gudiel Álvarez, December 2004, page 78-79.

⁶¹According to the investigation of the Special Prosecutor (DICRI, Ref. MP60/2004/5417, April 5, 2005). pages: 221 - 227.

Some villagers of Cruce de la Esperanza gave their testimony but did not identify themselves before the Prosecutor because they were afraid. They stated that "a person known as Miguel Ángel Azurdia [...] always had problems with the deceased, maybe because he was envious ... he even threatened the family of the deceased, and we are afraid that he actually carries out the threats, because not only he is not from this village, but he also has a military machismo".

In his deposition to the Prosecutor, Cirilo Pérez Ordóñez says that Miguel Azurdia had "bad feelings and he has said that he is a former member of the Army."

Pedro Fernando del Cid Escobar, indicated that Miguel Ángel Azurdia always brags about having been a member of the National Army.

⁶² Makrina Guidiel and Beatriz Gudiel stated that Miguel Ángel Azurdia was a "former kaibil of the Guatemalan army". Annex 6, Deposition of Makrina Gudiel Alvarez before the office of the Prosecutor Distrital, February 10, 2005, page 6. Ver, Annex 6, Special Prosecutor, Deposition of Beatriz Gudiel Álvarez, May 11, 2005, page 44.

According to the CEH, the Kaibiles were elite soldiers of the Guatemalan Army during the armed conflict. During their training, the Army encouraged the aggressiveness and braveness through the dehumanized mental and physical pressure. "It was essential that the kaibiles killed animals, specially dogs, and eat them raw or grilled, and drink their blood to show braveness". Memory of Silence, Volume II, The violations of human rights and the facts of violence, para. 895.

⁶³ Annex 6, DICRI, Ref. MP60/2004/5417, April 5, 2005, page 224.

audit on the management of funds allocated to School "Republic of Mexico." At that time, the population of Saint Lucia asked Gudiel again to be president, and he did not accept a new term.⁶⁴

60. Makrina Gudiel stated that when Azurdia was removed as Chairman, he phoned her and threatened to hurt her, her son and Florentin Gudiel.⁶⁵ According to her own testimony he called and said, "so you guys got your way to appoint a new committee, but I do shit. ("los voy a hacer mierda)".⁶⁶

61. Makrina Gudiel reported this threat to the Public Prosecutor on November 26, 2003.⁶⁷ According to interviews conducted by the investigative staff of the Attorney General, community residents knew of the on-going conflict between Miguel Azurdia and Florentín Gudiel.⁶⁸ Following the threat, the daughters of Mr. Gudiel Ramos said that armed individuals watched their home in the month prior to his murder. According to Makrina Gudiel's testimony, at least one of these events was reported to the Mayor.⁶⁹

62. According to the testimony from family members to the Human Rights Attorney General, a fortnight before his assassination Gudiel Florentin went to the Myrna Mack Foundation to sign a claim against the State of Guatemala to be presented to the IACHR in the case of the forced disappearance of his son, Miguel Gudiel Alvarez.⁷⁰

⁶⁴ Annex 6, DICRI, Ref. MP60/2004/5417, interview of Cirilo Pérez Ordóñez, April 5, 2005, pages 222-223. See Annex 6, Deposition of Beatriz Gudiel, May 11, 2005, page 44.

⁶⁵ Annex 6, Prosecutor office on Human Rights, File No. 048-2004/DI, Deposition of Makrina Gudiel Álvarez, December of 2004, page 78-79. See also, Annex 6, Special Prosecutor, Ref. MP. 16-2005, FDH, Deposition of Makrina Gudiel Álvarez, May 11, 2005, page 78.

⁶⁶ "Annex 6, Deposition of Makrina Gudiel, page 225. See also Annex 6, Deposition of Makrina Gudiel Alvarez before the office of the District Prosecutor of Santa Lucía, Department of Escuintla, February 10, 2005, page 6, where it states that, regarding the menace, "he told me ...you are going to pay this, I am going to run over you". All these happened because by the time he called me, he was President of the previously mentioned school."

⁶⁷ The complaint is not in the file. However, the documents of the Prosecutor Office refer to such complaint and the date that it was filed. See Annex 6, DICRI, Ref. MP60/2004/5417, April 5, 2005, page 227.

⁶⁸ Some villagers of Cruce de la Esperanza gave their testimony but did not identify themselves before the Prosecutor because they were afraid. They stated that "a person known as Miguel Ángel Azurdia [...] always had problems with the deceased, maybe because he was envious ... he even threatened the family of the deceased, and we are afraid that he actually carries out the threats, because not only he is not from this village, but he also has a military machismo". DICRI, Ref. MP60/2004/5417, April 5 2005, page 224.

Makrina Gudiel learned that Miguel Angel Azurdia and Miguel Estrada requested once that Florentín Gudiel was taken out of the Educational Committee. Annex 6, Prosecutor, Deposition of Makrina Gudiel Álvarez, February 10, 2005, page 6.

Cirilo Pérez Ordoñez stated that "Miguel Azurdia and Miguel Estrada fought to convince the neighbors so that Florentin was not recognized as anonymous heroes". Annex 6, DICRI, Ref. MP60/2004/5417, interview of Cirilo Pérez Ordoñez, April 5, 2005, page 223.

⁶⁹ The next of kin of Florentín Gudiel Ramos refer to the following facts:

"the neighbors alerted us that there was a pickup in the backyard [...] with armed men that were placed below the orange trees, and smoke at night, and that were controlling our house [...]. "Then my dad and I inspected the field and there were actually traces of cars, and cigarette butts [...]. "we did not present a complaint [...] but we told the Mayor, whom we trusted a lot, of what was going on in the area". "In the following days, the neighbors told us that there were armed men looking to our house". Annex DVD 2, Deposition of Makrina Gudiel Álvarez, received by the IACHR on February 14, 2011 and sent to the State on March 8.

"[...] I remember that a month before the murder of my father, unidentified men, with their faced covered, came to my house, [...], to the residency of my father; we thought that they might want to rob the house [...]. [This happened on November 15, 2004. I think that all of these are with the intention to harm us, because of our political work, but we thought it was common crime. I also remember that a neighbor, who sometimes robs, asked us not to think he was responsible, because he had seen unknown people in our home at night". Annex 6, Special Prosecutor, Deposition of Makrina Gudiel Álvarez, May 11, 2005, page 47.

"[On November 21, 2004] when my nephews and my son, all of them children, staid at my mom's house, they were sent to see if our house was closed, but they were very scared when they saw an armed man with its face covered by the window, where I used to sleep. When he saw them, he ran through the fields and then to the street. My nephews and children ran to tell my brother, who fired into the air.

⁷⁰ Annex 6, Human Rights Prosecutor. File 048-2004/DI, June 16, 2005, page 79.

63. In December 2003 Makrina Gudiel Alvarez allegedly received a threat by a person who had infiltrated the URNG. The Commission notes that the petitioners state that the threat was reported to MINUGUA.⁷¹ Calls were done by the Escuintla Mediation Center at the request of Makrina Gudiel Álvarez. Also, according to a statement of the center dated February 20, 2004, as the author of the threats did not appear, the authorities ordered "to continue the judicial proceedings of the case."⁷² There is no evidence in the file as to any additional actions taken in relation to this threat.

4. The murder of Florentín Gudiel Ramos

64. On December 20, 2004, the staff of the Public Prosecutor of Santa Lucia Cotzumalgupa found the lifeless body of Florentin Gudiel Ramos in a supine position at 11:30 a.m. The body was found approximately ninety point five kilometers along the road to the Pacific on a portion of asphalt with a green bike between his legs, with two projectile wounds caused by firearms in the frontal region and one in the back.⁷³

65. Family members reported on the activities Florentín Gudiel performed on the day of his murder, including the collecting of data on people who were disappeared during the armed conflict.⁷⁴ Witnesses, who last saw Florentín Gudiel alive, reported seeing him on his bicycle being chased by two men on bicycles.⁷⁵ One of the witnesses, Irma Elizabeth Martinez said:

[...] I saw that Mr. Florentín Gudiel Ramos left the road that passes over the railway line to board a bicycle about 300 meters from where he was murdered and took the asphalt going to your residence. I noticed that behind him were two guys on bicycles as about 15 feet away, one was of white complexion, the other one was tall, dark, thin, and about 1.60 high, [...] one with blue shirt with red cap and the other with a beach red t-shirt, with a light blue cap.⁷⁶

66. After these events, according to testimony from people who were close to the kill site, detonations from a gun⁷⁷ were heard but there was little visibility that day due to the fact that there was lots of smoke because people were burning cane.⁷⁸ The final report submitted by the prosecution concerning this case, states that no person reported having observed exactly where Mr. Gudiel died.⁷⁹ In contrast, it appears from the testimony presented by Makrina Gudiel Alvarez to the Commission that there may have been some witnesses to the events and vehicles present near the crime scene.⁸⁰

⁷¹ Communication of the petitioners received by the IACHR on January 12, 2011

⁷² Annex 24, Center of Mediation of the Judicial Organism of Guatemala, February 20, 2004.

⁷³ Annex 6, District Prosecutor of Santa Lucia, procedure of removal of the body, December 20, 2004, page 295. See, National Police, Substation No. 31-43, Letter No. 4,126-2004/.../ref.///RL. Juárez, page 296.

⁷⁴ Annex 6, Deposition of Beatriz Gudiel Álvarez, May 11, 2005, page 45. See also, Annex 8, Written testimony by Makrina Gudiel Álvarez.

⁷⁵ See interview of Reyes Tun Annex 6 National Police, Substation No. 31-43 Escuintla, Letter No. 4,126-2004/.../ref.///RL. Juárez, page 296.

⁷⁶ Annex 6, DICRI, Ref. MP001/2005/33263, June 21, 2006, pages 147-148.

⁷⁷ See Deposition of Pablo Flores Coxal en Annex 6, DICRI, Ref. MP001/2005/33263, June 21, 2006, page 148-149.

⁷⁸ Annex 6, Deposition of Elizabeth Leon, DICRI, Ref. MP001/2005/33263, June 21, 2006, page 148.

⁷⁹ Annex 6, Special Prosecutor, answer to the letter MPDHH-047B-2009, April 2, 2009, pages 444-445.

⁸⁰ Makrina Gudiel indicates that there they use a "Coca Cola distribution bus to prevent the body from receiving sunlight". Moreover, she stated that the persons that were in the bus told her brother, Florentin Gudiel Alvarez, that was in the scene crime, to be careful because "the men were close, in a car and could come back". Makrina Gudiel says, as well, that a person named Pedro Yos had told her that, the day of the murder, there was a car waiting for the men who committed the murder, in the path to La Esperanza. Véase, Annex DVD 2, Deposition of Makrina Gudiel Álvarez, received by the IACHR on February 14, 2011 and sent to the State on March 8. See also, Annex 8 Written testimony by Makrina Gudiel Álvarez.

67. The Commission notes that the information provided by the parties agree that at the time authorities arrived on the crime scene, a pick-up was present, but no data about the truck was recorded. Also some people were present who apparently had tried to assist the victim.⁸¹

5. Events after the murder of Florentín Gudiel Ramos

68. As stated in the report of the Human Rights Attorney General, a copy of which was integrated into the Public Ministry records, the family members of Florentín Gudiel said that on the day of the wake between 5 to 7 armed men showed up in a vacant lot that was in front of their residence in 2 vehicles and the family was able to see that they were all *kaibiles*.⁸² In response to a request from the Human Rights Attorney General, the Ministry of National Defense reported on this day no patrols were present in that area and that the Ministry has no vehicles that matched the description given.⁸³

69. On the other hand, Makrina Gudiel made the prosecutor's office aware that on the day of her father's burial, acquaintances without indicating their names, informed her that Mr. Miguel Angel Azurdia and another man named Miguel Ángel Estrada were near the cemetery, and upon reaching the burial site the first thing they said was "look at what they bring," they smirked and left the area in a mocking manner.⁸⁴ Also during the Catholic celebration of prayers for nine days after a death ("la novena"), Makrina Gudiel noted that some women who went to the prayers had been harassed.⁸⁵ Another of Florentín Gudiel's daughters, Beatriz Gudiel Alvarez, reported to the prosecutor that on the third or fourth day after the death of her father while she was hanging the laundry she observed:

"[...] fat and dark man walking. He was short, twenty years old, with a shirt of the FRG [...] he was walking slowly with a paper in his hand, [...] when he saw me, he was scared and turned away, [and] raised his hand to indicate a stopping gesture possibly to another person. Then the man walked one block down and then returned with another man, [who is a] pimp, about twenty-years old with a beige shirt with the sleeves cut off, and dark pants. I saw him showing a gun in his belt on the left side. When he passed by the house, the pimp told me good morning with a sneer, then I waited for him to return but I did not see him [...]."⁸⁶

70. On December 23, 2004, the Human Rights Attorney General (PDH) requested the National Civil Police to provide security measures to Makrina Gudiel and her family.⁸⁷ There is no evidence in the record that these measures have been implemented. According to the testimony of Makrina Gudiel, when she went to seek for protection from the police officers, they told her that there was no chance of them providing it.⁸⁸

⁸¹ According to the deposition of one of the policemen that took part of the removal of the body, when he got to the crime scene there was a parked pick-up, which he did not see the plaques, and that there were some persons that were apparently trying to help the victim. Annex 6, Special Prosecutor, Deposition of Cesar Danilo Carrera, May 9, 2005, page 42.

⁸² Annex 6, Prosecutor office on Human Rights, report of December 23, 2004, page 81.

⁸³ Annex 6, Ministry of National Defense, Report 018/DDH/MDN/CHAV-05, March 22, 2005, page 100.

⁸⁴ Annex 6, DICRI, Deposition of Makrina Gudiel, Ref. MP60/2004/5417, April 5 2005, page 225.

⁸⁵ According to the written testimony of Makrina Gudiel, a man named Enrique Cruz, owner of a protestant school, had asked "who were the women that had been praying for that old man who is already burning in hell." Annex 8, Written testimony by Makrina Gudiel Álvarez.

⁸⁶ Annex 6, Special Prosecutor, Deposition of Beatriz Gudiel Álvarez, May 11, 2005, page 45. See Annex, DVD 1, and Deposition of Beatriz Gudiel, received by the IACHR on February 14, 2011 and sent to the State on March 8.

⁸⁷ Annex 6, Human Rights Prosecutor, File 048-2004/DI, June 16, 2005, page 77.

⁸⁸ Annex DVD 2, Deposition of Makrina Gudiel Álvarez, received by the IACHR on February 14, 2011 and sent to the state on March 8, 2011.

71. With no possibility of protection from the National Police, Makrina Gudiel indicates that while celebrating the ninth day after her father's murder, the municipality transit police of Santa Lucia provided security patrols and, once the nine day celebration was over, they all left the area.⁸⁹

72. Furthermore, in January 2005, Makrina Gudiel Alvarez reported to the Prosecutor that on January 14, 2005, while traveling in a van, the vehicle glass began to tarnish as if it had been raining, she took his hand and noticed that there was a smell of gasoline. When she reached a restaurant in the street, she pulled over to clean the glass and realized that there was a pick-up and a white truck behind them. When she tried to leave the place, the vehicle that was behind, turned the lights on and off, giving the impression that it was following Mrs. Gudiel.⁹⁰ The prosecution made some inquiries concerning these events⁹¹ and the case was eventually dismissed in February 2008.⁹²

73. In its complaint to the prosecutor about the incident with the truck, Makrina Gudiel referred to the harassment suffered by her family after Gudiel's murder. She indicated that "there have been other acts of intimidation against (her) family, the day of (her father's) funeral and later. That forced us to leave our home to take shelter in different places and try to protect our security and physical integrity."⁹³

6. Consequences of the assassination of Florentín Gudiel Ramos on his family

74. During the government of the URNG in Santa Lucia, Makrina Gudiel Alvarez worked as an official in the Social Administration of the Municipality.⁹⁴ In addition, she worked with women's issues in the municipality⁹⁵ and held the position of Secretary of COCODE in the Village of Cruce de La Esperanza.⁹⁶ After the murder of her father and the incident with the van she resigned from her job,⁹⁷ left her post as Secretary of COCODE and fled to Mexico with her children Carlos Ernesto Cruz Gudiel and Jose Gabriel Gudiel and her mother Maria Agripina Alvarez in search of better security conditions.⁹⁸

75. For her part, Beatrice Gudiel and her children Ileana Concepcion and Rodrigo also left Santa Lucia and sought refuge elsewhere in the country, leaving their rented house.⁹⁹ Family members indicate that as a result of the displacement they could not continue with the projects undertaken and suffered economic losses.¹⁰⁰ According to the petitioners, José Francisco, Ana Patricia and Florentino, all surnamed Gudiel

⁸⁹ Annex 6, Special Prosecutor, Deposition of Makrina Gudiel, May 11, 2005, page 47. Deposition of Makrina Gudiel, DVD 2, received by the IACHR on February 14, 2011 and sent to the state on March 8, 2011.

⁹⁰ Annex 6, DICRI, Ref. MP60/2004/5417, April 5, 2005, page 225-226.

⁹¹ On January 26, 2005 staff from the Public Prosecutor checked the area where the facts took place, they took pictures and did some interviews to the persons that stated that they knew nothing about an existing problem. Annex 6, DICRI, Ref. MP60/2004/5417, April 5, 2005, page 226-227.

⁹² Annex 6, Unit of Crimes against Human Rights Activists, Process number MP 15-2005, Report of the investigator in charge of the investigation, received by the Prosecutor Office – Human Rights Section on July 20, 2009, page 56.

⁹³ Annex 19, Complaint presented by Makrina Gudiel Álvarez received at the Office of the Public Ministry on January 21, 2005.

⁹⁴ Annex 20, ID documentation of Makrina Gudiel, ID of Official of Social Organization.

⁹⁵ Annex 21, Letter of resignation of Makrina Gudiel Álvarez to the Municipality Mayor, November 5, 2007

⁹⁶ Annex 6, Municipality of Santa Lucía, response to the Letter MP001/2005/33263, November 21, 2006, pages 278- 283. See also communication of the petitioners received in the IACHR on January 12, 2011.

⁹⁷ Annex 21, Letter of resignation of Makrina Gudiel Álvarez to the Municipality Mayor, November 5, 2007.

⁹⁸ Annex 8, Written testimony by Makrina Gudiel Álvarez. See also, Annex 22, Mexican Commission of Help to Refugees, Record of application of refugee of Makrina Gudiel Alvarez and her children Carlos Ernesto and José Gabriel Cruz Gudiel, as well as María Agripina Álvarez Tobar, February 24, 2005.

⁹⁹ Annex 8, Written testimony by Makrina Gudiel Álvarez.

¹⁰⁰ "Makrina Gudiel states that: "[...] by the time my dad was murdered, we as a family had planned an alternative financial development project. We owned some fields, a strong municipality and enough water. We were going to construct a recreational
Continues...

Alvarez, have not been able to fulfill their plan to return to Guatemala because of the facts of this case.¹⁰¹ They also note that some family members interrupted their studies.¹⁰²

76. María Agripina Álvarez, wife of Florentin Gudiel, by abandoning their property, she lost her livelihood, and thus became economically dependent on her family members. According to Ms. Alvarez, Mrs. María Agripina Álvarez died on June 3, 2010.¹⁰³

77. The expertise proposed by the petitioners and not contested by the State indicates that the following family members have suffered psychological consequences because of the death of Florentin Gudiel and the situation of impunity in which the facts remain: Yolanda Gudiel¹⁰⁴; Beatriz Gudiel¹⁰⁵; Makrina Gudiel¹⁰⁶; José Franciso Gudiel¹⁰⁷, Florentin Gudiel¹⁰⁸ y Ana Patricia Gudiel¹⁰⁹. It also refers to the impact of death on their grandchildren Román Vladimir González Gudiel and his two siblings¹¹⁰; Ileana Concepción

...continuation

center, with pools, and restaurant. Moreover, my dad left pieces of furniture to sell them as part of the business. He also left a field ready to plant foreign guava. [...]”Annex 8, Written testimony by Makrina Gudiel Álvarez.

