

**Brief *Amici Curiae* Submitted to
the Inter-American Court of Human Rights
on behalf of Robert F. Kennedy Human Rights,
Center for Human Rights and Democracy in Africa
Centre For Strategic Litigation,
the Freedom of Expression Hub, and the
Institute for Human Rights and Development in Africa**

in the case of Gómez Virula and Others v. Guatemala

September 11, 2018

I. INTRODUCTION

Robert F. Kennedy Human Rights, the Institute for Human Rights and Development in Africa (“IHRDA”), Freedom of Expression Hub (“FOE-Hub”), the Centre for Strategic Litigation, and the Center for Human Rights and Democracy in Africa (“CHRDA”) submit this brief *amicus curiae* in the case of *Gómez Virula and Others v. Guatemala*. The amici seek to highlight for the Inter-American Court on Human Rights (“the Court”) both the notoriously dire situation faced by labor unionists like Mr. Gómez in Guatemala (“Guatemala” or “the State”) over many decades, as well as the State’s failure to protect Mr. Gómez’s human rights in connection with his forced disappearance and murder twenty-three years ago. As to this latter point, the amici seek in particular to elucidate the interpretation of the right of freedom of association enshrined in Article 16 of the American Convention on Human Rights (the “American Convention” or “ACHR”). Given Mr. Gómez’s status as a labor union leader, the State had a heightened obligation to protect Mr. Gómez’s Article 16 rights, but the State failed to conduct any serious or prompt search for him after receiving notice of his kidnapping, which ended in his murder. Protection of the right to freedom of association is critical for human rights defenders like Mr. Gómez, not only to ensure that they may, as individuals, carry on their work unobstructed, but also in light of the collective dimension of this right. This collective dimension carries special importance where violence against the human rights defender silences not only that single individual’s voice, but also has a broader chilling effect on the exercise, by others, of the right to freely associate. Several African human rights organizations that engage with the African Commission and Court on Human and Peoples’ Rights join this amicus to share with the Court relevant regional standards on Freedom of Association, thereby promoting interregional dialogue and the harmonization of jurisprudential standards.

This brief will provide a summary of the facts in this case and an overview of the situation of violence against human rights defenders and impunity that has raged in Guatemala for decades, followed by a discussion of the content and interpretation of the right of free association, and concludes with a recommendation as to the appropriate remedies that the Court should order in this case.

II. FACTUAL BACKGROUND¹

At the time of his murder in March 1995, Alejandro Yovany Gómez Virula was a mere 24 years old. Mr. Gómez was employed at the RCA Assembly plant, a Korean cross-border assembly plant located in Guatemala City. He was a member of, and was serving as the Secretary of Finance for, the plant’s Workers Trade Union. In August 1994, the assembly plant had been shut down, leaving 70 workers jobless. Following the shutdown, the Trade Union demanded that the laid-off workers receive wages owed, as well as other benefits. This dispute

¹ The Inter-American Commission on Human Rights (“Commission”) noted that “the facts alleged by the petitioners in relation to Alejandro Yovany Gómez, his immediate family, his work as a trade unionist, his disappearance, and murder were not contested by the State.” Inter-American Comm’n on Human Rights, Report on Admissibility and Merits, *Alejandro Yovany Gómez Virula and Family v. Guatemala*, No. 33/17, Case 11.639 ¶ 37 (2017) (“Merits Report”). The recitation of the facts of the case in this Section II is primarily taken from the “Proven Facts” section (Section V) of the Merits Report.

resulted in a lawsuit brought before the Guatemala Labor Tribunal. At the same time, however, the union began negotiating with the company. Mr. Gómez played an active part in those meetings and was closely involved in the case.²

On the morning of March 13, 1995, Mr. Gómez participated in meetings at the Trade Union's office to address the conflicts between the RCA Assembly Plant and its former workers. He had with him a list of all of the Trade Union members who planned to participate in a demonstration protesting their situation outside of the Korean embassy. Around 5:00 p.m. that day, he told his mother that he had a meeting with the Secretary General of the Trade Union. An anonymous witness later stated that she had seen Mr. Gómez and his friend (and fellow Trade Union member) Mr. Cardona that day at 6:20 p.m., and that two men had beaten Mr. Gómez and followed him. Mr. Cardona subsequently testified that on the day of Mr. Gómez's disappearance, as he and Mr. Gómez were walking past the assembly plant where they had formerly worked, a man came out of the factory and began to assault Mr. Gómez. Mr. Cardona said that he (Mr. Cardona) sought to break up the fight but the man then began to chase him (Mr. Cardona) and Mr. Cardona ran away, but when Mr. Cardona came back, Mr. Gómez was no longer there.

Mr. Gómez's parents reported Mr. Gómez missing to the National Police on the day after his disappearance (March 14, 1995), but despite assurances that the matter would be promptly looked into, the police did not say what inquiries would be made.

Two days later, on March 16, 1995, the Trade Union sent a communication to the Ministry, of the Interior requesting a hearing to provide information about Mr. Gómez's disappearance. That communication was followed the next day by another communication to the Ministry wherein the Trade Union indicated the time and location of Mr. Gómez's disappearance. Yet another note was sent by UNSITRAGUA³ to the Ministry on the following day. In addition, UNSITRAGUA issued a press release imploring the President of the Republic to take all necessary steps to locate Mr. Gómez.