¹⁰¹ Annex 8, Written testimony by Makrina Gudiel Álvarez. See also, communication of the petitioners received by the IACHR on January 12, 2011 and Annex 22 Mexican Commission of Help to Refugees, Record of application of refugee of Makrina Gudiel Alvarez and her children Carlos Ernesto and José Gabriel Criz Gudiel, as well as María Agripina Álvarez Tobar, February 24, 2005.

¹⁰² Makrina Gudiel points out that she lost a scholarship to study in 2005, as a consequence of them having to flee to Mexico. Her son, Carlos Ernesto Cruz Gudiel, lost his job as a schoolteacher and he missed a whole year of college studies. Oscar Cruz Gudiel had to be separated from his mother and siblings so he could keep on studying. His aunt Yolanda Gudiel, older daughter of Florentin Gudiel Ramos took care of him. Makrina Gudiel indicates as well that her youngest son, José Gabriel Cruz Gudiel, missed a whole year of school. Makrina Gudiel returned to Guatemala on 2006. See communication of the petitioners received by the IACHR on January 12, 2011.

¹⁰³ Annex 8, Written testimony by Makrina Gudiel Álvarez.

¹⁰⁴ She shows “symptoms: [...]. She developed depression, coupled with the pain to see her mother’s sickness and mourning [...].The reactive initial depression that she developed because of the traumatic impact has gone through cycles of depressive and anxiety phases. [...]”.Annex 23, psychosocial expertise done by María de los Ángeles Herraéz Fernández (Psychology bar MU-00879,) January 5, 2011.

¹⁰⁵ “She and her children describe a profound depressive phase [...] she is being treated for her ulcer, colitis and thyroid. [...] That following year she and her husband decided to get separated because of the differences they had regarding the search for justices for her father. She feels that she lost a personal and family project with the community.”. Annex 23, Psychosocial expertise done by María de los Ángeles Herraéz Fernández (Psychology bar MU-00879,) January 5, 2011

¹⁰⁶ “He presents a delayed mourning that worsens with the stress produced by the investigation and search for justice in his father case. There has been a change in character that is reflected in his emotional firm expression, in the feelings of pain and rage that have been that have been channeled in the investigation and search for justice. The consequences on his health can be seen in his recurrent hypotension and tachycardia.” Annex 23, psychosocial expertise done by María de los Ángeles Herraéz Fernández (Psychology bar MU-00879,) January 5, 2011.

¹⁰⁷ He suffers from a “delayed mourning and a chronic anxiety disorder. [...] He suffers from vitiligo (a skin sickness) and psoriasis, both directly related to stressful events of high impact” Annex 23, Psychosocial expertise, January 5, 2011

¹⁰⁸ Florentino Gudiel was trying to return to Guatemala to participate in a project of a recreational center with his family. Coupled with the emotional suffering of the impact he suddenly saw his family project broken [...] he has dermatitis (psoriasis) and a generalized stage of anxiety, that are reactivated with conflictive or dangerous situations [...] He presents symptoms of delayed mourning”. Annex 23, Psychosocial expertise, January 5, 2011

¹⁰⁹ “She presents a frozen grief, where the experience of the pain and fear suffered is updated and causes her to have anxiety crisis when the facts come back to her memory [...] Her character changed radically, he became introverted and cautious, and totally centered in her family [...] Her mourning process is directly related to the process of justice [...] She highly fears for the life of her children [...]”.Annex 23, Psychosocial expertise, January 5, 2011

¹¹⁰ The Commission notes that according to the expertise, Yolanda’s three older children suffered the lost of their grandfather, in particular, regarding Román Vladimir González Gudiel, the expertise specifically refers “the state of insecurity and fear after his murder [...] He refers to having suffered from a reactive depression after the murder [...] He has later had phases of anxiety”. Annex 23, psychosocial expertise, January 5, 2011.

Pérez Gudiel¹¹¹; Rodrigo Pérez Gudiel¹¹²; Carlos Ernesto Cruz Gudiel¹¹³; Oscar Cruz Gudiel;¹¹⁴ José Gabriel Cruz Gudiel.¹¹⁵

78. As for the consequences of the assassination of Florentín Gudiel in Santa Lucia, Makrina Gudiel states that it "disrupts an entire history of struggle, living testimony of what happened in the past [...] [and] is also a clear message to the rest of the population encouraged not to fight because that can happen."¹¹⁶ The psychosocial expertise submitted by the petitioners and not contested by the State referred to the impact of the murder of Florentín Gudiel and the lack of clarification of the events on the collective damage and the stigmatization provoked in those who wanted to engage in community leadership.¹¹⁷

7. The investigation of the murder of Florentín Gudiel Ramos and harrassment acts against his family

79. According to the information in the record, the investigation related to the death of Florentin Gudiel was based on at least two possible theories of crime. First, the investigating authorities considered as possible motive the clashes arising from his community leadership and related enmities¹¹⁸ Later, nearly two years after the murder, when the investigating authorities received the testimony of a person who said Florentin Gudiel may have witnessed the murder of a youth in the area, the office of the prosecution eventually considered as a line of investigation that the motive for the murder was precisely that Florentin had witnessed that fact.¹¹⁹ The following describes the investigation by the Attorney General as recorded.

80. On December 20, 2004 the District Attorney of Santa Lucia along with agents from the National Civil Police performed the procedure of removing the body of Florentín Gudiel Ramos which showed two projectile impacts caused by firearms in the frontal region and one in back. At the crime scene, they located three 9 mm shells and met Mr. Reyes Tun, who said he saw two men who were driving a bicycle behind Mr. Gudiel who were responsible of murder. One was wearing a red shirt and the other one a white shirt. The assistant prosecutor ordered the transfer of the body to the morgue of the town for the autopsy.¹²⁰

¹¹¹ She shows "[...] fear, insecurity and lots of sadness because of the lack of the protective figure that her grandfather was. [...] There was a change in her character. She became emotionally inhibited and she restricts her personal relations [...]". Annex 23, Psychosocial expertise, January 5, 2011

¹¹² "He describes with detail what happened the day of the murder and the following days when they left the community. He describes that, at first, it was very difficult to overcome this. He remembers that he could not sleep well [...]". Annex 23, psychosocial expertise, January 5, 2011.

¹¹³ "He presents a complicated grief [...] not only did he had an affective lost but he also lost his job as a school teacher [...]. The rage and impotence because of the lack of justice is reflected in his skepticism and lack of confidence [...]". Annex 23, psychosocial expertise, January 5, 2011.

¹¹⁴ "He presents a delayed grief and reactive depression to the fact. Later, he has gone through limited addictive periods (alcohol and tobacco)[...]" Annex 23, psychosocial expertise, January 5, 2011.

¹¹⁵ "The murder left him with a feeling of extreme vulnerability [...] he has intrusive memories regarding the murder that cause him isolating behavior that reactivate his fear to suddenly loose a loved person [...]" Annex 23, Psychosocial expertise, January 5, 2011.

¹¹⁶ Annex 8, Written testimony by Makrina Gudiel Álvarez.

¹¹⁷ Annex 23, Psychosocial expertise, January 5, 2011

¹¹⁸ The April 5, 2005 report rendered by the personal investigator of the Direction of Criminal Investigations, indicated that "it could be said that there was hostility between the deceased and Mr. Miguel Angel Azurdia. It is possible that the problems began in the fact that both of them wanted to be President of the local Committee". Annex 6, DICRI, Ref. MP60/2004/5417, April 5, 2005, page 227.

¹¹⁹ The report rendered by the personal investigator of the Direction of Criminal Investigations, indicated that one hypothesis of the motive of the crime was based on the fact that "Florentín Gudiel Ramos had made comments to other persons that the had seen the individuals responsible for the death of Carlos Adalso [...] and that these men knew that Florentin could denounce them in any moment". Annex 6, DICRI, Report related to the death of Florentin Gudiel Ramos, Ref. MP001/2005/33263, June 21, 2006, page 150.

¹²⁰ Annex 6, District Prosecutor office of Santa Lucía, Escuintla, procedure of body removal, December 20, 2004 page 295. Annex 6, National Police, Letter No. 4,126-2004/.../ref.///RL. Juárez, page 296.

In her testimony, Makrina Gudiel stated that "[locals] made the good gesture of carrying water and washing the blood."¹²¹

81. The body was taken to a funeral home in a vehicle owned by it.¹²² When it was assigned to an investigator of the Criminal Investigative Service "the corpse had already been taken", there were no inspections done. The investigator proceeded to collect the testimonies of Makrina Gudiel Alvarez, daughter of Florentin Gudiel, Maria Agripina Alvarez Tobar, who was his wife, and Elizabeth de Leon, a neighbor.¹²³ The same day they performed the autopsy.¹²⁴ There is no evidence in the case file that after the body was removed, the Prosecutor took any action until January 12, 2005, when he made a request to the Criminal Investigations Deputy that investigators be appointed.¹²⁵

82. Between January 20 and 25, 2005, investigators at the Criminal Investigations Directorate of Public Prosecutions (DICRI) interviewed Cirilo Perez Ordonez, the partner of Beatriz Gudiel Alvarez, Sun Sanuc Reyes, who was cutting cane at the time of the murder and heard some explosions and Pedro Fernando del Cid Escobar, a farmer, who said that he was aware of the conflicts between Florentín Gudiel and Miguel Ángel Azurdia.¹²⁶ He also interviewed Makrina Gudiel and Benjamin Galvez.¹²⁷ On February 10, 2005, Makrina Gudiel Alvarez gave another statement to the prosecutors.¹²⁸

83. The Office of Santa Lucia forwarded the case file to the Special Prosecutor for Human Rights on March 21, 2005.¹²⁹ From that date, the Special Prosecutor of Human Rights was in charge of the investigation through a unit specializing in crimes against human rights activists (hereinafter Special Prosecutor) and was assigned registration number 001/2005/33263 MP.

84. The first action by the prosecution is dated April 5, 2005, when the chief medical examiner was asked if it was necessary to request an extension of the autopsy report.¹³⁰ This was answered in the affirmative,¹³¹ and on April 19, 2005 it was requested.¹³²

¹²¹ Annex DVD 2, Deposition of Makrina Gudiel Álvarez, received by the IACHR on February 14, 2011 and sent to the state on March 8 2011.

¹²² Annex 6, Special Attorney General of Human Rights ref. MP. 16-2005. Fdh, interview of César Danilo Carrera Lafaro, May 9, 2005, page 42.

¹²³ Annex 6, Service of Criminal Investigation, Letter No. 16-2004 Ref. MEBP.bg, December 21, 2004, pages 93-95.

¹²⁴ Annex 6, Forensic Physician. Judicial Organ. Necropsy No. 225/04, December 22, 2004, page 116.

¹²⁵ Annex 6, Prosecutor Office of Santa Lucia Cotzumalguapa, MP60/2004/5417, Request for the appointment of the investigators to the Criminal Operational Section of the Public Ministry, January 12, 2005, page 2. This request was reiterated on March 14, 2005, See Annex 6, Prosecutor Office of Santa Lucia, MP/60/2004/5417, Reiteration of request of appointment of the investigators to the Criminal Operational Section of the Public Ministry, page 9.

¹²⁶ Annex 6, DICRI, Ref. MP60/2004/5417, Report on the death of Mr. Florentin Gudiel Ramos (Anonymous Heroes), April 5, 2005, page 224.

¹²⁷ Annex 6, DICRI, Ref. MP60/2004/5417, Report of April 5, 2005, page s 222-227.

¹²⁸ Annex 6, Prosecutor office of the Public Ministry of Santa Lucia, MO60/2004/5717, Deposition of Makrina Gudiel Álvarez, February 10, 2005, page s 5 a 7.

¹²⁹ Annex 6, Prosecutor office of Santa Lucia Cotzumalguapa, MP60/2004/5417, and Submission of the file to the Special Attorney General of Human Rights, March 21, 2005, page 1.

¹³⁰ Annex 6, Special Prosecutor of Crimes committed against the Human Rights Activists, Ref. 16-05 Request for the possible extension of the necropsy, April 5, 2005, page 10.

¹³¹ Annex 6, Direction of Forensic Sciences of the Public Ministry, Ref. 16/05. Medical Report on the legal Request for the possible extension of the necropsy no. 225-2004, April 8, 2005, page 21.

¹³² Annex 6, Special Prosecutor of the crimes against Human Rights defenders, Ref. 16-05, Request for the possible extension of the necropsy no. 225-04, April 19, 2005, page 15. The extension was received on May 13, 2005. See Annex 6, Forensic Md., Judicial organ of Santa Lucia, Extension of Necropsy No. 225-04, May 10, 2005, pages 58 – 59.

85. During April 11 through 25th of 2005, the Special Prosecutor asked for the identification of Mr. Miguel Angel Azurdia and Miguel Estrada¹³³ and information on whether they had authorization or license to carry firearms.¹³⁴ The request was answered in the negative.¹³⁵ The Special Prosecutor also requested the issuance of death certificate of Mr. Florentin Gudiel,¹³⁶ which was issued the same day.¹³⁷ The Public Ministry received the DICRI's report of April 5, 2005, with information of the first steps on the investigation on April 20, 2005.¹³⁸ In addition, the sketch diagram that was performed in order to describe the field where the body of Florentín Gudiel¹³⁹ was found was given to the Attorney General in writing on April 29, 2005.¹⁴⁰

86. Similarly, from May 9-11 of 2005 the Special Prosecutor conducted interviews with one of two police officers involved in the procedure of removing the corpse;¹⁴¹ with Makrina Gudiel who expanded her statement,¹⁴² and Beatriz Gudiel Alvarez who reported that the third or fourth day after the murder of her father, two men whose physical description corresponded to the two suspected perpetrators of the murder of Florentin Gudiel were lurking around her house. The Special Prosecutor noted that a woman named "Juana" informed him that two days before the murder she saw two men in front of a store that matched the description of those whom she saw outside the home. Finally, the Special Prosecutor said that this lady had told him that one of the people she saw lived in the village of El Zapote and was called "the Cat" who frequented a bar called the Black Cat and was known to be killer.¹⁴³

87. Based on the statement of Beatriz Gudiel, on May 2005 two descriptions were made of the suspects.¹⁴⁴ That same day, the Special Prosecutor asked the DICRI to undertake several steps, including investigating whether there were complaints against Miguel Azurdia by Mr. Gudiel Ramos, in the entity ISE MOCASA, adviser to the School "República de México". The report noted that the prosecution suspected two youths, known as "Cheese" and "The Cat".¹⁴⁵

88. On July 26, 2005, investigators of the DICRI interviewed Reyes Sun Sunuc, Rudy Rolando Lopez who worked in the cane fields near the crime scene, and Antonio Morataya Bucaro who stated with respect the School Committee of "República de México" that "the only one who the committee had problems with was Ms. Mayra Elizabeth Merida de Molina who had sued the Committee for having been fired from her job as a teacher." The report indicates that Miguel Estrada was not working for any agency and that Miguel

¹³³ Annex 6, Prosecutor Office of Human Rights. Special Prosecutor Unit No. 2, Ref. 16-05. Request to the Supreme Electoral Tribunal, April 11, 2005, page 16.

¹³⁴ Annex 6, Prosecutor Office of Human Rights, Ref. 16-05, Letter 752519, Request of information to the Ministry of Defense, April 19, 2005, page 32.

¹³⁵ Annex 6, Ministry of Defense, Reg. 752519, Letter 110EAM/mds-4300-2005, May 3, 2005 page 39.

¹³⁶ Annex 6, Special Prosecutor Unit No. 2, Ref. Exp. 16-2005, Request for a death certificate copy to the Civil Registry of Santa Lucia, April 2, 2005, page 27.

¹³⁷ Annex 6, Civil Registry of Santa Lucia, death certificate, April 5 2005, page 28.

¹³⁸ Annex 6, DICRI, Ref. MP60/2004/5417, Report of April 5, 2005, page 221.

¹³⁹ Annex 6, Guatemalan Public Ministry, certificate of "planning", page 29.

¹⁴⁰ Annex 6, DICRI, report No. 315^a-2005 EEC-G 11, Ref. Exp. 16-2005, map of the place where the body of Mr. Florentin Gudiel Ramos was found April 29, 2005, page 41.

¹⁴¹ See also Annex 6, Civil National Police, and Letter No. 4,126-2004/.../ref.///RL. Juárez. Pages 42-43.

¹⁴² Annex 6, Special Prosecutor, Ref. MP. 16-2005, FDH, Deposition of Makrina Gudiel Álvarez, May 11, 2005, page 47-48.

¹⁴³ Annex 6, Special Prosecutor, Deposition of Beatriz Gudiel Álvarez, May 11, 2005, page s 44-46.

¹⁴⁴ Annex 6, DICRI, Unit of Crime Scene Specialists, Report No. 364-2005 EEC G12, Picture done with the information given by Beatriz Gudiel, May 9, 2005, pages 67-72.

¹⁴⁵ Annex 6, Prosecutor Office of Human Rights, Ref. Exp. 16-2005 FDH, Request to the Direction of Criminal Investigations, May 17, 2005, pages 55-57.

Azurdia was working in the Ingenio Madre Tierra, and is dedicated to selling appliances. Copies of the schedules of Miguel Estrada and Miguel Azurdia were added to the report.¹⁴⁶

89. The Special Prosecutor requested the judicial review of the case on August 24, 2005,¹⁴⁷ which was granted on September 1st of that year.¹⁴⁸

90. On February 21, 2006, the Special Prosecutor asked the DICRI's investigators to appear to give them new lines of investigation.¹⁴⁹ On May 16, 2006, Makrina Gudiel Álvarez visited the Special Prosecutor to make "some requests."¹⁵⁰ In a letter dated June 21, 2006, the DICRI was informed of the investigatory guidelines by the prosecution.¹⁵¹

91. The report submitted by the DICRI indicated that on May 24, 2006 the Special Prosecutor met a person named Zoila Etelvina Larios Sanchez who stated that on October 14, 2004 her son, Carlos Adolfo Cáceres Sanchez, was found dead of gun shot. Zoila Etelvina Sanchez said that about nine days after the death of her son, when she was driving to the market with their daughter Cindy Paola Cáceres,¹⁵² she was approached by an old male person, with glasses, gray hair, and a mustache, who told her:

"[...] you are the mother of the deceased Chalana, as this was how Carlos Adolfo was called, [...] I saw the death of your son. He mentioned to me the names of the Cat, Susy, Salomon and Chelelo, [...]. He said that he heard that my son called [...] his father, which is my husband. He told me that he was all alone with a "colima" and was hiding, and that he remembered telling him that he was going to be killed [...]. I asked that man why was he telling that to me, and he replied that he did not want to get himself into trouble because those people were very dangerous."¹⁵³

92. Ms. Sanchez indicated that people that Mr. Gudiel had mentioned, had told his son to join his gang. She indicated to investigators where the suspects lived and gave a physical description of all of them except for "Salomon".¹⁵⁴ On May 29, 2006, Ms. Sanchez seeing the photo of Florentín Gudiel Ramos that was provided by staff DICRI indicated "that the person in the picture is the person who informed her those responsible for the death of her son".¹⁵⁵

¹⁴⁶ Annex 6, DICRI, REF. MP16-2005, Communication No. 3581-2005, September 1 2005, page 106-111.

¹⁴⁷ Annex 6, Special Prosecutor Unit No. 2, Request of jurisdictional control, process no. 475-05, August 24, 2005, page 298.

¹⁴⁸ Annex 6, Guatemalan Judicial Organ, C. 475-05 Of. 10 Jurisdictional Control, order notified to the public ministry on September 7, 2005, page 119. See also, Annex 6, Front page of the file of the investigation before the criminal Judge, process 475-2005. Of. 2, page 113.

¹⁴⁹ Annex 6, Prosecutor Office- Human Rights Section MP001/2005/33263, Guidelines to the investigation of the death of Florentin Gudiel Ramos, February 21, 2006, page 121. On March 1, 2006, the Special Prosecutor gave new guidelines. See Annex 6, Prosecutor Office - Human Rights Section. MP001/2005/33263, Guidelines to the investigation of the death of Florentin Gudiel Ramos, February 21, 2006, pages 122-123.

¹⁵⁰ Annex 6, Unit of Crimes against Human Rights Activists, Deposition of Makrina Gudiel Álvarez, May 16, 2006, page 125.

¹⁵¹ That report includes the interviews of Vidal Orlando Tun Carin; Pablo Flores Coxal; Elizabeth De Leon Esquit. Ms. De León said that she had seen MR. Gudiel in his bicycle the day of the murder. When asked if she has seen the persons that were after Florentín she replied that she did not because there was a lot of fog caused by the sugarcane burning. Irma Elizabeth Martínez López, resident of the Cruce de la Esperanza Village pointed out that she remembered that one of the persons that were after Florentin Gudiel Ramos in his bicycle has the same characteristics of José Daniel Estinal (aka nito); Moreover, she pointed out that during the mass of Mr. Gudiel's death he saw two individuals with the characteristics of the men that were after Mr. Gudiel Ramos. He added that when they realized he was looking at them, they fled in their bikes. Annex 6, DICRI, Report on the death of Florentin Gudiel Ramos, Ref. MP001/2005/33263, June 21, 2006, pages 147-151

¹⁵² Annex 6, DICRI, Report on the death of Florentin Gudiel Ramos, Ref. MP001/2005/33263, June 21, 2006, page 149.

¹⁵³ Annex 6, Special Prosecutor, Deposition of Zoila Etelvina Sanchez Larios, May 24, 2006, pages 128-129.

¹⁵⁴ Annex 6, Special Prosecutor, Deposition of Zoila Etelvina Sanchez Larios, May 24, 2006, pages 129-130.

¹⁵⁵ Annex 6, Special Prosecutor, diligence of May 29, 2006, page 134.

93. In its conclusions, the DICRI report indicates that the "features provided by Ms. Sanchez Larios of the individuals known as the " Cat "and Chelelo, appear to be the same persons that Ms. Elizabeth Martinez Lopez offered in the interview".¹⁵⁶ Identification of Solomon Velazquez Sanchez was added to the file of the National Police.¹⁵⁷

94. Between June and August of 2006, the Special Prosecutor requested some ballistic tests¹⁵⁸ and asked the forensic physician to clarify the reasons for there being three gun shots, yet there were only two bullet fragments.¹⁵⁹ Also, the Special Prosecutor made a report on the murders in the area between 2004 and 2006.¹⁶⁰ The case file of Florentín Gudiel included some of the follow up steps taken in relation to Salomon Velazquez, one of the persons identified by Etelvina Sanchez, at the time of the murder of Gudiel, because he was being held in prison on unrelated charges.¹⁶¹

95. After the investigative staff learned of the murder of a teacher of the "República de México" School¹⁶² who was the goddaughter of Florentín Gudiel Ramos,¹⁶³ the Special Prosecutor, interviewed several teachers of the school.¹⁶⁴ One of the interviewees stated that she heard that the murder of the teacher could have been "because she was Gudiel Florentín goddaughter."¹⁶⁵

96. On September 21, 2006, the Special Prosecutor requested the police and criminal histories of Miguel Ángel Azurdia and Miguel Ángel Estrada.¹⁶⁶ In response to this request the DICRI reported they did not have criminal or police backgrounds.¹⁶⁷ On September 20, 2006, the Prosecutor requested the Director of Immigration for some information on the migratory movement of Florentin Gudiel Ramos.¹⁶⁸

97. Between September 27 and October 10, 2006, the Special Prosecutor made several requests and performed other diligences. Indeed, he requested: a report from the United Nations Program for

¹⁵⁶ Annex 6, DICRI, Ref. MP001/2005/33263, June 21, 2006, page 150.

¹⁵⁷ Annex 6, DICRI, Ref. MP001/2005/33263, June 21, 2006, page 150.

¹⁵⁸ Annex 6, Special Prosecutor, MP001/2005/33263, request of ballistic expertise, June 12, 2006, page 140. The DICRI rendered its expertise on June 23, 2006, see Annex 6, DICRI, Bal-06-1426, RCD-06-12977, Ref. 001/2005/33263, June 23, 2006, page 321. Annex 6, Special Prosecutor, MP001/2005/33263, Request of ballistic expertise, August 1, 2006, page 159.

¹⁵⁹ Annex 6, Special Prosecutor, MP001/2005/33263, Request of clarification of necropsy 225/04, July 26, 2006, page 157. See Annex 6, Special Prosecutor, MP001/2005/33263, Request of copy of the protocol of the necropsy 225/04, July 26, 2006, page 158. On August 3, 2006 the forensic physician submitted a report on the Annex 6, Forensic Md., Reference MP001/2005/33263, Report on the necropsy, August 3, 2006, page 212.

¹⁶⁰ Annex 6, Special Prosecutor, Ecp. MP001200533263, August 1, 2006, pages 160-163.

¹⁶¹ Communication of the State received by the IACHR on October 29, 2011.

¹⁶² Annex 6, DICRI, Report No. 35C-2006 E.E.C-1, Reference MP 60/206/1562, Submission to the Prosecutor office of Santa Lucia of the report on the investigation of the murder of Rosa Dolores Rodríguez Valencia, June 5, 2006, page 191.

¹⁶³ Annex 6, Prosecutor office - Human Rights section, MP001/2005/33263, Request of baptism certificate of Rosa Dolores Rodríguez Valencia, October 10, 2006, page 267. Annex 6, Parish of Santa Lucia, Baptism record of Rosa Dolores Rodríguez Valencia, Book 50, page 231 number 01152, December 17, 1978, page 284.

¹⁶⁴ Annex 6, Special Prosecutor, interview of Sandra Patricia Sucuo Reyes, August 17, 2006, page 219. Annex 6, Special Prosecutor, interview of Otilia Álvarez Arias, August 17, 2006, pages 233-236. Annex 6, Special Prosecutor, interview of Sandra Patricia Sucuo Reyes, 1 August 17, 2006, page 218-220.

¹⁶⁵ Annex 6, Special Prosecutor, interview of Milvia Adalza Ajic López, August 17, 2006, page 232.

¹⁶⁶ Annex 6, Unit of Criminal Background, Criminal background of Miguel Ángel Azurdia and Miguel Ángel Estrada, September 21 2006, pages 248-249.

¹⁶⁷ Annex 6, General Subdivision Criminal Investigation, response to the MP001/2005/33263 request, October 19, 2006, page 275.

¹⁶⁸ Annex 6, Special Prosecutor, MP001/2005/33263, Request of migratory movements. September 20, 2006, page 247. Annex 6, DICRI, Report on the Migratory movements, September 27, 2006, pages 256-258.

Development when it named Florentín Gudiel an Unsung Hero,¹⁶⁹ and a list of all the people who served on the Education Committee from the School Committee of "República de México".¹⁷⁰ He also interviewed María Cruz Rodríguez Valencia, sister of the murdered teacher;¹⁷¹ he requested that PRONADE provided information on the funds provided, audits and complaints in relation to expenditure allocated to the School.¹⁷² He asked the Supreme Electoral Tribunal to submit information about the identity and residence of some teachers who resigned from the community Self-Management School "República de México"¹⁷³ and requested information on their migratory movements.¹⁷⁴

98. On November 21, 2006 the Special Prosecutor asked the DICRI to give continuity to the case by investigating the full names and place of residence of "The Cat", "Salomon", "Susy", "Chelelo" and Jose Daniel Espital, aka "Nito".¹⁷⁵

99. On March 13, 2007, the Special Prosecutor interviewed Irma Elizabeth Martinez Lopez, who mentioned that her mother told her that "his daughter-in-law, Elizabeth de Leon, who lives close to her said that Selvin had killed Don Florentin, I think they his last name is 'Arana' name or 'Squit' [...] Selvin is Elizabeth's cousin and he lives in the Colonia "February 8th" of Santa Lucia, [...] He is short, fat, light brown, straight hair, I think he has a mustache [...]"¹⁷⁶

100. On March 6, 2007, the Special Prosecutor requested that the DICRI present the report with its investigations.¹⁷⁷ This request was repeated on August 7, 2007.¹⁷⁸ The DICRI presented the report with a letter dated March 27, 2008.¹⁷⁹ It was required as well that the investigator attends the meeting at the Special Prosecutor office to amplify his report.¹⁸⁰

101. In June of 2008, the Court requested a search warrant for the buildings where the following persons resided: Francisco Cardenas, aka "El Gato", Rolando Latin Cisneros, aka "Chelelo" Salomon Sanchez

¹⁶⁹ Annex 6, Prosecutor office - Human Rights section, Request to the UNPD on the designation of Florentín Gudiel as Anonymous Hero, September 27, 2006, page 254.

¹⁷⁰ Annex 6, Prosecutor office - Human Rights section, MP001/2005/33263, Request to the School of Cruce de la Esperanza, September 27, 2006, page 260. This request was reiterated on October 19, 2006. Annex 6, Prosecutor office - Human Rights section, MP001/2005/33263, October 19, 2006, page 274.

¹⁷¹ Annex 6, Special Prosecutor, interview of María Cruz Rodríguez Valencia, September 29, 2006, page 259.

¹⁷² Annex 6, Prosecutor office - Human Rights section, MP001/2005/33263, Request of amplification of information to PRONADE, 6 October 2006, page 264.

¹⁷³ Annex 6, Prosecutor office - Human Rights section, MP001/2005/33263, Request of information on the identity and residence of Brenda Elizabeth Rodríguez Quiñones, Carla Eugenia Gomar Rubio y Elisania Judith Canas Ortiz, October 9, 2006, page 263.

¹⁷⁴ Annex 6, Special Prosecutor, MP001/2005/33263, Request of migratory movements of Brenda Elizabeth Rodríguez Quiñones, Carla Eugenia Gomar Rubio y Elisania Judith Canas Ortiz, without date, received on October 26, 2006 by the General Office of Immigration, page 262. Annex 6, General Direction of Migration, response to letter Mp001/2005/33263, received by the Special Prosecutor on October 19, 2006, pages 269-273.

¹⁷⁵ Annex 6, Prosecutor office - Human Rights section, MP0001/22005/33263, Request to the Direction of Criminal Investigations, November 21, 2006, page 277.

¹⁷⁶ Annex 6, Special Prosecutor, interview of Irma Elizabeth Martínez López, March 13, 2007, page 312

¹⁷⁷ Annex 6, Prosecutor office - Human Rights section, MP001/2005/33263, Request of the report on the investigations requested on November 21, 2006, March 1, 2007, received by the public ministry on March 6, 2007, page 286.

¹⁷⁸ Annex 6, Prosecutor office - Human Rights Section, MP001/2005/33263, Request of the report on the investigations requested to the investigator Adilio Yovany Contreras Yaquian, August 7, 2007, page 287.

¹⁷⁹ Annex 6, DICRI, MP001-2005-33263, Report on the investigation of the death of Florentín Gudiel Ramos, March 27, 2008, received by the Public Ministry on April 4, 2008, page 314.

¹⁸⁰ Annex 6, Special Prosecutor, MP001/2005/33263, Request of appearance to Mr. Adilio Yovany Contreras Yaquian, April 8, 2008, page 289.

Velasquez and Selvin Geovany Arana Esquit, in order to search for firearms related to the crime.¹⁸¹ On June 17, 2008, the raids were carried out and all procedures had negative results.¹⁸²

102. On November 24, 2008, the prosecution asked the DICRI to investigate the way of life of Ludin Rolando Latin Cisneros, aka "Chelelo" and interview him in connection with the murder of Florentín Gudiel.¹⁸³ On February 5, 2009, the prosecutor met some local people who indicated that Mr. Ludin was engaged in masonry work and that he had been working for three months in the cane fields, so he was almost never in his residence during the day. On February 3, 2009, the prosecution interviewed Ludin Rolando Latin Cisneros, who said he knew very little of Florentín Gudiel, but he knew he was a leader of the "Colonia Esperanza" and that he and his family had belonged to the guerrillas for long time.¹⁸⁴

103. Following a request to the Prosecutor by the Presidential Human Rights Coordinator (COPREDEH), in a letter dated April 2, 2009, the investigative agent concluded that in relation to the hypothesis of the case, the reason Florentin Gudiel was killed "was because he witnessed the murder of a male person occurred days before his death."¹⁸⁵

104. Regarding the participation of Miguel Angel Azurdia and Miguel Estrada, the Special Prosecutor concluded that

Given the investigation conducted, there is no legal basis to proceed against such persons. During the investigation conducted by the Prosecutor, he has taken into account the statements of the affected party and such statements did not establish that there was legitimate participation by the persons mentioned by Mrs. Makrina Gudiel; there are only presumptions.¹⁸⁶

105. On August 24, 2006, the petitioners informed the Commission that Mrs. Makrina Gudiel was denied access to the internal file and a copy thereof in order for her to send it to the Commission. They also indicated that the attorney who assisted her in her first statement was also denied access to the entire file.¹⁸⁷ According to the petitioners, a copy of the file was provided to them on November 2010, under the entry into force of Decree 18-2010 which recognized certain rights of the aggrieved family, even if they are not constituted as third parties ("querellantes adhesivos").

106. According to the family members of Mr. Gudiel, Miguel Estrada, one of those suspected of Florentin Gudiel's murder, died in 2010.¹⁸⁸ Furthermore, the petitioners indicate that Ms. Irma Martinez, who

¹⁸¹ Annex 6, Special Prosecutor, MP001/2005/33263, Process No. 475-2005 Of. 2º, Requests of search warrants to the Criminal Judge of the Municipality of Santa Lucía, Escuintla, June 13, 2008, pages 291-294.

¹⁸² Annex 6, General Direction National Civil Police, Letter 36-2008, 17 June 2008, page 412. See also General Direction National Civil Police, Letter 37-2008, June 17, 2008, page 413. Prosecutor office - Human Rights Section, MP001/2005/33263, Process No. 475/2005 Of. 2do, Reports of the searches, June 24, 2008, page 415.

¹⁸³ Annex 6, Special Prosecutor, Ref. MPD001/2005/33263, Request to the DICRI to investigate Ludin Rolando Latin Cisneros, November 24, 2008, page 425.

¹⁸⁴ Annex 6, DICRI, Letter No. 36-2009 Ref. Montenegro, response to the request no, MP001/2005/33263, February 5, 2009, page 427

¹⁸⁵ Annex 6, Unit of Prosecutor office regarding the crimes committed against human rights activists, response to letter MPDHH-047B-2009, case 989-2006-SCT/MP, April 2, 2009, page 444.

¹⁸⁶ Annex 6, Special Prosecutor, Process Number MP 15-2005, Report of the investigator in charge of the investigation, received by the Prosecutor office - Human Rights Section, on July 20, 2009, page 449. See communication of the State of October 17, 2011 received by the IACHR on October 29, 2011.

¹⁸⁷ Communication of the petitioners received by the IACHR on August 24, 2006 and sent to the State on August 28, 2006. In its communication of September 28, 2006 the State indicated that neither Makrina Gudiel nor any other next of kin of the victim asked to be included in the process as a "querellante adhesivo" (a third party that can act in the process). See communication of the State of September 28, 2006, received by the IACHR on October 2, 2006. The State informed that according to Article 314 of the Criminal Proceedings Code, "the actions in the process could only be examined by the processed, the other persons that have been allowed to intervene in the process, and the representatives of the victims".

¹⁸⁸ Annex DVD 2, Deposition of Makrina Gudiel Álvarez, DVD received by the IACHR on February 14, 2011 and sent to the State on March 8.

pinpointed one of the alleged gunmen, was "very scared because she risked much to bring the authorities all the information and even went with them [the authorities] to show them the suspect's home and knowing where he lived, they did nothing about it."¹⁸⁹

107. In May 2008 the State offered an application to provide special protection for Ms. Makrina Gudiel, but she did not accept it, because according to her, the state institution that would be in charge of delivering it "makes no guarantees about the quality of the police service that would be provided for her personal protection. Therefore she believes that the protection could put her lives at greater risk."¹⁹⁰

B. Considerations of Law

1. Regarding Florentín Gudiel Ramos

a. Right to Judicial Guarantees and Judicial Protection (Articles 8¹⁹¹ and 25¹⁹² of the American Convention)

108. The Inter-American Court has established that everyone affected has the right to obtain clarification of the events that violated their human rights and the corresponding responsibilities from the competent organs of the State, through the investigation and prosecution that are established in Articles 8 and 25 of the Convention.¹⁹³ The protection offered by these provisions is reinforced by the general obligation to respect the human rights imposed by Article 1.1 of the Convention. In this respect, the Court has expressly found that:

Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, inter alia, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered.[...] Article 25 'is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society [...]'. That article is closely linked to Article 8(1), which provides that every person has the right to a hearing, with due guarantees [...] for the determination of his rights, whatever their nature.¹⁹⁴

109. As a result, the States Parties are obliged to take all measures to ensure that no one is deprived of judicial protection and the exercise of the right to simple and effective recourse.¹⁹⁵ Thus, in accordance with the case law of the Inter-American Court, the State has the obligation that "each State act that composes the investigation proceeding, and the entire investigation in itself, should be oriented to a

¹⁸⁹ Annex DVD 1, Deposition of Beatriz Gudiel Álvarez, received by the IACHR on February 14, 2011 and sent to the State on March 8. See also, Annex 8, Written testimony by Makrina Gudiel Álvarez. In relation to the lack of protection of that person, the Prosecutor office indicates that in order for a person to be considered included in the Witness Protection Program, he has to meet the requirements of the regulations. One of such requirements is that the deposition of the witness is decisive to capture, accuse or sentence someone, for having directly witnessed the facts and that he manifests risk for such reasons. In the instant case, no one has declared to have observed where Mr. Florentín Gudiel died" Annex 6, Special Prosecutor, response to the letter MPDHH-047B-2009, case 989-2006-SCT/MP, April 2, 2009, page 444.

¹⁹⁰ Communication of the State of July 16, 2008, received by the IACHR on July 23, 2008.

¹⁹¹ Article 8.1. 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.

¹⁹² Article 25 provides that: 1. 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.

¹⁹³ I/A Court H.R., Case of Barrios Altos v. Peru, Judgment of March 14, 2001, para. 48.

¹⁹⁴ I/A Court H.R., Case of Loayza Tamayo. Reparations (Article 63.1 American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, para. 169; Case of Velásquez Rodríguez, Judgment of June 26, 1987. Series C No. 1, para. 91; Case of Fairén Garbí and Solís Corrales. Preliminary Objections. Judgment of June 26, 1987. Series C No. 2, para. 90.

¹⁹⁵ I/A Court H.R., Case of Barrios Altos v. Peru. Judgment of March 14, 2001. Series C No. 75, para. 43.

specific purpose: the determination of the truth and the investigation, finding, arrest, prosecution and, if applicable, punishment of those responsible for the events."¹⁹⁶

110. The IACHR points out that the obligation to investigate is an obligation as to means, rather than as to results, a duty to be assumed by the State as a judicial obligation itself and not as a mere formality preordained to be ineffective.¹⁹⁷ In this sense, the investigation should be undertaken with due diligence, effectively, seriously, impartially,¹⁹⁸ and within a reasonable period of time.¹⁹⁹ The IACHR recalls the obligation to investigate and sanctions 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 masterminds.²⁰⁰

111. Taking into consideration the cited case law, the Commission will analyze if in the instant case the Guatemalan state performed a serious and diligent investigation, within a reasonable time.

Due diligence in the investigation of the murder of Florentín Gudiel Ramos

112. The Commission has indicated that the most efficient way to protect human rights defenders in the Hemisphere is to duly investigate the acts of violence against them and to sanction those responsible for the acts²⁰¹. For its part, the Office of the UN High Commissioner has indicated that the lack of investigation and sanction of those responsible of the violations against human rights defenders “constitute a major factor that augments the risk of the defenders, because it leaves them in a defenseless and unprotected situation”.²⁰²

113. The Inter-American Court has pointed out that to investigate with “due diligence” implies that the investigations must be done by all the available legal means and must be directed to determine the truth²⁰³. States have the duty to ensure that all necessary actions be taken to learn the truth and to sanction those responsible,²⁰⁴ involving all the State relevant institutions.²⁰⁵

¹⁹⁶ I/A Court H.R., Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 101.

¹⁹⁷ I/A Court H.R., Case of Velásquez Rodríguez. Judgment of July 29, 1988. Series C No. 4. Para. 177; I/A Court H.R., Case of Cantoral-Huamaní and García-Santa Cruz. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. Para. 131.

¹⁹⁸ I/A Court H.R., Case of García Prieto et al.. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168. Para. 101; I/A Court H.R., Case of Gómez-Paquiyaury Brothers. Judgment of July 8, 2004. Series C No. 110. Paras. 146; I/A Court H.R., Case of Cantoral-Huamaní and García-Santa Cruz, Preliminary Objections, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. Para. 130.

¹⁹⁹ I/A Court H.R., Case of Bulacio. Judgment of September 18, 2003. Series C No. 100. Para. 114; I/A Court H.R., Case of the Rochela Massacre. Judgment of May 11, 2007. Series C. No. 163. Para. 146; I/A Court H.R., Case of the Miguel Castro-Castro Prison. Judgment of November 25, 2006. Series C No. 160. Para. 382.

²⁰⁰ 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, para. 109.

²⁰¹ 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.

²⁰² OHCHR. Defending human rights: between the commitment and the risk. Executive summary, para.7. <http://www.hchr.org.mx/documentos/libros/informepdf>

²⁰³ I/A Court H.R., Case of García-Prieto et al. v. El Salvador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2007. Series C No., para. 101.

²⁰⁴ I/A Court H.R., Case of Bulacio v. Argentina. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para. 114; I/A Court H.R., I/A Court H.R., Case of the Rochela Massacre v. Colombia. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 146.

²⁰⁵ 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, para. 130; I/A Court H.R., Case of Huilca-Tecse v. Peru. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, para. 66.

114. As the Court has indicated, in compliance with the duty to investigate a violation of the right to life with due diligence, States are obligated to act, from the first moments, with all acuity²⁰⁶. Specifically regarding the crime scene, following the Manual on the Effective Prevention and Investigation of Extrajudicial, Arbitrary and Summary Execution (Protocol of Minnesota)²⁰⁷, the Inter-American Court has stated that investigator must, at least, take pictures of the crime scene, of any other physical evidence, and how the body was found, and after it was removed; must take blood, hair, fibers, and threads samples, or other clues that have to be taken and kept; to examine the area in order to look for shoe prints or any other clue that could be an evidence, and to make a detailed report on any observations of the scene, the actions of the investigators, and the disposition of all the collected evidence.²⁰⁸ For its part, the Protocol of Minnesota establishes, among other obligations, that when investigating a crime scene the neighboring area where the body was found must be closed, and the access to it must be prohibited, except for the investigator and her team.²⁰⁹

115. The Commission notes that the United Nations Manual indicates that due diligence in the legal and medical investigation of a death requires maintaining the chain of custody of each item of forensic evidence.²¹⁰ The Inter-American Court has stated that this “consists in keeping a precise written record, complemented, as applicable, by photographs and other graphic elements, to document the history of the item of evidence as it passes through the hands of the different investigators responsible for the case.”²¹¹ The Commission recalls that the first steps of the investigation are fundamental elements “for the good course of a judicial investigation, especially when one is in front of a fact that caused the life of someone.”²¹²

116. In the instant case, the IACHR notes that there were flaws in the first actions of the investigation that show a lack of due diligence of the Guatemalan state:

- a) The body of Florentín Gudiel Ramos was found on December 20, 2004. The file does not show how the authorities got to the place where the body was found. Although one of the police officers indicated that he was sent there by an order from the central transmission center,²¹³ it is not clear how he learned of the facts, nor who advised the authorities about the crime.
- b) When the investigator from the Criminal Investigation Service arrived to the crime scene, “the body had already been taken away”, and he did not perform the visual inspections.²¹⁴ There is no information in the file that indicates that the police personnel and the deputy agent of the Public Ministry that intervened in the first actions, performed inspections with the required acuity to identify details such

²⁰⁶ I/A Court H.R., Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 121.

²⁰⁷ See U.N. Doc E/ST/CSDHA/12 (1991). Previously, the Commission has used UN documents to evaluate the minimum diligences to be done in such cases. See IACHR. Report 10/95, (Manuel Stalin Bolaños Quiñonez). Case. 10.580. Ecuador. September 12, 1995, para. 53.

²⁰⁸ I/A Court H.R., Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 301. The Court refers to United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, UN, document ST/CSDHA/12 (1991).

²⁰⁹ I/A Court H.R., Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 301.

²¹⁰ United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, y I/A Court H.R., Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 305.

²¹¹ I/A Court H.R., Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 305.

²¹² I/A Court H.R., Case of Myrna Mack-Chang v. Guatemala. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 167. IACHR, Report No. 37/00, Case 11.481, Monseñor Oscar Arnulfo Romero y Galdámez, El Salvador, April 13, 2000, para. 85.

²¹³ Annex 6, Special Attorney General of Human Rights, ref. MP. 16-2005. Fdh, interview of César Danilo Carrera Lafaro, May 9, 2005, page 42.

²¹⁴ Annex 6, Criminal Investigation Service, Letter No. 16-2004 Ref. MEBP.bg, December 21, 2004, pages 93-95.

- as the cloth of the body, if there were blood stains, marks on the body of the victim, hair, fiber, threads or other clues.
- c) There is no evidence that the crime scene was protected nor delimited. On the contrary, in three pictures in the case file, there is a dog in the crime scene. In one of the images the dog is approximately one meter from the body. This allows the IACHR to conclude that authorities did not take the necessary measures to prevent the crime scene from being contaminated.²¹⁵
 - d) The IACHR observes that in the pictures there are some objects, like a purse and a piece of cloth with stripes. Neither the act of body removal, nor the police report states that these objects were present. It was not until a later deposition that a police officer confirms that “there was a white bag with the logo of a grocery store [...] and that he did not see its content”. He also said that “the face of the victim was covered with a colorful sheet”.²¹⁶ According to the agent, the objects were handed to Florentín Gudiel’s son,²¹⁷ which means that they were not collected as evidence.
 - e) The police agents and the Public Ministry did not take note of the vehicles that were at the crime scene. According to the information received by Makrina Gudiel, close to the crime scene there was a car that was waiting for the perpetrators of the murder.²¹⁸ Moreover, according to a police agent that participated in the body removal “there was a pick-up parked but he did not take its plates.”²¹⁹
 - f) Before the removal of the body, only Florentin Gudiel Álvarez - Florentín Gudiel Ramos son - and a local worker were interviewed. It is worth noting that one of the police officers that intervened in the removal later stated that “there were several persons close to the body”.²²⁰ The lack of interviews of the persons that might have been present has a serious consequences in the development of the investigation because, according to the next of kin of the victims, some persons that were at the bus close to the crime scene, indicated to Florentin Gudiel Álvarez that the murderers were “close to the car and could come back”.²²¹

117. The non-exhaustion in the inspection and conservation of the evidence in the crime scene is evident in the short time that the body removal lasted – 30 minutes.²²² According to Makrina Gudiel, “some neighbors of the place made the gesture to bring water and wash the blood”.²²³ Consequently, the IACHR considers that the rectification of the above deficiencies, became irreparable.

118. Also, even if a sketch of the crime scene was done, it was based on the version given by the Deputy officer of the Public Ministry, without taking into account the declarations of other police agents. Moreover, the sketch does not include the objects found in the scene nor where the pick-up was parked, and that was identified by one of the police officers.²²⁴

²¹⁵ See pictures of the crime scene, pages 3 y 4.

²¹⁶ Annex 6, Special Attorney General of Human Rights , ref. MP. 16-2005. Fdh, interview of César Danilo Carrera Lafaro, May 9, 2005, page 42.

²¹⁷ According to the later depositions of a police officer, the Deputy agent of the Public Ministry “inspected the crime scene, checking the victim and he then gave to the victim’s son the objects he found”. Annex 6, Special Attorney General of Human Rights , ref. MP. 16-2005. Fdh, interview of César Danilo Carrera Lafaro, May 9, 2005, page 42.

²¹⁸ Annex 8, Written testimony by Makrina Gudiel Álvarez.

²¹⁹ Annex 6, Special Attorney General of Human Rights , ref. MP. 16-2005. Fdh, interview of César Danilo Carrera Lafaro, May 9, 2005, page 42.

²²⁰ Annex 6, Special Attorney General of Human Rights , ref. MP. 16-2005. Fdh, interview of César Danilo Carrera Lafaro, May 9, 2005, page 42.

²²¹ Annex 8, Written testimony by Makrina Gudiel Álvarez.

²²² According to the Public Ministry the body removal started at 11:30 hrs., and according to the police report it ended at 12 hr. Annex 6, District prosecutor of Santa Lucia , Escuintla, act of removal of the body, December 20, 2004, page 295. See also Annex 6, National Civil Police, substation No. 31-43 Escuintla, Letter No. 4,126-2004/.../ref.///RL. Juárez, page 293.

²²³ Annex DVD 2, Deposition of Makrina Gudiel Álvarez, received by the IACHR on February 14, 2011 and sent to the State on March 8.

²²⁴ Annex 6, Special Attorney General of Human Rights , ref. MP. 16-2005. Fdh, interview of César Danilo Carrera Lafaro, May 9, 2005, page 42.

119. Moreover, the police report stated that the body would be taken to the “morgue of the judiciary”,²²⁵ however, according to the later deposition of a police officer that was involved in the proceedings, the body was taken to the funerary Santísima Trinidad, because the morgue was under construction.²²⁶ Moreover, during the transfer of the body, it was not taken into custody by police officers or by agents of the Public ministry. In fact, according to the testimony of the police officer “the victim was transferred with his cloth. He ignored what happened afterwards, because the transfer order was given to Mr. Sixto Gutiérrez, who is an employee of the funerary; the police officer believed that the vehicle used to transfer the body is that of the funerary [...]”²²⁷. The IACHR observes that, according to the foregoing, during the transfer to the morgue the chain of custody of Florentín Gudiel’s body was broken.

120. The IACHR notes as well that even if the autopsy determined the cause of death of the victim, it did not state the form, place and moment of the death.²²⁸ Due to the several flaws in the first report, an extension of the autopsy was required to review specific points.²²⁹ The extension of the autopsy stated that at the moment of the autopsy (13 hrs.) 3 or 4 hours might have elapsed from the death.²³⁰ This is inconsistent with the death certificate required by the Prosecutor office, which states that Florentín Gudiel died at 12:30 hrs.²³¹ The IACHR also notes that time of death on the death certificate is incongruent with the time of death where the body removal proceedings took place, that ended at 12:00 hrs.²³² Consequently, the lack of diligence has prevented the determination of the approximate time of the death of Florentín Gudiel Ramos.

121. Moreover, the body of Florentín Gudiel had three gunshot wounds, only two bullet fragments were extracted.²³³ The extension of the autopsy stated that no third projectile was extracted because “the Morgue does not have the radiology instruments [...]”²³⁴ to do so. The IACHR recalls that the Court has stated that States must guaranty that the authorities in charge of the investigation have the logistical and scientifically necessary means to collect and process the evidence.²³⁵ The IACHR considers that the practice of the autopsy done in a place that does not have all the technical elements to adequately perform an autopsy evidences the lack of a complete investigation.

122. Moreover, according to the depositions of the Deputy Prosecutor, the body was transferred with the same clothes, and “no print was seen at first sight”. However, he stated that “this could only be determined by an expert witness”.²³⁶ The IACHR notes that no expertise was called to analyze the victim’s clothes. On the contrary, the forensic physician stated that he “discarded the clothes for reasons of

²²⁵ Annex 6, National Civil Police, Substation No. 31-43 Escuintla, Letter No. 4,126-2004/.../ref.//RL. Juárez, page 296.

²²⁶ Annex 6, Special Attorney General of Human Rights , ref. MP. 16-2005. Fdh, interview of César Danilo Carrera Lafaro, May 9, 2005, page 42.

²²⁷ Annex 6, Special Attorney General of Human Rights , ref. MP. 16-2005. Fdh, interview of César Danilo Carrera Lafaro, May 9, 2005, page 42.

²²⁸ Annex 6, Forensic Physician, Judicial Organism, Necropsy No. 225/04, 22 December 2004, page 116.

²²⁹ Annex 6, Special Prosecutor, Ref, 16-05, page 15.

²³⁰ Annex 6, Forensic Md., Judicial organism of Santa Lucia, Extension of Necropsy No. 225-04, May 10. 2005, page 58.

²³¹ Annex 6, Civil Registry of Santa Lucia, Death certificate of Florentín Gudiel Ramos, April 2, 2005, page 28.

²³² According to the Public Ministry the body removal started at 11:30 hrs., and according to the police report it ended at 12 hr. Annex 6, District Prosecutor, Escuintla, act of removal of the body, December 20, 2004, page 295. See also Annex 6, National Civil Police, substation No. 31-43 Escuintla, Letter No. 4,126-2004/.../ref.//RL. Juárez, page 293.

²³³ Annex 6, Special Prosecutor, MP001/2005/33263, Request of clarification of necropsy 225/04, July 26, 2006, page 157.

²³⁴ Annex 6, Forensic Md., Judicial Organism, extension/Necropsy No. 225/04, Reference: MP001/2005/33263, August 3, 2006, page 212.

²³⁵ I/A Court H.R., Case of Tiu-Tojín v. Guatemala. Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 190, para. 77.

²³⁶ Annex 6, Prosecutor office of Santa Lucia , MP60/2004/5417, Response to the letter of the Special Attorney General of Human Rights dated April 28, 2005, May 4, 2005, page 37.

sanitation.”²³⁷ This failure is serious in light of the depositions of the next of kin of Florentín Gudiel Ramos, who indicated that he received testimonies that “after [their] father, the perpetrators put a foot over him to give him the coup de grace. [Makrina Gudiel] what [she] wanted to see that [her] dad was wearing a white shirt and t-shirt. [She] wanted to see if there was a shoe print [...], but the clothes had been thrown away.”²³⁸ The IACHR considers that these omissions not only have implications due to the lack of an expert analysis in the investigation, but it also considerably affects the right of the next of kin to know the truth of what happened.

123. The IACHR notes that the authorities did not perform some proceedings that were required by the Prosecutor office. Even when the Prosecutor office required that a comparison be performed between the bullets and the shells that were found at the crime scene that were at the lab²³⁹, the ballistic section of the report does not indicate that such comparison was actually performed.²⁴⁰ Moreover, even though the request was reiterated,²⁴¹ the file does not show a response. Additionally, the Prosecutor office requested that the DICRI interview a person by the name of Juana, possible last name Vera;²⁴² however, there is no evidence that it was actually performed. Moreover, other persons that could have been relevant to the investigation were not interviewed. One of them was Mrs. Mayra Mérida, whom Florentín Gudiel supported in litigation against the Committee of the School “República de México”; another person was the mother of Elizabeth Martínez, who might have pointed out one of those alleged to be responsible.

Due diligence in relation with the lines of investigation in the case

124. The Commission notes that in the instant case, the State did not did not perform some tests, nor did it promote the investigative theories that have emerged since the recompilation of the first clues during the first months of the investigation.

125. As to the way an investigation must be conducted, the Inter-American Court has indicated that the goal is not to substitute for the national jurisdiction by establishing specific modalities of investigation and prosecution of a concrete case to obtain the best or more efficient result, but to confirm if in the steps taken there breached international obligations.²⁴³ In cases where the facts refer to the violent death of a person, the Court has indicated that the investigation must be conducted in a way that it can ensure the analysis of the hypotheses emerging from the investigation regarding the authorship of the events.²⁴⁴ Moreover, it is necessary that the investigation be conducted so as to avoid omissions in the collection of evidence and in the follow up investigation of the logical lines of inquiry.²⁴⁵

²³⁷ Annex 6, Forensic Md., Judicial organism of Santa Lucia, Extension of Necropsy No. 225-04, May 10. 2005, page 59.

²³⁸ Annex DVD 2, Deposition of Makrina Gudiel Álvarez, received by the IACHR on February 14, 2011 and sent to the State on March 8.

²³⁹ Annex 6, Special Prosecutor, MP001/2005/33263, request of ballistic expertise from the Public Ministry Ballistic Department, June 12, 2006, page 140.

²⁴⁰ Annex 6, DICRI, Bal-06-1426, RCD-06-12977, Ref. 001/2005/33263, June 23, 2006, page 321.

²⁴¹ Annex 6, Prosecutor office - Human Rights Section, MP001/2005/33263, request of ballistic expertise, August 1, 2006, page 159.

²⁴² Annex 6, Prosecutor office - Human Rights Section MP001/2005/33263, Guidelines for the investigation of the death of Mr. Florentin Gudiel Ramos, March 1, 2006, page 122.

²⁴³ I/A Court H.R., Case of Nogueira de Carvalho et al. v. Brazil. Preliminary Objections and Merits. Judgment of November 28, 2006. Series C No. 161, para. 80.

²⁴⁴ I/A Court H.R., Case of Kawas-Fernández v. Honduras. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para.112.

I/A Court H.R., Case of Tiu-Tojín v. Guatemala. Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 190, para. 77.

126. In that regard, the State has to show that it has performed an immediate, exhaustive, serious and impartial investigation,²⁴⁶ that has to be tailored to explore all the possible lines of investigation that allow the identification of the perpetrators of the crime, in order to prosecute them and to sanction them.²⁴⁷ The state can be responsible for “not ordering, practicing or assessing the evidence” that can be fundamental to the due clarification of the facts.²⁴⁸ In the case of human rights defenders, the IACHR has considered that part of the due diligence required in the development of the investigations, is that the investigative authority takes into consideration the activity of the attacked defender in order to identify the interests that could have been affected in the investigation, and therefore to be able to establish lines of investigation and hypothesis of the crime.²⁴⁹

127. In the instant case, the investigation was assigned to a specialized entity for crimes committed against human rights activists, this entity was in charge of performing the pertinent proceedings in order to clarify the facts and responsibilities.²⁵⁰

128. The IACHR considers as a positive step the establishment of specialized units of the public ministry in order to act in a more coordinated manner, and to respond with the due diligence in the investigation of attacks against defenders.²⁵¹ Consequently, the CIDH appreciates that having assigned the case to this Special Prosecutor office, the State recognized the human rights defender profile of Mr. Gudiel Ramos, and the relationship that could exist between his activities and the crime committed against him. However, the IACHR notes that in the investigation, the State did not conduct investigative due diligence in a serious and exhaustive way that established hypotheses in relation to the motive of the murder.

129. As stated above in the chapter of proven facts, the investigation into the death of Florentín Gudiel was based on at least two lines of investigation. First, one of the possible motives considered had to do with conflicts arising from his community leadership.²⁵² Second, another line of investigation was opened after the investigative authorities interviewed one person that indicated that Florentín Gudiel could have witnessed a murder in the area.²⁵³ The IACHR will analyze next if Guatemala acted with due diligence in relation to both lines of investigation.

130. In relation to the first hypothesis –that the murder of Florentín Gudiel Ramos was committed as a reprisal for his community leadership – the Commission points out that there are contextual elements in

²⁴⁶ IACHR, Report on the Merits, N° 55/97, Juan Carlos Abella y Otros (Argentina), November 18, 1997, para. 412.

²⁴⁷ IACHR, Report No. 25/09 Merits (Sebastião Camargo Filho) Brazil, March 19, 2009, para. 109. See also, IACHR, Access to Justice for Women Victims of Violence in the Americas, OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 41.

²⁴⁸ I/A Court H.R., Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala. Preliminary Objections. Judgment of September 11, 1997. Series C No. 32, para. 230. See also, IACHR, Access to justice to women victim of violence in the Americas, OEA/Ser. L/V/II. doc.68, 20 January 2007, para. 41.

²⁴⁹ IACHR, Second Report on the Situation of Defenders in the Americas, December 31, 2011, para. 236.

²⁵⁰ In that regard, the objectives of the Prosecutor Office – Human Rights section, created in 2005, is to centralize and attend the crimes committed against the members of the diverse groups that defend and promote human rights”. See Agreement Number 03-2005, that creates the Prosecutor Office – Human Rights section, 3rd paragraph.

²⁵¹ IAC 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, recommendation 23.

²⁵² The April 5, 2005 report rendered by the personal investigator of the Direction of Criminal Investigations, indicated that “it could be said that there was hostility between the deceased and Mr. Miguel Angel Azurida. It is possible that the problems were originated in the fact that both of them wanted to be President of the local Committee”. Annex 6, DICRI, Ref. MP60/2004/5417, April 5, 2005, page 227.

²⁵³ The report rendered by the personal investigator of the Direction of Criminal Investigations, indicated that one hypothesis of the motive of the crime was based on the fact that “Florentín Gudiel Ramos had made comments to other persons that he had seen the individuals responsible for the death of Carlos Adeldo [...] and that these men knew that Florentin could denounce them in any moment”. See Annex 6, DICRI, Report related to the death of Florentin Gudiel Ramos, Ref. MP001/2005/33263, June 21, 2006, page 150.

the instant case regarding a pattern of murders against human rights defenders that coincide with the specific circumstances where his murder happened. These elements give credibility to this hypothesis.

131. In this regard, the IACHR notes that the facts occurred in 2004, a year close to the date of the conclusion of the armed conflict. Precisely in that year, the IACHR confirmed the existence of a pattern of intimidation against human rights defenders, determination of the profile of the victims, methods of intimidation, and motives behind them.²⁵⁴

- a) Regarding the profile, the Commission stated that defenders were murdered if they promoted economic, social or cultural rights, as well as if they searched for the truth and justice in relation with the human rights violations committed during the internal armed conflict.²⁵⁵ According to the information contained in the file, Florentín Gudiel Ramos fits this profile, as he promoted housing and education projects within the community, he sought justice for the disappearance of his son during the conflict, he gathered information of the disappeared persons in his community, and he promoted measures in order to dignify the victims through a plaza of heroes and martyrs.
- b) Regarding the authorship of the aggressors, according to this pattern, clandestine groups and illegally armed groups that were linked or were directed by some active and former members of the military were still operating.²⁵⁶ As the IACHR has highlighted in the chapter regarding proven facts, in several depositions contained within the file, the next of kin identified persons who were allegedly responsible who were associated with power groups during the conflict. The information in the file is consistent in that there were clashes between Florentín Gudiel Ramos – who was known, along with his family, as a “guerrilla member”- and a former military commissioner (FGR sympathizer) and an alleged former kaibil that had threatened Mr. Gudiel in 2003.
- c) Regarding the methods of investigation, the IACHR pointed out that the perpetrators had a wide and visible logistical support in the tapping of the telephone lines, the use of vehicles, the utilization of state resources, as well as broad experience and operative capacity that was reflected in their actions and deployment.²⁵⁷ The next of kin of Florentín Gudiel Ramos indicate that their house had been watched for months before the murder by armed groups and by individuals with masks. Moreover, after the murder they indicated having seen army members and vehicles outside the place where the body was being veiled. They also indicated having seen individuals close to their house with FRG t-shirts.
- d) Regarding the motives of the aggression, the Commission stated that according to the pattern of aggressions at the time of the events, there was a link between the increase in the violations of some political and juridical events and the related with the activity of the defender.²⁵⁸ In this case, the IACHR notes that 15 days before his murder Florentín Gudiel Ramos had gone to the Myrna Mack Foundation to sign his application against the State for the forced disappearance of his son.²⁵⁹ Moreover, Gudiel was murdered three months after he was elected as Community leader (September 11, 2004).

²⁵⁴ IACHR. Justice and Inclusion: The challenges of the Democracy in Guatemala, December 29, 2003, OEA/Ser.L/V/II.118, Doc. 5 rev. 1, para. 212. Available at: <http://www.cidh.oas.org/countryrep/Guatemala2003sp/capitulo3.htm>. IACHR. Annual Report 2004, Chapter V, Guatemala, OEA/Ser.L/V/II.122, Doc. 5 rev. 1, February 23, 2005, para. 55. Available at: <http://www.cidh.oas.org/annualrep/2004sp/cap.5.htm#GUATEMALA>

²⁵⁵ Human Rights Council, Report of the Special Rapporteur, Philip Alston, on extrajudicial, summary or arbitrary executions, Mission to Guatemala (21 - 25 August 2006), A/HRC/4/20/Add.2, February 19, 2007, para. 35, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/109/02/PDF/G0710902.pdf?OpenElement>

²⁵⁶ IACHR. Justice and Inclusion: The challenges of the Democracy in Guatemala, December 29, 2003, OEA/Ser.L/V/II.118, Doc. 5 rev. 1, para. 212. Available at: <http://www.cidh.oas.org/countryrep/Guatemala2003sp/capitulo3.htm> The CEH indicates that, during years, the military commissioners kept applying the level of authoritarianism reached during the bloodiest stage of the confrontation. Testimonies of the CEH indicate that during this stage, the former chiefs commissioners were “tranquil, [because] they know they can do whatever they want, they are authorities [...]”. CEH. Guatemala Memory of Silence, Chapter II, Volume I The Military commissioners. Available at: <http://shr.aas.org/queatemala/ceh/mds/spanish/cap2/vol1/cmil.html>

²⁵⁷ MINUGUA. Final Report, Human Rights Advisory, November 15, 2004.

²⁵⁸ IACHR. Justice and Inclusion: The challenges of the Democracy in Guatemala, December 29, 2003, OEA/Ser.L/V/II.118, Doc. 5 rev. 1, para. 187-188. Available at: <http://www.cidh.oas.org/countryrep/Guatemala2003sp/capitulo3.htm>

²⁵⁹ Annex 6, Prosecutor of Human Rights, Escuintla 048-2004/DI, 16 June 2005, page 79.

132. The Commission notes that in relation to this line of investigation, the Prosecutor's office has requested the following proceedings: 1) the identity data of Miguel Angel Azurdia y Miguel Estrada;²⁶⁰ 2) information if they had a license to have firearms;²⁶¹ 3) to investigate if there were complaints from Miguel Azurdia against Mr. Gudiel Ramos at the School "Republic of Mexico" School;²⁶² 4) to determine if Miguel Azurdia was in Guatemala, and 5) his police and criminal background records.²⁶³ The Special Prosecutor office indicated that as there were rumors that he was responsible for masterminding the murder "the investigation was only directed to his identification, for example, the certification of their ID, the activities they did, among others".²⁶⁴

133. The result of the investigation, seven years after the murder of Florentín Gudiel, in relation to the possible participation of the persons referred is at follows: Miguel Ángel Azurdia and Miguel Ángel Estrada did not have a licenses for firearms;²⁶⁵ regarding their activities: Miguel Estrada did not work, and Miguel Azurdia worked at the Madre Tierra Mill, and he also sold electronic appliances. Copies of their IDs were included in the file, and it was stated that they did not have police records.²⁶⁶

134. Based on the previous information, the Special Prosecutor office concluded that "there was no legal basis to proceed against such persons because during the investigation performed -that had taken into account the deposition of Mrs. Makrina Gudiel- it has not been established that the persons mentioned by her participated, existing only her "presumption".²⁶⁷

135. The Commission notes that the Special Prosecutor Office reached that conclusion, while omitting to undertake certain processes that were suggested by the DICRI itself. The report presented by the investigator as of April 20, 2005 established:

I suggest the Deputy agent of this case to call Miguel Ángel Azurdia through the necessary means [...] in order to take his deposition related to a complaint against him, lodged on November 26, 2003 by Makrina Gudiel Álvarez (daughter of the deceased) for alleged threats against her and her family.²⁶⁸

136. There is no evidence in the file that Miguel Azurdia was interviewed in relation to that complaint. Moreover, the IACHR notes that no other essential proceedings were undertaken in the development of this line of investigation, such as interviewing Miguel Estrada concerning the conflicts with Florentín Gudiel Ramos, and confirming if at the moment of the events he was actually a former military commissioner and whether Miguel Azurdia was in fact a former *kaibil*. Also, the Prosecutor's office did not

²⁶⁰ Annex 6, Prosecutor Office of Human Rights. Special Prosecutor Unit No. 2, Ref. 16-05. Request to the Supreme Electoral Tribunal, April 11, 2005, page 16.

²⁶¹ Annex 6, Prosecutor Office of Human Rights, Ref. 16-05, Letter 752519, April 19, 2005, page 32.

²⁶² Annex 6, Prosecutor Office of Human Rights, Ref. Exp. 16-2005 FDH, Request to the Direction of Criminal Investigations, May 17, 2005, page 56.

²⁶³ Annex 6, Unit of Criminal Background, Criminal background of Miguel Ángel Azurdia and Miguel Ángel Estrada, September 21 2006, pages 248-249.

²⁶⁴ Annex 6, Prosecutor Office of Human Rights , Ref. Exp. 16-2005 FDH, Request to the Direction of Criminal Investigations, May 17, 2005, page 56.

²⁶⁵ Annex 6, Ministry of National Defense, Reg. 752519, Letter 110EAM/mds-4300-2005, May 3, 2005 page 39.

²⁶⁶ Annex 6, General Subdivision Criminal Investigation, response to the MP001/2005/33263 request, October 19, 2006, page 275.

²⁶⁷ Annex 6, Special Prosecutor, Process Number MP 15-2005, Report of the investigator in charge of the investigation, received by the Prosecutor office - Human Rights Section, on July 20, 2009, page 449. See communication of the State of October 17, 2011 received by the IACHR on October 29, 2011.

²⁶⁸ Annex 6, DICRI, Ref. MP60/2004/5417, Report on the death of Mr. Florentín Gudiel Ramos (Hero Anonymous), April 5, 2005, page 227.

confirm the facts related to the presence of armed people and the presence of the military during the funeral services that were reported by the next of kin to the police.

137. The investigative authority did not confirm if Florentín Gudiel Ramos had a petition before the IACHR for the forced disappearance of his son, neither did it investigate the records that Florentín Gudiel had in relation to the other disappeared people of Santa Lucía during the conflict that possibly could show who were the masterminds. Equally, no links were investigated between the possible orchestrators that have emerged during the investigation and those who were pointed out by the next of kin as masterminds.

138. The Commission considers that the State has not performed a serious and exhaustive investigation tailored to know the truth of the facts in relation to that line of investigation, in contravention of Article 8 of the Convention. In that regard, the State has not performed fundamental proceedings in the investigation of this hypothesis, taking into consideration the pattern of murders of defenders with the profile of Florentín Gudiel Ramos. Guatemala has failed to continue this line of investigation, even when the authorities have not performed key proceedings that have been suggested by other investigative bodies.

139. Regarding the second hypothesis –that Florentín Gudiel Ramos was murdered because he witnessed the murder of Carlos Adolfo Cáceres Sánchez-, the IACHR notes that Zoila Etelvina Sánchez Larios, mother of the victim, identified Florentín Gudiel Ramos through a picture as the person who told her he had witnessed her son’s murder.

140. The IACHR would like to point out that the DICRI report does not indicate the way in which the authorities learned of the murder of Carlos Cáceres. In this sense, the report states that after doing several interviews in the Las Cruces village, “a version emerged related to the death of the murder of a male resident of the hamlet El Triunfo, which occurred in October of 2004, a few meters away from where Mr. Florentín Gudiel was murdered”.²⁶⁹ However, the file does not identify the interviewed persons. Moreover, the IACHR notes that this line of investigation was based entirely on the 2006 interview of Mrs. Zoila Etelvina Sánchez that states that the image of Florentín Gudiel coincided with the person that she saw once in October 2004, that is, one and a half years before. The Commission notes that notwithstanding that interview, the Prosecutor office has not strengthened such hypothesis with other interviews or additional experts. For example, it has not established if Florentín Gudiel Ramos was in the place where Carlos Adolfo Cáceres was murdered, or if he used to frequent that area.

141. Additionally, even if the DICRI confirmed “that by the descriptions given by Mrs. Sánchez Larios, of the individuals known as “El Gato” and “Chelelo”, appear to be the same given by Mrs. Elizabeth Martínez López in the interview²⁷⁰, no sketches or PhotoFIT was done of either person. Equally, there is no evidence in the file that Zoila Etelvina Sánchez Larios or Elizabeth Martínez were shown the PhotoFIT pictures done based on the deposition of Beatriz Gudiel about the people who were watching her house.

142. The Commission stresses again that more than seven years after Mr. Gudiel’s murder, the file does not contain the pictures of the suspects although the authorities have their physical descriptions and addresses. There is no evidence that such pictures have been shown to the persons who saw the individuals that were following Mr. Gudiel on a bicycle. Moreover, only one out of four persons pointed out by Mrs. Sánchez has been asked to give a statement. No explanation was given as to why the other three persons have not been asked to give a statement. Also, the State has not identified the residence of the person known as “Susy”. Except for “Salomón”, the Prosecutor office has not requested the criminal background of the other suspects.

²⁶⁹ Annex 6, DICRI, Report on the death of Mr. Florentin Gudiel Ramos, Ref. MP001/2005/33263, June 21, 2006, page 149.

²⁷⁰ Annex 6, DICRI, Report on the death of Mr. Florentin Gudiel Ramos, Ref. MP001/2005/33263, June 21, 2006, page 150.

143. The IACHR stresses that this hypothesis has been deeply questioned by the next of kin of the victims that consider that Florentín Gudiel would have commented on this issue or he would have reported it.²⁷¹ However, the Prosecutor Office accepted this hypothesis in its last report where it concluded that he was murdered “because he witnessed the murder of a man days before his death.”²⁷² The IACHR considers that, taking into consideration the previous omissions, the investigation regarding this line of inquiry has not been exhaustive. Consequently, the State has not seriously investigated this hypothesis in contravention of Article 8 of the American Convention.

144. Lastly, the IACHR notes that there is a complex situation regarding security for the persons that are a part of the process. The petitioners have indicated that even though Irma Martínez identified one of the allegedly responsible for the facts in her deposition before the Prosecutor’s office, he still visits his mother’s house. Consequently she has stated that she is “very afraid because she risked a lot to give them information and she even showed them his house, and they did not do anything about it.”²⁷³ The IACHR notes that the report of the Public Ministry indicates that it is not possible to offer judicial protection to the witness because she does not comply with the requirement of having witnessed the murder of Florentin Gudiel Ramos.²⁷⁴

145. The Court has stated in its case law that in order to fulfill the obligation to investigate “pursuant to Article 1(1) of the Convention, the State should adopt ex officio and immediately sufficient investigation and overall protection measures regarding any act of coercion, intimidation and threat towards witnesses and investigators”.²⁷⁵

146. The Commission notes that Mrs. Martínez is the only person that has reported having heard of the direct participation of a person in the murder of Florentín Gudiel Ramos. Moreover, she is one of the two persons that have indicated having seen him moments before his murder, being followed by some individuals in bicycles. Based on the foregoing, the IACHR considers that her deposition is highly relevant to incriminate the participants in the crime and to continue with the investigation. In this sense, the State has to analyze the risks of the situation and take the adequate measures of protection so that witnesses participate in the investigation.

147. Consequently, the Commission considers that the lack of due diligence of the State has been proven in the irregularities and inconsistencies identified in 1) the initial proceedings of the investigation, 2) the crime scene, 3) the lack of due diligence in the investigation of the hypothesis of the crime, and 4) the lack of protection of the persons that have given their deposition in the case. All of the above demonstrates the lack of due diligence in the investigation of the facts, whereupon the State has perpetuated the impunity of the murder of Florentín Gudiel Ramos. Based on the previous considerations, the IACHR concludes that the State is responsible for not guaranteeing the next of kin of Florentín Gudiel Ramos with respect to their judicial guarantees nor the access to an effective remedy, because it did not conduct an investigation with due diligence.

²⁷¹ Communication of the petitioners received in the IACHR on January 12, 2011.

²⁷² Annex 6, Unit of Prosecutor office regarding the crimes committed against human rights activists, response to letter MPDHH-047B-2009, case 989-2006-SCT/MP, April 2, 2009, page 444.

²⁷³ Annex DVD 1, Deposition of Beatriz Gudiel Álvarez, received by the IACHR on February 14, 2011 and sent to the State on March 8.

²⁷⁴ The Prosecutor office indicates that in order for a person to be considered included in the Witness Protection Program, he has to meet the requirements of the regulations. One of such requirements is that the deposition of the witness is decisive to capture, accuse or sentence someone, for having directly witnessed the facts and that he manifests risk for such reasons. In the instant case, no one has declared to have observed where Mr. Florentín Gudiel died” Annex 6, Special Prosecutor, response to the letter MPDHH-047B-2009, case 989-2006-SCT/MP, April 2, 2009pages 444-445.

²⁷⁵ I/A Court H.R., Case of Kawas-Fernández v. Honduras. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para.107.

The right to an investigation of the murder of Florentín Gudiel Ramos within a reasonable time

148. Article 8.1 of the Convention establishes as one of the elements of due process that the courts should decide cases brought before them within a reasonable time by a competent judge. In this sense, a lengthy delay may constitute, in itself, a violation of judicial guarantees,²⁷⁶ for which the State bears the burden of explaining and proving the reason why more than a reasonable time was required to issue a final judgment in a particular case.²⁷⁷ In this sense, the reasonableness of the time must be measured against the total duration of the criminal proceedings.²⁷⁸ In terms of Article 8.1 of the Convention, the Commission will consider, in the light of the actual circumstances of the case, the three elements consistently born in mind in its jurisprudence: a) the complexity of the matter, b) the behavior of the judicial authorities and c) the procedural activity of the interested party.²⁷⁹

149. First, regarding the complexity of the matter, the Commission considers that the instant case is not complex. There is only one clearly identified victim, and from the beginning of the investigation there have been clear clues that could have served to allow the victims to clarify the facts and to establish responsibilities. It is worth noting as well, that the next of kin of the victim have contributed to the process by presenting evidence and asking to speed the process.

150. There are periods of inactivity in the investigation, that were not caused by the complexity of the case, but were due to deficient actions of the authorities:

- a) On December 20, 2004, the District Prosecutor performed the body removal and asked that an investigator be appointed. The file was submitted to the Special Prosecutor on March 21, 2005. That is, during the three months that followed the murder, no additional investigations were carried out nor required.
- b) In January, 2005 the Prosecutor requested that the DICRI appoint investigators to follow up with the case. The request was reiterated in March 2005. In between those dates and without formal appointment of investigator, DICRI staff on January 20th, 25th and 26th of 2005 that seem to have been done without guidelines of the Public Ministry, performed some inquiries. The first report of the DICRI that included those diligences, was presented to the Public Ministry on April 20, 2005, three months after being performed.
- c) The sketch of the crime scene was performed 4 months after the murder; the first ballistic expertise was requested one and a half years after the facts, and the jurisdictional control of the case was requested 8 months after the murder. The IACHR notes that the cover of the judicial file establishes that the crime prosecuted is “manslaughter”, when the nature of the events makes it clear that it was a homicide.
- d) After the Special Prosecutor requested the DICRI to perform some interviews in May 2005, it did not intervene in the investigation until February 2006 when it issued new guidelines of investigation. In that period of time the DICRI only performed diligences of investigation in July 2005 and the report was presented to the Prosecutor two months later, in September,

²⁷⁶ I/A Court H.R., Case of García Asto and Ramírez Rojas v. Peru. Judgment of November 25, 2005. Series C No. 137, para. 166; I/A Court H.R., Case of Gómez-Palomino v. Peru. Judgment of November 22, 2005. Series C No. 136, para. 85; and I/A Court H.R., Case of the Moiwana Community v. Surinam. Judgment of June 15, 2005. Series C No. 124, para. 160.

²⁷⁷ I/A Court H.R., Case of Ricardo Canese v. Paraguay. Judgment of August 31, 2004. Series C No. 111, para. 142.

²⁷⁸ I/A Court H.R., Case of López Álvarez v. Honduras. Judgment of February 1, 2006. Series C No. 141, para. 129; I/A Court H.R., Case of Acosta Calderón v. Ecuador. Judgment of June 24, 2005. Series C No. 129, para. 104; and I/A Court H.R., Case of Tibi v. Ecuador. Judgment of September 7, 2004. Series C No. 114, para. 168.

²⁷⁹ IACHR, Report on the Merits No. 77/02, Waldemar Gerónimo Pinheiro and José Víctor dos Santos (Case of 11.506), December 27, 2002, para. 76. See also I/A Court H.R., Case of López Álvarez v. Honduras. Judgment of February 1, 2006. Series C No. 141, para. 132; I/A Court H.R., Case of García Asto and Ramírez Rojas v. Peru. Judgment of November 25, 2005. Series C No. 137, para. 166.

2005. In any case, the Prosecutor intervened again 5 months after having received that last report.
- e) In November 2006, the Prosecutor required the DICRI to perform some diligences. This request was reiterated four months later, on March 1st, 2007. Five months after the reiteration, on August 7, 2007, the Prosecutor requested that the DICRI investigator present him to the Prosecutor office. The IACHR notes that the next report of the DICRI in the file was presented on March 2008, that is, more than a year after the original request of the Prosecutor.
 - f) It took the Prosecutor 5 months after the searches were performed, to request that one of the possible perpetrators of the murder was interviewed.
 - g) No reconstruction of the events has been done after seven years of the murder.
 - h) The last communication of the State to the IACHR dates April 2009. The state has not informed the Commission of new proceedings in more than two years.

151. In the instant case, the delays of the State in the investigation have had serious repercussions in the possibility to sanction those responsible of the crime. The Commission notes that according to the testimony of the next of kin of the victim, one of the orchestrators that had participated in the planning of the murder of Florentín Gudiel Ramos had already died.²⁸⁰ Equally, regarding the right of the victims to know the truth and obtain reparation, the IACHR notes that the wife of Florentín Gudiel Ramos, María Agripina Álvarez, died in July 2010 without knowing the circumstances of or those responsible for the murder of her husband.²⁸¹

152. Taking into consideration all of the above, the Commission concludes that the 7 year period that it has taken the state investigative body to conclude initial stage of the investigation, exceeds the term that could be considered as reasonable for the state to perform the investigative processes, and it constitutes a denial of justice against the next of kin of Florentín Gudiel Ramos.

153. Based on the foregoing paragraphs, the Commission concludes that the investigations and internal proceedings have constituted effective remedies to guarantee the access to justice, to determine the truth of the facts, the investigation and sanction of the totality of those responsible, and the reparation of the consequences of the violations. Consequently, the Commission considers that the Guatemalan State is responsible for the violation of Articles 8(1) y 25 of the American Convention, in relation with Article 1(1), to the detriment of the next of kin of Florentín Gudiel Ramos.

b. The Right to Life (Article 4 of the American Convention in relation with Article 1.1 of the Convention)

154. Article 4.1 of the American Convention on Human Rights establishes that "[e]very person has the right to have his life respected. [...] No one shall be arbitrarily deprived of his life." In regard to the right enshrined in Article 4 of the American Convention, the Inter-American Court has established that:

[...] the right to life plays a fundamental role in the American Convention for being the essential prerequisite for the realization of the other rights.²⁸² When the right to life is not respected, all the other rights are meaningless. The States have the obligation to ensure the creation of the conditions necessary to avoid violations of this inalienable right and, specifically, the duty of impeding violations of this right by its agents²⁸³. Compliance with Article 4 in conjunction with Article 1.1 of the American

²⁸⁰ Annex DVD 2. Deposition of Makrina Gudiel Álvarez, received by the IACHR on February 14, 2011 and sent to the State on March 8.

²⁸¹ Communication of the petitioners received at the IACHR on January 12, 2011.

²⁸² I/A Court H.R., Case of the Miguel Castro Castro Prison v. Peru. Judgment of November 25, 2006. Series C No. 160, para. 237; I/A Court H.R., Case of the Pueblo Bello Massacre v. Colombia. Judgment of January 31, 2006. Series C No. 140, para. 120; I/A Court H.R., Case of Huilca Tecse v. Peru. Judgment of March 3, 2005. Series C No. 121, para. 65.

²⁸³ I/A Court H.R., Case of Zambrano-Vélez et al. v. Ecuador. Judgment of July 4, 2007. Series C No. 166, para. 79; I/A Court H.R., Case of Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela. Judgment of July 5, 2006. Series C No. 121, para. 65. Continues...

Convention not only presupposes that no person may be arbitrarily deprived of his life (negative duty), but also requires that the States adopt any and all necessary measures to protect and preserve the right to life (positive duty), pursuant to the obligation to guarantee the full and free exercise of rights of all individuals under their jurisdiction.²⁸⁴

155. With regard to fulfilling the obligation of guarantee, the jurisprudence of the Inter-American system indicates that this embodies aspects such as prevention, protection and investigation. When these elements have not been fulfilled, the States may be held internationally responsible for the violation of the right to life.

156. Specifically, the Commission has established that a lack of protection may be said to have taken place whenever the State leaves an individual in a defenseless situation, thus permitting the occurrence of human rights violations, a clear non-compliance with the duty of prevention.²⁸⁵

157. In conformity with the jurisprudence of the Inter-American System, to establish a violation of the rights enshrined in the Convention, it is not necessary to determine the culpability of individual perpetrators or their motive. In the *Case of Paniagua Morales*, the Court ruled that in order to establish the international responsibility of the State:

the State's international responsibility is also at issue when it does not take the necessary steps under its domestic law to identify and, where appropriate, punish the authors of such violations.²⁸⁶

158. Equally, the Inter-American system has stated that the State's responsibility to act with due diligence when faced with violations of human rights extends to the actions of non-State actors, third parties or private individuals. In this regard, the Court has emphasized that:

[s]aid international responsibility may also be generated by acts of private individuals not attributable in principle to the State. The States Party to the Convention have erga omnes obligations to respect protective provisions and to ensure the effectiveness of the rights set forth therein under any circumstances and regarding all persons. The effect of these obligations of the State goes beyond the relationship between its agents and the persons under its jurisdiction, as it is also reflected in the positive obligation of the State to take such steps as may be necessary to ensure effective protection of human rights in relations amongst individuals. The State may be found responsible for acts by private individuals in cases in which, through actions or omissions by its agents when they are in the position of guarantors, the State does not fulfill these erga omnes obligations embodied in Articles 1.1 and 2 of the Convention.²⁸⁷

159. The Court has also established that:

[...] it is evident that a State cannot be held responsible for every human rights violation committed between private individuals within its jurisdiction. Indeed, a State's obligation of guarantee under the

...continuation

150, para. 64; I/A Court H.R., *Case of Ximenes-Lopes v. Brazil*. Judgment of July 4, 2006. Series C No. 149, para. 125; I/A Court H.R., *Case of Baldeón-García v. Peru*. Judgment of April 6, 2006. Series C No. 147, para. 83; see also, United Nations Human Rights Committee, General Comment No. 6 (1982), para. 3, in *Compilation of General Recommendations Adopted by Human Rights Treaty Bodies*, U.N.Doc.HRI/GEN/1/Rev 1 at 6 (1994); United Nations Human Rights Committee, General Comment No. 14 (1984), para. 1, in *Compilation of General Recommendations Adopted by Human Rights Treaty Bodies*, U.N.Doc.HRI/GEN/1/Rev 1 at 18 (1994).

²⁸⁴ I/A Court H.R., *Case of Vargas-Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155, para. 75; I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, para. 130; I/A Court H.R., *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Judgment of March 29, 2006. Series C No. 146, para. 152.

²⁸⁵ IACHR. Report 24/98. Joao Canuto de Oliveira. Brazil. April 7, 1998, para. 53.

²⁸⁶ I/A Court H.R., *Case of the "White Van" (Paniagua-Morales et al.) v. Guatemala*. Judgment of March 8, 1998. Series C No. 37, para. 91.

²⁸⁷ I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 111.

Convention does not imply its unlimited responsibility for any act or deed of private individuals, because its obligation to adopt measures of prevention and protection for private individuals in their relations with each other is conditional on its awareness of a situation of real and imminent danger for a specific individual or group of individuals and the reasonable possibility of preventing or avoiding that danger. In other words, even though the juridical consequence of an act or omission of a private individual is the violation of certain human rights of another private individual, this cannot be attributed automatically to the State, because the specific circumstances of the case and the discharge of such obligation to guarantee must be taken into account.²⁸⁸

160. The European Court of Human Rights has understood the duty of prevention to extend to the "positive obligation of the authorities to take preventive measures to protect an individual or an identified group of persons whose life is at risk from the criminal acts of third parties."²⁸⁹ Notwithstanding the above, the European Court has recognized that this positive obligation cannot be imposed on the state as an impossible or disproportionate obligation,²⁹⁰ and thus it is necessary that the state authorities "knew or ought to have known of the existence of a real and imminent risk to the life of an identified individual or individuals from the criminal acts of third parties, and that the authorities did not take the measures within the scope of their powers, which, judged reasonably, might have been expected to avoid that risk."²⁹¹ In this regard the European Court has established that the State must verify "whether the authorities took all reasonable measures that might be expected to reduce the risk."²⁹²

161. In a similar sense, the Commission has separated the following criteria, i.e.: i) the existence of a real and immediate risk; ii) the awareness the State has of this risk; iii) the special circumstances of the individuals affected; and iv) the reasonable possibilities of prevention or if the State knew or should have known about the risk.²⁹³

162. In the instant case, the Commission has considered that it is proven that after the triumph of the URNG, November 26, 2003²⁹⁴ Makrina Gudiel Álvarez reported to the Public Ministry that she received a phone call from a former *kaibil* of the Guatemalan army, who threatened Florentín Gudiel, her and her son. According to Makrina Gudiel, this event happened after the person who threatened her had been fired from the position of the President of the Committee of the school "Escuela República de México", an institution where Florentín Gudiel Ramos participated in its creation.

²⁸⁸ I/A Court H.R., Case of González et al. ("Cotton Field"). Judgment of November 16, 2009, para. 280; I/A Court H.R., Case of the Pueblo Bello Massacre v. Colombia. Judgment of January 31, 2006. Series C No. 140, para. 123. See also ECHR, Case of Kiliç v. Turkey, Judgment of March 28, 2000, paras. 62 and 63 and ECHR, Case of Osman v. the United Kingdom, Judgment of October 28, 1998, paras. 115 and 116.

²⁸⁹ ECHR, Case of Kiliç v. Turkey, Judgment of March 28, 2000, Application No. 22492/93, para. 62; Case of Osman v. the United Kingdom, Judgment of October 28, 1998, para. 115.

²⁹⁰ ECHR, Case of Kiliç v. Turkey, Judgment of March 28, 2000, Application No. 22492/93, para. 63; Case of Osman v. the United Kingdom, Judgment of October 28, 1998, para. 116.

²⁹¹ For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.

ECHR, Case of Kiliç v. Turkey, Judgment of March 28, 2000, Application No. 22492/93, para. 63; Case of Osman v. the United Kingdom, Judgment of October 28, 1998, para. 116.

²⁹² ECHR. Case of Mahmut Kaya v. Turkey, March 28, 2000, para. 87.

²⁹³ IACHR, Report of Carlos Luna López vs. Honduras, Case 12. 272, July 22, 2011, para. 160. IACHR, Complaint of the Inter-American Commission in the Case of Luisiana Ríos et al., April 20, 2007, paras. 226-228. Available at <http://www.cidh.org/demandas/12.441%20Luisiana%20Rios%20y%20otros%20Venezuela%2020%20abril%202007%20Esp.pdf>.

²⁹⁴ The complaint is not in the file. However, the documents of the Prosecutor Office refer to such complaint and the date that it was filed. See Annex 6, DICRI, Ref. MP60/2004/5417, April 5, 2005, page 227.

163. According to Makrina Gudiel, the person who called identified himself as Miguel Azurdia and he told her: "so you guys got your way to appoint a new committee, but I do shit. ("los voy a hacer mierda)".²⁹⁵

164. According to the depositions of Makrina Gudiel, and that were not contested by the State, when she reported the facts to the Public Ministry she gave them the phone number and told them that that was the number of the man who threatened her, her father, and her son. She asked the authorities to open "an investigation against this man who is a former military kaibil."²⁹⁶

165. The following facts, in light of the specific context of the threat, allows the Commission to assert that there was a situation of real, and immediate risk that was reported to the Prosecutor's office. Consequently, the State had the duty to take specific measures to protect the life of Florentín Gudiel Ramos.

166. The Commission stresses in first place that, taking into consideration the time period when it occurred, the threat was clearly grave, because it could have been perpetrated by a former member of the Army against demobilized persons of the URNG. In this regard, the Commission notes that the Gudiel family had fled to Mexico after the forced disappearance of one of its family members by the Guatemalan army. The family came back to Santa Lucía with a return agreement that incorporated the URNG members into society. Consequently, there was a serious situation of fragility in their security in a country where the structures linked to the armed conflict were still operating.

167. Regarding the continuation of the operation of structures linked to the armed conflict during the events that were opposed to the work of Florentin Gudiel, the elected mayor elected of Santa Lucía at the time of the facts, said that Gudiel's leadership caused "lots of discontent and anger with leadership figures who were associated with war-lordism and corruption of the past and mainly linked to the repressive apparatus of the period of armed conflict".²⁹⁷

168. Additionally, the risk of the threat was evident by virtue of the alleged identity of the author of the threat. The IACHR recalls that according to the CEH, the kaibiles were defined as a "machine to kill when foreign forces or doctrines put the nation or the army in danger".²⁹⁸ They were characterized by their barbarism and extreme cruelty in the training methods.²⁹⁹ In 2003, when the threat was made, the IACHR pointed out that a great number of the violations occurred against the human rights defenders who were social leaders and sought justice for the events that occurred during the conflict, and were perpetrated by former members of the Army that, after the conflict, had the cooperation of military intelligence.³⁰⁰ The IACHR has previously pointed out that Florentín Gudiel had the profile of the attacked defenders.

169. As it is clear from the declaration of Makrina Gudiel, when she reported the threat to the Prosecutor, she explained the particular situation of existing risk by virtue that the author of the threat was

²⁹⁵ "Annex 6, Deposition of Makrina Gudiel, page 225. See also Annex 6, Deposition of Makrina Gudiel Alvarez before the office of the District Prosecutor of Santa Lucía, Department of Escuintla, February 10, 2005, page 6, where it states that, regarding the menace, "he told me ...you are going to pay this, I am going to run over you". All these happened because by the time he called me, he was President of the previously mentioned school."

²⁹⁶ Annex DVD 1, Deposition of Makrina Gudiel Álvarez, received by the IACHR on February 14, 2011 and sent to the State on March 8.

²⁹⁷ Annex 1. Deposition of Julio Armando Paz Espinoza, former municipal mayor of Santa Lucía, Department of Escuintla (2004-2008).

²⁹⁸ CEH. Guatemala Memory of Silence, Chapter II, Volume I, para. 116. Available at: <http://shr.aaas.org/guatemala/ceh/mds/spanish/cap2/vol1/cmil.html>

²⁹⁹ The Kaibiles were elite soldiers of the Guatemalan Army during the armed conflict. During their training, the Army encouraged the aggressiveness and braveness through the dehumanized mental and physical pressure. "It was essential that the kaibiles killed animals, specially dogs, and eat them raw or grilled, and drink their blood to show braveness". Memory of Silence, Volume II, The violations of human rights and the facts of violence, para. 895.

³⁰⁰ IACHR, Justice and social inclusion: The challenges of democracy in Guatemala, December 29 2003, OEA/Ser.L/V/II.118, Doc. 5 rev. 1, para. 212. Available at: <http://www.cidh.oas.org/countryrep/Guatemala2003sp/capitulo3.htm>

linked to the Guatemalan army, and due to the fact that her family had some decommissioned members from the URNG:

I explained the Public Ministry that we were members of the URNG [and] that were members of the Community Council; that the man was a former member of the Army and that, as such, had opposite ideas to us. I reported the facts because Guatemala already had peace agreements; there was a process and an effort to construct a different nation where the conciliation had to prevail.³⁰¹

170. The Commission considers that the previous elements allowed Guatemala to know about a situation of the real and imminent risk which the State could have protected the life of Florentín Gudiel. However, the IACHR notes that the State not only did not take any specific protective measures, but also has not investigated this threat nor identified if the author of threat was actually a former *kaibil* for 8 years.

171. Additionally, as it was pointed out by the Commission in the section of proven facts, in the period between the threat against Gudiel and his murder, his next of kin indicated that their house was under surveillance, persons with their faces covered roamed around their property, and that some persons hid in front of their house.³⁰²

172. The IACHR notes that the State knew of at least one more time that implied a situation of risk to Mr. Gudiel. According to the information given by Makrina Gudiel, not contested by the State, the Gudiel family informed the Municipal Mayor that a group of men that were armed were watching the Gudiel family at nights.³⁰³ The Commission notes that despite this complaint, the State did not adopt any measure to protect their life, even though Mr. Gudiel was the Mayor of the village of Cruce la Esperanza, which caused him to have conflicts with a man named Miguel Estrada, former mayor of the FRG, who was identified by the next of kin of Gudiel, as a former military commissioner that knew Miguel Azurdia, the alleged former *kaibil* that had previously threatened him.³⁰⁴ The Municipal Mayor of Santa Lucía also knew of the confrontations between Florentín Gudiel and Miguel Estrada³⁰⁵.

173. After the murder of Mr. Gudiel, the State has established a hypothesis that indicates that the murder is not related with these events, the Commission has previously determined that no hypothesis has been duly investigated. Moreover, the Commission notes that at the moment the threat was reported to the Prosecutor, there was a series of contextual evidence that had been reported to the Prosecutor that show that Guatemala had a duty to adopt measures to protect the life of Florentín Gudiel Ramos. When analyzing the State's obligations in relation to this duty, the Commission values exclusively the factual elements that were present at the moment the state knew of the situations of risk, independently of the hypothesis that eventually emerged in the investigation of the murder.

³⁰¹ Annex DVD 2, Deposition of Makrina Gudiel Álvarez, received by the IACHR on February 14, 2011 and sent to the State on March 8.

³⁰² Annex DVD 2, Deposition of Makrina Gudiel Álvarez, received by the IACHR on February 14, 2011 and sent to the State on March 8. Annex 6, Special Prosecutor, Deposition of Makrina Gudiel Álvarez, May 11, 2005, page 47. Annex 8, Testimony of Makrina Gudiel, Narration of the day that my father was assassin.

³⁰³ According to the testimony of Makrina Gudiel Álvarez "the neighbors alerted us that there was a pickup in the backyard [...] with armed men that were placed below the orange trees, and smoke at night, and that were controlling our house [...]. "Then my dad and I inspected the field and there were actually traces of cars, and cigarettes leftovers [...]" "we did not present a complaint [...] but we told the Mayor, whom we trusted a lot, of what was going on in the area". "In the following days, the neighbors told us that there were armed men looking to our house". Annex DVD 2, Deposition of Makrina Gudiel Álvarez, received by the IACHR on February 14, 2011 and sent to the State on March 8. (uncontested by the State).

³⁰⁴ According to the next of kin of the victim, when they were taking Mr. Gudiel's body at the entrance of the graveyard, Mr. Estrada and Mr. Azurdia were laughing. See communication of the petitioners received by the IACHR on January 12, 2011.

³⁰⁵ Regarding the arguments between Gudiel and Estrada, the elected mayor of the URNG explains that Gudiel had several problems with Mr. Estrada "who was a former deputy mayor, because he wanted to have influence in the village of Cruce La Esperanza where Florentín Gudiel was a community mayor fully accredited". Annex 6, Prosecutor office on Human Rights, Interview of Julio Paz, File No. 048-2004/DI, page 80.

174. Given the foregoing, the Commission considers that the Guatemalan State knew of the existence of the real and imminent risk, through the complaint before the Public Ministry that was clearly grave because of the alleged authorship of the aggressor and the particular circumstances of Florentín Gudiel Ramos. Moreover, even though the State had opportunities to adopt specific measures of protection, it did not do it, leaving the victim exposed to a state of defenselessness that facilitated the occurrence of his murder. Consequently, the Commission concludes that the Guatemalan state breached its obligation of protection, and is internationally responsible for the breach of the right to life to the detriment of Florentín Gudiel Ramos.

2. Regarding Florentín Gudiel's Family

a. Freedom of Movement and Residence (Article 22 in relation to Article 1(1))

Preliminary note. "iura novit curia"

175. In its admissibility report the Commission did not address the alleged violation of article 22, which was alleged by the petitioners after said report. The IACHR notes that the facts that support such allegations are an integral and indivisible part of the case and, also, they emerge from the information of the documents presented by the parties during the proceedings before the IACHR. The Commission notes as well that the state knew the facts on which the allegation was based, and it had the opportunity to submit its observations to that regard. Consequently, based in the "iura novit curia" principle, and taking into account the necessity of being congruent with other cases that present similar situations, the Commission will proceed to make some considerations in that regard.

176. Article 22 of the American Convention establishes the protection of the right of movement and residence; every person that is legally in the territory of a State has the right to freely move and reside in it, and the right to enter, stay and exist the territory without illegal state interference.³⁰⁶ Moreover, the Court has established that this right can be affected when a person is victim of threats and harassment, and the State does not provide the necessary guarantees for the persons to freely move and reside in the territory, even when the threats and harassment come from non-state agents.³⁰⁷ The Court has found Article 22 of the Convention to be breached to the detriment of several persons that were forced into exile "without being able to or wanting to return to their home due to the well founded fear of persecution."³⁰⁸ In this regard, the Court has made reference to the social, family and financial impact that the exile had in these persons.³⁰⁹

177. As it is clear from the facts of the instant case, the next of kin of Florentín Gudiel Ramos suffered exile from Santa Lucía on two occasions in search of better security conditions; first, after the forced disappearance of Miguel Gudiel Ramos and, secondly, after the death of Florentín Gudiel Ramos. About the first displacement, the IACHR declared the violation to Article 22 of the Convention by the State in the case 12.590–currently before the Inter-American Court – to the prejudice of the next of kin of José Miguel Gudiel Álvarez³¹⁰, son of Florentín Gudiel Ramos.

178. In relation to the second displacement of the Gudiel family, the IACHR notes that according to the information provided by the petitioners, and not contested by the State of Guatemala, as a consequence of

³⁰⁶ I/A Court H.R., Case of Valle-Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 138.

³⁰⁷ I/A Court H.R., Case of Valle-Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 139.

³⁰⁸ I/A Court H.R., Case of Valle-Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, paras. 140, 141, 144.

³⁰⁹ I/A Court H.R., Case of Valle-Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 141.

³¹⁰ Makrina Gudiel Álvarez (sister), María Agripina Álvarez de Gudiel (mother), Florentín Gudiel Ramos (father, assassin in 2004), José Francisco Gudiel Álvarez (brother), Yolanda Gudiel Álvarez (sister), Beatriz Gudiel Álvarez (sister) y Florentín Gudiel Álvarez (sister).

the lack of investigation of the facts related to the death of Florentín Gudiel, the progressive harassments and attacks that they reported as having received, and the fear of suffering an attack against his life, some members of the family had to temporarily return to Mexico, others fled to other parts of Guatemala, and some others, that thought of going back Guatemala after the first exile, stayed in Mexico because they feared suffering an attack. According to the information given by the petitioners and not contested by the State, Makrina Gudiel Álvarez fled to Mexico with her children, as well as with her mother María Agripina Álvarez in search for better security conditions; Beatriz Gudiel and her children looked for refuge in other parts of the country. Finally, José Francisco, Ana Patricia and Florentin, all of which have the last-name Gudiel Álvarez have not had the chance to return to Guatemala given the facts of the instant case.³¹¹

179. The Commission considers that the lack of investigation of the previous threats of the murder of Mr. Gudiel, the situation of impunity of the murder, the harassments that the family members report having suffered, as well as the lack of effective protection measures, have a causal relationship that is solid enough with the displacement of the Gudiel family to attribute responsibility to the State based on the fact that these persons were forced to leave Santa Lucía for extended periods of time as a product of the violence against their family.

180. Taking into consideration the facts and the referred case law of the Inter-American Court, the IACHR declares that, in the instant case, the state of Guatemala has breached Article 22 of the American Convention, with relation to Article 1(1), to the prejudice of the persons named before³¹².

b. Right to Personal Integrity (Article 5 of the American Convention, in relation to Article 1(1))

181. Article 5.1 of the American Convention establishes that "[e]very person has the right to have his physical, mental, and moral integrity respected. The Inter-American Court has indicated that the immediate family of the victims of certain human rights violations can, in turn, be victims.³¹³ Specifically, the Court has stressed that the victims' immediate family may have their mental and moral integrity affected as a result of the particular situations suffered by their loved ones, and owing to the subsequent acts or omissions of the State authorities in relation to the facts.³¹⁴

182. Specifically, the Commission has concluded supra that, in the instant case, there was not complete and effective investigation regarding the facts. In this regard, the Court has noted 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.³¹⁵

³¹¹ Annex 8, Written testimony by Makrina Gudiel Álvarez. See also, Communication of the petitioners received on January 12, 2011, Annex 22, Mexican Commission of Help to Refugees, Record of application of refugee of Makrina Gudiel Alvarez and her children Carlos Ernesto and José Gabriel Cruz Gudiel, as well as María Agripina Álvarez Tobar, February 24, 2005

³¹²The IACHR does not have information that allows it to make a pronouncement in relation to the situation of Yolanda Gudiel Alvarez and her nuclear family as family members that have been affected by displacement.

³¹³ I/A Court H.R., Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. para. 112; I/A Court H.R., Case of Bueno Alves. Judgment of May 11, 2007. Series C. No. 164. para. 102.

³¹⁴ I/A Court H.R., Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. para. 112; I/A Court H.R., Case of Vargas Areco v. Paraguay. Judgment of September 26, 2006. Series C No. 155. para. 96.

³¹⁵ I/A Court H.R., Case of Valle-Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 102 Cfr. I/A Court H.R., Case of the Rochela Massacre v. Colombia. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 195, I/A Court H.R., Case of Velásquez-Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, para. 181; I/A Court H.R., Case of Heliodoro-Portugal v. Panama. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C No. 186, para. 146, y I/A Court H.R., I/A Court Continues...

183. Based on the previous paragraphs, the Commission considers that the loss of a beloved persona in the context previously described, as well as in the absence of a complete and effective investigation that also causes suffering and anguish of not knowing the truth, constitutes itself a harm in the psychological and moral integrity of the next of kin of Florentín Gudiel Ramos.

184. Additionally, the IACHR notes that the murder of Florentín Gudiel constitutes the second violent loss of a member of the Gudiel Álvarez family. Also, after the murder, members of the family had to leave Santa Lucía again, leaving their properties and jobs. All of this, placed the Gudiel Álvarez family in a state of anguish, fear and turmoil that produces a financial instability and the non-compliance of their projects.³¹⁶

185. Indeed, according to the available information and the expertise presented by the petitioners and that was not contested by the State, the IACHR notes that the following family members of Florentín Gudiel Ramos have suffered psychological consequences because of his death and because of the impunity of the events: Yolanda Gudiel; Beatriz Gudiel; Makrina Gudiel; José Franciso Gudiel, Florentino Gudiel and Ana Patricia Gudiel. Moreover, the expert witness refers to the impact of the death Gudiel Ramos on his grandchildren Román Vladimir González Gudiel and his siblings; Ileana Concepción Pérez Gudiel; Rodrigo Pérez Gudiel; Carlos Ernesto Cruz Gudiel; Oscar Cruz Gudiel José Gabriel Cruz Gudiel. Specially in relation to the effects in Florentín's grandchildren, Makrina Gudiel states that:

these children in exile had listened to our testimonies of terror, of how we lived when we were persecuted by the Guatemalan state, because we defended and demanded our human rights we are entitled to as Guatemalans. The day of Florentín's murder, his grandchildren personally experienced this political cruelty ... of ordering silence to anyone that was an obstacle because he was defending and promoting the human development.³¹⁷ Moreover, Makrina stated that being separated from her children's father, Mr. Florentín Gudiel Ramos "was a paternal figure for her children, especially the youngest one, and his enforced absence has grave consequences for his mental health."³¹⁸

186. On the other hand, the IACHR notes that, according to the content of Article 5, in relation to the duty to protect enshrined in Article 1(1) of the Convention, States have the obligation to seriously prevent, investigate and sanction the facts under its knowledge.³¹⁹

187. The IACHR notes that the next of kin of Florentín Gudiel have reported to the Prosecutor that they have been threatened, followed, and their homes watched. In this sense, the Human Rights Attorney General pointed out in the report that was sent to the Prosecutor office that "it is clear that the family suffers from constant threats by unknown individuals that are heavily armed."³²⁰ Notwithstanding that the previous events were reported to the authorities, they have not been duly investigated, nor the family members have received effective protection by the State.

...continuation

H.R., Case of García-Prieto et al. v. El Salvador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2007. Series C No. 16, para. 102.

³¹⁶ Makrina Gudiel states that: "[...] by the time my dad was murdered, we as a family had planned an alternative financial development project. We owned some fields, a strong municipality and enough water. We were going to construct a recreational center, with pools, and restaurant. Moreover, my dad left pieces of furniture to sell them as part of the business. He also left a field ready to plant foreign guava. [...]" Annex 8, Written testimony by Makrina Gudiel Álvarez.

³¹⁷ Annex 8, Written testimony by Makrina Gudiel Álvarez.

³¹⁸ Annex 8, Written testimony by Makrina Gudiel Álvarez.

³¹⁹ I/A Court H.R., Case of Velásquez-Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, para. 174., para. 166.

³²⁰ Annex 6, Attorney General of Human Rights, Ordinary file - Escuintla 048-2004/DI, June 16, 2005, page 81.

188. In that regard, the IACHR notes that Makrina Gudiel has reported that she received death threats and an alleged attempt against her life that were not duly investigated by the State. In relation to the alleged threat that Makrina Gudiel Álvarez indicates that she received in December of 2003 by an undercover operator in the URNG, the Commission notes that was reported to the Mediation Center of the Judiciary. However, as the alleged author of the threats did not present himself before such body, the latter ordered that the judicial proceedings of the case should continue.³²¹ According to the evidence in the file, no investigation has been opened, nor an analysis conducted to determine if it might be related with the facts of this case.

189. Equally, as the IACHR indicated, the death threat against Makrina Gudiel, and against her father and son, Carlos Ernesto Cruz Gudiel, in 2003 by an alleged former *kaibil* has not been investigated after 8 years of the threats.

190. On the other hand, in relation to the alleged attempt against Makrina Gudiel's life on January 25, 2005 when she allegedly found gas on her car with the purpose of setting fire, the IACHR notes that the State performed an visual inspection of the place and interviewed some individuals in the area.³²² However, Guatemala did not perform some important proceedings in the investigation, such as identifying if, actually, the liquid allegedly thrown on the car was gas. The State closed the investigation.

191. Additionally, the State indicates having offered to begin a request of protection for the next of kin of Florentín Gudiel. The protection was granted in 2008, that is more than three years after the murder of Florentín Gudiel Ramos. The information in the file does not indicate that during the following months of the murder of Florentín Gudiel the State took the necessary actions to protect the personal integrity of his family members' and thus, allowing a defenseless situation that made them move looking for more secure conditions.

192. The lack of protection of the next of kin of Florentín Gudiel was evident in the following months after his murder because even though the Human Rights Attorney General had requested for the National Police to adopt urgent protection measures for them, there is no information that the Police complied with that request. On the contrary, according to the depositions of Makrina Gudiel, that were not contested by the State, after the mourning celebrations, the next of kin directly requested protection to the National Police, but it denied them the protection notwithstanding the Attorney General's request. According to the deposition of Makrina Gudiel that was not contested by the State, when they went to ask for protection, the policemen

Indicated that they had very few vehicles, that they did not have gas and that it was too much for them to protect us. That they had to protect a population of 120 thousand people and that it was not possible to follow on the situation that we were experiencing. Consequently, the Human Rights Attorney General Office advised us to leave.³²³

193. In view of the great distress that the Gudiel Álvarez family has lived in its search for justice for the murder of Florentín Gudiel Ramos, the lack of effective protection and investigation on the attacks and harassment that they lived the days after the murder, as well as the deep suffering and radical change in their life as a result of the displacement, the Commission concludes that the State violated the right to mental and moral integrity enshrined in Article 5(1) of the American Convention, in relation to the duty to respect established Article 1(1), to the detriment of the next of kin mentioned above.

³²¹ Annex 24, Mediation Center of the Guatemalan Judicial Organism, February 20, 2004.

³²² On January 26, 2005 staff from the Public Prosecutor checked the area where the facts took place, they took pictures and did some interviews to the persons that stated that they knew nothing about an existing problem. Moreover, they visited the restaurant where the vehicle had stopped and they interviewed Claudia Maricela López who worked there. She said she did not remember any particular vehicle parked near the restaurant and that it was common that cars parked there. Annex 6, DICRI, Ref. MP60/2004/5417, interview of Claudia Maricela López, April 5, 2005, page 226-227.

³²³ Annex DVD 2, Deposition of Makrina Gudiel Álvarez, received by the IACHR on February 14, 2011 and sent to the State on March 8 de 2011.

c. Right to judicial guarantees (Article 8) for the alleged lack of total access to the judicial file

194. The petitioners have alleged under Article 8 of the Convention that the authorities denied Florentín Gudiel's next of kin total access to and a copy of the file, because they had not requested to be a third party ("querellante adhesivo"),³²⁴ and that they were able to have access to a copy of the file in 2011 when the Decree 18-2010 introduced a series of rights to the next of kin of the victims in the processes.³²⁵ The State pointed out that according to the law at the time of the events, neither Makrina Gudiel nor any other next of kin requested to be considered as third parties ("querellante adhesiva"), which would have gave them access to the file.³²⁶ The IACHR notes that according to the foregoing, there is no controversy that Mrs. Makrina Gudiel did not request to be considered as a third party in the process according to the internal law. There is no controversy either regarding the fact that the way for her to have access to the file, according to the internal law, was to have made that request and be considered a third party.

195. The IACHR reiterates that, as the Inter-American Court has stated, during the process of the investigation and during the judicial proceedings, the victims of human rights violations or their next of kin must have broad opportunities to participate and be heard, both in the clarification of the facts and in the sanctioning of those responsible, as well as in the search for a just compensation.³²⁷ The Court has indicated that "the access to the file is a *sine qua non* requirement in the procedural investigation of the victim in the process where he constitutes himself as third party ("parte coadyuvante o querellante") according to the internal law."³²⁸

196. The IACHR notes that according to the Guatemalan Criminal Proceedings Code at the time of the events, some direct family members of the victims could constitute themselves as aggrieved, personally or through their representatives.³²⁹ The Inter-American Court has indicated that the State has the right to prevent the diffusion of the content of the proceeding, but it must be balanced by adopting the necessary compatible measures with the exercise of the procedural rights of the victims.³³⁰

³²⁴ Communication of the petitioners on the merits, received at the IACHR on January 12, 2011.

³²⁵ Article 7 of Decree 18-2010 states the reform of Article 117 of the Criminal Procedure Code, Decree 51-92 of Congress, as amended: "Article 117. Wronged. This Code considers as wronged: 1. The victim affected by the crime, 2. The spouse, parents and children of the victim and the person who lives with her at the time of the crime, [...]". "Even if the victim or wronged has not been constituted as a third party ("querellante adhesivo") in accordance with this Code, is entitled to: a. being informed of his rights in criminal proceedings. b. Medical and psycho-social assistance, or any measure designed to reduce the consequences of crime. c. That the Public Ministry hears her opinion on the procedure, mainly before final decisions or regarding the provisional decisions that imply the closure or temporary extinction of criminal prosecution. d. To be informed, in an appropriate and timely manner, of the final prosecution and judicial decisions, and to be invited to the hearings in which his opinion may be given. e. to receive compensation and / or compensation for injuries received. f. to receive protection when her physical integrity is at risk, as a result of criminal prosecution against the accused. g. That mechanisms exist to reduce the risk of secondary victimization during criminal proceedings [...]" Cf. Communication of the petitioners on the merits, received at the IACHR on January 12, 2011.

³²⁶ See communication of the State of September 28, 2006, received at the IACHR on October 2, 2006. The State informed that according to Article 314 of the Criminal Proceedings Code, "the actions in the process could only be examined by the processed, the other persons that have been allowed to intervene in the process, and the representatives of the victims."

³²⁷ Cf. I/A Court H.R., Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124. para. 147. Cf. I/A Court H.R., Case of the Serrano-Cruz Sisters v. El Salvador. Preliminary Objections. Judgment of November 23, 2004. Series C No. 118, para. 63.

³²⁸ I/A Court H.R., Case of Radilla-Pacheco v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, para. 252.

³²⁹ According to Decree 51-92 of the Criminal Proceedings Code: "Article 314. (Character of the actions in the process) [...] The activities or actions could only be examined by the processed individual, and to any other person that has been given access in the proceedings, the defenders and their representatives."

³³⁰ I/A Court H.R., Case Radilla Pacheco Vs. México. Preliminary Objections, Merits and Reparations, Judgment of 23 November 2009 Series C No. 209, para.252.

197. In the instant case, the Commission notes that the petitioners indicated that the next of kin could not constitute themselves as third parties, due to their lack of financial resources and the denial of professionals to assume this responsibility.³³¹ Moreover, the IACHR notes that the State reformed its law and the petitioners indicate that they could not have access to the file without the need to constitute themselves as third parties. However, there are not enough elements in the file that indicate that the next of kin had requested to be considered as third party in the process, without the need of a lawyer, and that the State had denied this request. There is no evidence either that the authorities put factual or legal obstacles to prevent them from requesting to be considered as a third party.

198. In the absence of such elements that allow evaluation of a more the concrete case, the IACHR considers that there are insufficient elements to make a pronouncement regarding Article 8 of the Convention for the referred facts by the petitioners.

2. Regarding Florentín Gudiel Ramos y Makrina Gudiel Álvarez

a. Right to participate in government (Article 23³³² of the American Convention) in relation with the duty to respect and guarantee human rights (Article 1 of the American Convention)

Preliminary note. “iura novit curia”

199. In its admissibility report the Commission did not address the alleged violation of article 23, which was alleged by the petitioners after said report. The IACHR notes that the facts that support such allegations are an integral and indivisible part of the case and, also, they emerge from the information of the documents presented by the parties during the proceedings before the IACHR. The Commission notes as well that the state knew the facts where the allegation was based, and it had the opportunity to submit its observations to that regard. Consequently, based in the “iura novit curia” principle, and taking into account that the, and the necessity of being congruent with other cases that present similar situations, the Commission will proceed to make some considerations on that regard.

200. In first place, the Commission recalls that in the frame of the analysis of the content of article 1 of the Declaration on the right and duty of individuals, groups and institutions to promote and protect the human rights, and fundamental freedoms universally recognized,³³³ the IACHR has understood that a human rights defenders is “every person that promotes and procures in any way the realization of human rights that are nationally and internationally recognized”.³³⁴ According to the UN High Commissioner in Human Rights the identifying criteria on who must be considered a human rights defender is the activity of the person and no other qualities.³³⁵ For instance, if the person is paid or not for her job or if she belongs to a civil organization or not.

³³¹ Communication of the petitioners on the merits, received at the IACHR on January 12, 2011.

³³² Article 23(1) establishes that every citizen shall enjoy the following rights and opportunities: a. to take part in the conduct of public affairs, directly or through freely chosen representatives; b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and c. to have access, under general conditions of equality, to the public service of his country. [...]

³³³ Article 1 of the Declaration establishes that “Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.”³³³ Declaration approved by the UN General Assembly through resolution A/RES/53/144, March 8, 1999. Available at: [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.RES.53.144.Sp?OpenDocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.RES.53.144.Sp?OpenDocument)

³³⁴ IACHR, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.LV/II.124. Doc. 5 rev.1, March 7, 2006, para.13. Available at: <http://www.cidh.oas.org/countryrep/Defensores/defensoresindice.htm>.

³³⁵ Office of the High Commissioner on Human Rights. Informative paper no. 29: The Human Rights Defenders: Protection of the right to defend rights, Geneva 2004. Available at: <http://www.ohchr.org/Documents/Publications/FactSheet29sp.pdf>

201. The IACHR considers that the present case has specific particularities because at the time of his murder, Mr. Florentín Gudiel was a human rights defender through the community leadership and public office.³³⁶ According to the internal law, the Community Major is a political position³³⁷ and it involves several activities of the defense of collective rights of persons that are under the jurisdiction of the Development Community Council (COCODEE) that elects them.³³⁸ Consequently, the Commission considers that the analysis of the right to political participation in the instant case must be given from the relation of that right with the work of promotion and defense of human rights.³³⁹

202. The Commission emphasizes the fundamental role that a respect for political rights plays in strengthening the democratic society and the rule of law. In this sense, the Court has established that:

Political rights are human rights of fundamental importance within the inter-American system and they are closely related to other rights embodied in the American Convention, such as freedom of expression, and freedom of association and assembly; together, they make democracy possible.[...]"³⁴⁰.

203. The Commission considers that due to the relationship between the performance of the duties of public office and the defense of human rights, States are obliged to develop positive actions that translate in the suppression of hostile or dangerous scenarios³⁴¹ and in the duty to generate the conditions to eradicate state agent or third party violation³⁴² so that they can freely exercise their activities of defense and promotion of human rights.

³³⁶ The IACHR notes that the members of the Community Assembly of the Community Developments Council are elected by the residents of a same community and are who elect the Mayor according to the principles, values, procedures and traditions. Those Councils are part of the System of Development Councils in Guatemala that has as a purpose to organize and coordinate the public administration through the formulation o development policies, budgetary plans and programs, and the impulse of the interinstitutional public and private coordination. The law defines them as "a means of participation of the Mayan, Xinca, Garifuna an non-indigenous population in the public measures in order to proceed with a democratic participation of development." See Decree 11-2002. Available at: [http://sistemas.segeplan.gob.gt/discode/sche\\$portal/documentos/ley_concejos_desarrollo_guatemala.pdf](http://sistemas.segeplan.gob.gt/discode/sche$portal/documentos/ley_concejos_desarrollo_guatemala.pdf)

³³⁷ According to Article 56 of Decree 12-2002 (Municipal Code): "According to the uses, norms and traditions of the communities, the Municipal Council will recognize the community mayors or deputy mayors as community entities of representation, specially regarding the decision making process and as a link with the municipal government. The appointment of the community mayors or deputy mayors will be done by the Municipal mayor, based on the designation or election done by the communities according to their principles, values and traditions" Available at: http://community.oas.org/munet/paises/guatemala/m/prueba_para_videos/545.aspx

³³⁸ According to Article 58 of Decree 12-2002 (Municipal Code) that is applied to the Development Community Councils, the community mayor or deputy mayor have to: i) Promote the organization and systematic participation of the community in identifying and solving local problems; ii) Collaborate in the identification of the local needs and in presenting proposals to solve them; iii) Proposing guidelines and instruments of coordination in the community to implement programs and projects by persons, institutions or entities interested in the development of the communities; iv) Do, promote and supervise projects that contribute to the integral development of the community, with the support and coordination of the Municipal Council. v) Promote and GESTIONAR in the community and municipal areas the actions that guarantee the rational and sustainable use of the public infrastructure. vi) To ensure the compliance of the ordinances, regulations and general regulations issued by the Council. Available at: http://community.oas.org/munet/paises/guatemala/m/prueba_para_videos/545.aspx

³³⁹ IACHR, Case 12.472 Merits Report. Carlos Antonio Luna López et al, July 22, 2011, para. 226. See mutatis mutandis I /A Court H.R., Case of Kawas-Fernández v. Honduras. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para.145.

³⁴⁰ I/A Court H.R., Case of Castaneda Guttmann. Judgment of August 6, 2008. Series C No. 184, para. 140; I/A Court H.R., The Word "Laws" in Article 30 of the American Convention on Human Rights. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 34; I/A Court H.R., Case of Yakama. Judgment of June 23, 2005. Series C No. 127, para. 191.

³⁴¹ Cfr. 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, para. 45. I/A Court H.R., Case of Kawas-Fernández v. Honduras. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 74.

³⁴² Cfr. 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, para. 44. It is worth noting that the UN Special Rapporteur on the situation of Human Rights defenders, Margarete Sekaggya, has expressed her worry for the continued attacks against human rights defenders by non-state agents. Consequently, she has decided to center one of her thematic reports to the General Assembly in the violations of human rights committed against human rights defenders by non-state agents, and its consequences to the GOCE of their rights. Cfr. UN General Assembly, A/65/223, Report of the UN Special Rapporteur on the situation of Human Rights defenders, August 4, 2010. Available at: <http://www2.ohchr.org/english/issues/defenders/docs/A-65-223.pdf>

204. Specifically, the Inter-American Court has stated between the actions that States must adopt to guarantee the activities of human rights defenders, that “have the duty to provide the necessary means for human rights defenders to conduct their activities freely; to protect them when they are subject to threats in order to ward off any attempt on their life or safety; to refrain from placing restrictions that would hinder the performance of their work, and to conduct serious and effective investigations of any violations against them, thus preventing impunity.”³⁴³ Based on the previous paragraphs, the Commission notes that the State of Guatemala was obliged to guarantee the exercise of the political rights of Florentín Gudiel Ramos, and, after his homicide, to investigate with special diligence and seriousness, due to the existence of INDICIOS-CLUES that the murder was committed as a reprisal for his community job from public office.

205. The Commission notes that since the beginning of the investigation in 2004, the Prosecutor received testimonies of the next of kin of the victim, from neighbors and from the municipal mayor that stated that there had been confrontations between Florentín Gudiel Ramos as a demobilized member of the URNG and known persons that were operative figures in the past; one of them was a sympathizer of the opposite party of the URNG. Moreover, as it has already been established, there are contextual and specific elements in relation to the circumstances of the murder that rationally allow one to consider as motives the community leadership of Florentín Gudiel Ramos and his search for justice to dignify the disappeared persons during the conflict. The IACHR notes that the murder of Gudiel was perpetrated only three months after he consolidated his community leadership in the public office as the Community Mayor. It has to be noted as well that after his murder, other community leaders of Santa Lucía have been murdered – some of them belonged to the URNG.³⁴⁴

206. The IACHR considers that when facing these leads the authorities in charge of the investigation had to make all the necessary efforts to clarify if Gudiel Ramos murder constituted a reprisal due to his community leadership that he developed in the exercise of his political rights. That is, the State had to perform a detailed, serious and diligent investigation to determine the veracity or to disprove the previous hypothesis.

207. As it has been stated in the section related to the rights of the judicial guaranties and judicial protection, after seven years of the facts, the State did not seriously and exhaustively investigate nor analyzes this line of investigation. On the contrary, according to the last report of the Prosecutor, this hypothesis was dismissed.

208. The IACHR notes that this lack of investigation, coupled with the fact that there have been several social leaders of Santa Lucía murdered in the area, have brought a situation of impunity and lack of protection that have a frightening effect on the persons that through their leadership try to defend human rights.³⁴⁵ Regarding this aspect, according to the depositions of Makrina Gudiel, with the murder of her father “the trajectory of fight and the live testimony of what happened in the past was interrupted, [...] [and the murder] was a clear message to the rest of the population by not daring to fight because that can happen to

³⁴³ I/A Court H.R., Case of Kawas-Fernández v. Honduras. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para 145; I/A Court H.R., Case of Nogueira de Carvalho et al. v. Brazil. Preliminary Objections and Merits. Judgment of November 28, 2006. Series C No. 161, para. 77.

³⁴⁴ Among them, in the Parceling of “El Naranjo”, the following members of COCODES in that area: Moisés Abjal, murdered on September 15, 2005 and his son Francisco Moisés Abjal, murdered on April 22, 2006; Víctor Manuel Rejino, murdered on May 30, 2006; Nemesio Yanes, murdered on May 19, 2006; Juan José Atz, community vice mayor murdered on September 2, 2006; Felipe Álvarez Tobías, murdered on December 8, 2007. Annex 1, Testimony of Julio Armando Paz Espinoza, mayor of Santa Lucía (2004-2008), December 5, 2010. See also Letter of Human Right First to the Attorney General and chief of the Prosecutor office of Guatemala December 20, 2007. Available at: <http://www.humanrightsfirst.org/wp-content/uploads/pdf/071220-hrd-dan-guatemala-allvarez-spanish-public.pdf>

³⁴⁵ The Inter-American Court has stated that the death of a defender could have a frightening effect on other defenders. It has stated that “The fear caused by such an event can directly reduce the possibility of human rights defenders exercising their right to perform their work by means of denunciations.” I/A Court H.R., Case of Valle-Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 96.

them.”³⁴⁶ Also, the psycho-social expertise presented by the petitioners establish that the murder of Florentín had an incidence in the reconstruction of the social network-tejido, and of the process of reconstruction of the citizenship in the area of Santa Lucía Cozumalguapa:

the impact that the murder has had on the collective harm, we can infer that is likely to perceive: a) the danger involved in the activities of leadership and defense of human rights –such as Florentín’s; b) the stigma associated with those activities would imply a bigger risk, due to the justifying effect that this has over the human rights violations. d) the exemplifying effect due to the public relevance of the victim both in community and municipal levels, which causes fear in other leaders in a context of frequent aggressions.³⁴⁷

209. The Commission considers that as of 2004 the State had several indications that the murder of Florentín Gudiel Ramos might have been committed as a reprisal for his community leadership. However, the State did not investigate with due diligence and, consequently, must not have considered that hypothesis.

210. Due to the flaws of the investigation, the Commission does not have elements that allow it to contest the evidence referred to and, consequently, considers that the State is responsible for failing to ensure Florentín Gudiel Ramos’ political rights and for not having conducted a diligent investigation of what had happened. Not reaching this conclusion would imply to allow the State to defend itself based on its own negligence and ineffectiveness in the investigation, and thus would not be considered responsible for ensuring the individuals the means to exercise their political rights in defense of human rights. Allowing this would permit a perpetuation of the chilling effect that was a consequence of the lack of investigation into the murders of social leaders of Santa Lucía.

211. On the other hand, the IACHR notes that, according to the information given by the petitioners and that has not been contested by the State, at the time of the murder, Makrina Gudiel Álvarez was the Secretary of COCODE, the same institution where Florentín Gudiel Ramos was a Community Mayor. The IACHR notes that according to the national legislation, the Community Assembly, which is formed by all the members of the community, elects the members of the Coordination Body of COCODE.³⁴⁸ Consequently, the IACHR notes that the position of Makrina Gudiel within the political structure of COCODE was a result of the election of the assembly and it had a political nature.

212. The IACHR recalls that the Court has stated that Article 23 of the Convention does not establish that its beneficiaries must have political rights, but it adds the word “opportunities”. This implicitly carries the obligation to guarantee, through positive measures, that every persons that is formally entitled to political rights, has the real opportunity to exercise them.³⁴⁹ In that sense, it is essential that the State creates the optimal conditions and mechanisms to secure that the political rights are effectively exercised.³⁵⁰

213. The IACHR has stated that after the lack of clarification of the facts related to the murder of Florentín Gudiel Ramos and the subsequent harassment, the Gudiel Álvarez family had to leave Santa Lucía. Consequently, Makrina Gudiel Álvarez had to abandon her public office in COCODE. The IACHR notes that there is a causality relation between the resignation of Makrina Gudiel, and the lack of clarification of the facts

³⁴⁶ Annex 8, Written testimony by Makrina Gudiel Álvarez.

³⁴⁷ Annex 23, Psychosocial expertise done by María de los Ángeles Herraiz Fernández (Psychology bar MU-00879,) January 5, 2011

³⁴⁸ The IACHR notes that according to the national law, the members of the Coordination Organ of COCODE are elected by the Community Assembly that is formed by all the members of the community. See articles 13 and 14 of the Decree 11-2002. Available at: [http://sistemas.segeplan.gob.gt/discode/sche\\$portal/documentos/ley_concejos_desarrollo_guatemala.pdf](http://sistemas.segeplan.gob.gt/discode/sche$portal/documentos/ley_concejos_desarrollo_guatemala.pdf)

³⁴⁹ I/A Court H.R., Case of Castañeda-Gutman v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 6, 2008. Series C No. 184, para. 145.

³⁵⁰ IACHR, Transmission note to the Court and Merits Report of Case 12.343 Edgar Fernando García et al. vs. Guatemala, February 9, 2011, para. 149. I/A Court H.R., Case of Castañeda-Gutman v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 6, 2008. Series C No. 184, para. 145.

related to the death of her father, leaving the family defenseless. Consequently, the IACHR avers that the State did not guarantee either the continuity of the exercise of Markina Gudiel Alvarez' political rights.

214. According to the previous considerations, the IACHR concludes that the Guatemalan state is internationally responsible for the violation of Article 23 of the Convention, in relation to Article 1(1), to the prejudice of Florentín Gudiel Ramos and his daughter, Makrina Gudiel Álvarez.

b. Right to freedom of association (Article 16 of the American Convention), in relation with the duty to respect and guarantee human rights (Article 1 of the American Convention)

Preliminary note. “iura novit curia”

215. In its admissibility report the Commission did not address the alleged violation of article 16, which was alleged by the petitioners after said report. The IACHR notes that the facts that support such allegations are an integral and indivisible part of the case and, also, they emerge from the information of the documents presented by the parties during the proceedings before the IACHR. Consequently, based in the “iura novit curia” principle, and taking into account that the state has had the opportunity of knowing the claims, and the necessity of being congruent with other cases that present similar situations, the Commission will proceed to make some considerations on that regard.

216. Article 16 of the American Convention establishes that “Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes”. According to the case law of the Inter-American Court this right has an individual and a social dimension. Regarding the individual dimension, the 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”.³⁵¹ Regarding the collective dimension, the Court has held that, in exercising the right protected by Article 16, individuals “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”³⁵². The Inter-American Court has also established that the positive obligations to prevent and investigate the violations to this right must be taken “even in the sphere of relations between individuals, if necessary”.³⁵³

217. In the instant case, the IACHR considers that the allegations related to the lack of clarification of the facts, according to the hypothesis that the murder of Florentín Gudiel Ramos was based on a reprisal for his community leadership, and the implications that the impunity and lack of protection had in order for Makrina Gudiel Álvarez to continue working as the Secretary of COCODE, has been analyzed under the analysis of article 23. Regarding the freedom of association, the petitioners have not presented elements of fact or law that allow the Commission to establish the elements of a violation of that article.

218. On the other hand, the petitioners have indicated that Makrina Gudiel created an association called “Diverse Women Leaders”, and has continued to receive threats and consequently has been impeded from fully enjoying her right to freedom of association. The Commission considers that the petitioners have not presented enough information that proves the casual link between those facts and the facts of the instant case. Consequently, the Commission cannot establish the possible responsibility of the State for a breach to the right of freedom of association.

V. CONCLUSIONS

219. Based on the considerations of fact and law expressed, the Inter-American Commission concludes that the State of Guatemala is responsible for:

³⁵¹ I/A Court H.R., Case of Huilca-Tecse v. Peru. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, para. 69.

I/A Court H.R., Case of Huilca-Tecse v. Peru. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, para. 69.

³⁵³ I/A Court H.R., Case of Kawas-Fernández v. Honduras. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 144. Cfr. I/A Court H.R., Case of Huilca-Tecse v. Peru. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, para. 76 y 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, para. 141.

- The violation of the rights to judicial guarantees and judicial protection (Articles 8 and 25 of the American Convention), in relation to Article 1.1, to the prejudice of María Agripina Álvarez, Yolanda Gudiel Álvarez; Beatriz Gudiel Álvarez; Makrina Gudiel Álvarez; José Franciso Gudiel Álvarez; Florentino Gudiel Álvarez; Ana Patricia Gudiel Álvarez; Vladimir González Gudiel and his siblings; Ileana Concepción Pérez Gudiel; Rodrigo Pérez Gudiel; Carlos Ernesto Cruz Gudiel; Oscar Cruz Gudiel, and José Gabriel Cruz Gudiel.
- The violation of the right to life (Article 4 of the American Convention), in relation to Article 1.1 of the same treaty, to the prejudice of Florentín Gudiel Ramos.
- The violation of the right to freedom of movement and residence (Article 22 of the American Convention in relation to Article 1.1, to the prejudice of María Agripina Álvarez, Beatriz Gudiel; Makrina Gudiel; José Franciso Gudiel, Florentino Gudiel; Ana Patricia Gudiel; Ileana Concepción Pérez Gudiel; Rodrigo Pérez Gudiel; Carlos Ernesto Cruz Gudiel; Oscar Cruz Gudiel, and José Gabriel Cruz Gudiel.
- The violation of the right to humane treatment (Article 5.1 of the American Convention), in relation to Article 1.1 of the said treaty, to the prejudice of María Agripina Álvarez, Yolanda Gudiel; Beatriz Gudiel; Makrina Gudiel; José Franciso Gudiel, Florentino Gudiel; Ana Patricia Gudiel; Vladimir González Gudiel and his siblings; Ileana Concepción Pérez Gudiel; Rodrigo Pérez Gudiel; Carlos Ernesto Cruz Gudiel; Oscar Cruz Gudiel, and José Gabriel Cruz Gudiel.
- The violation of the right to participate in government (Article 23 of the American Convention), in relation to Article 1.1, to the prejudice of Florentín Gudiel Ramos, and Makrina Gudiel Álvarez.

VI. RECOMMENDATIONS

220. Based on the analysis and conclusions in the present report, the IACHR recommends that the State of Guatemala:

1. Make comprehensive reparations for the violations of human rights presented in the current report both in its material and moral aspects.

2. Develop and complete a full, thorough and impartial judicial investigation, in a timely way, with the aim of establishing the circumstances surrounding Mr. Florentín Gudiel Ramos' death; perform a complete investigation with the logic investigation hypothesis in relation with the case; and identify all persons involved therein at the different planning and execution stages, and apply the appropriate punishments.

3. Issue the appropriate administrative, disciplinary or criminal measures with regard to the acts or omissions of the state officials who contributed to the denial of justice and impunity surrounding the events of the case.

4. Adopt measures of a legislative, institutional or judicial character aimed at reducing the exposure to risk facing human rights defenders who are in a vulnerable situation. In this sense, the State must:

4.1 Strengthen the institutional capacity to combat the pattern of impunity surrounding cases of threats and murders of defenders, through the elaboration of investigatory protocols, which take into account the risks inherent in the work of human rights defenders, in order to allow a comprehensive development of the investigation under this hypothesis.

4.2 Strengthen the mechanisms for the effective protection of persons whose declarations have a relevant impact to the investigations, and who are at risk as a result of their connection to investigations.

4.3 Develop swift and adequate institutional response measures, which allow effective protection for human rights defenders in situations of risk.

VIII. NOTICE

221. The Commission decides to transmit the instant report to the Guatemalan State and to grant it two months to implement the recommendations it contains. That period will be counted from the date of transmission of the instant report to the State, which shall not be at liberty to make it public. The Commission also decides to notify the petitioners of the adoption of a report under Article 50 of the Convention.