On March 18, 1995, Mr. Gómez's father again went to the National Police, and was told that no action had been taken, and no one would be assigned to the matter until the following Monday, when Mr. Gómez's family would need to furnish a vehicle to conduct the investigation because the police did not have one. From these facts, the Inter-American Commission on Human Rights ("Commission") concluded that

[T]he State had knowledge of Mr. Gómez Virula's disappearance from the day after it happened and before his body was found. . . . [N]o actions were taken to look for Mr. Gómez between the first complaint and the finding of the body. . . .

² The Commission notes that ultimately, on July 10, 1995 (several months after Mr. Gómez's murder), the Trade Union and the company reached an agreement, accepting 111,000 quetzals instead of the 600,000 quetzals that the union had demanded. Merits Report ¶ 39.

³ Unión Sindical de Trabajadores de Guatemala ("UNSI TRAGUA") is a major Guatemalan workers union. It is affiliated with the International Trade Union Confederation ("ITUC") and the World Federation of Trade Unions ("WFTU").

The existence of complaints filed prior to the finding of the body and the lack of attempts to ascertain Mr. Gómez's whereabouts were also referred to in public communiques issued by the Human Rights Office of the Archdiocese of Guatemala.⁴

Mr. Gómez's body was found by chance on March 19, 1995, in a gully in Guatemala City with his head submerged in a river of raw sewage. Though his identification and personal objects of value were still with the body, the list of Trade Union members who planned to participate in the Korean embassy demonstration was missing. The forensic report indicated that Mr. Gómez had fourth degree brain and chest trauma, cerebral hemorrhage, a fractured skull, pulmonary contusion, and other injuries, and that he had died from the fourth degree cerebral and chest trauma. The discovery of Mr. Gómez's body did not come as a result of any search efforts by the State.

On March 20, 1995, the Human Rights Office of the Archdiocese of Guatemala issued a statement denouncing the "extrajudicial execution" of Mr. Gómez, expressing concern at the "inefficiency and unwillingness of the competent authorities to investigate into the whereabouts of trade unionist Gómez when his disappearance had been denounced by family members," and imploring the State authorities to "demonstrate the political will and desire to minimize impunity in Guatemala, by conducting the inquiries needed to determine the perpetrators of Mr. Gómez's death and to bring them before the Courts."⁵

The Office of the Public Prosecutor initially ordered the two Korean owners of the assembly plant to present themselves, but those individuals did not appear; the petitioners claim that the State took no steps to locate them expeditiously. The State, for its part, claimed that there was no mention of these individuals in migration control records. The State noted that on July 7, 1995, the Department of Criminal Investigations of the National Police submitted a report to the Public Prosecutor's Office that concluded that "there was sufficient circumstantial evidence that the Korean gentlemen had been the instigators of the death of Mr. Alejandro Yovany Gómez Virula and that Mr. Edgar Octavio Cardona had participated in the deed, since he refused to provide information regarding it."⁶ While Mr. Cardona had initially not appeared in response to the request from the Public Prosecutor's Office that he make a statement, as noted above, Mr. Cardona subsequently did appear to testify before a criminal court judge, where he stated that Mr. Gómez had been assaulted by a man who came out of the assembly plant. The petitioners asserted that after Mr. Cardona's testimony, the State did nothing to advance the case for a long time, and that it was only on July 31, 1996—*i.e.*, more than 15 months after Mr. Gómez's body was found—that the Attorney General requested that "priority be attached to the [matter]."⁷ The State claims that the Public Prosecutor's office "received" the file on August 12,

⁴ Merits Report ¶ 49.

⁵ Merits Report ¶ 55.

⁶ Merits Report ¶ 58.

⁷ Merits Report ¶ 61.

1996, and took a statement from Mr. Gómez’s father. The State further claims that the lawyer in the trade union where Mr. Gómez worked was also summoned, but did not testify.

The State claimed a number of difficulties faced by the Public Prosecutor’s Office in investigating Mr. Gómez’s disappearance and murder, including the failure of witnesses to appear, and inconsistent statements from those witnesses who did appear. According to the State, these difficulties led the Public Prosecutor’s Office to archive the case file, a decision that was subsequently overturned by the relevant criminal court. In rejecting the decision to archive the case file, the court pointed out that “the time that has elapsed since the occurrence of the deed complained of is no ground for the investigation not to continue.”⁸ Though the State claimed that the investigation continued after the court’s decision not to archive the case file, in December 2014, the Public Prosecutor’s Office sent a communication to COPREDEH⁹ stating that “there are no records of Mr. [Gómez] as either plaintiff or injured party nor is there any record of the file [MP-232-95] in the database.”¹⁰

The Commission concluded in its Merits Report that the State bore responsibility for the violation of Mr. Gómez’s Article 16(1) right to freedom of association, among other rights recognized in the American Convention.¹¹ The Commission highlighted that “Mr. Gómez Virula was a trade union [activist], particularly in his capacity as Secretary of Finance of the RCA Maquila Workers’ Union and, inter alia, in connection with a labor suit against the assembly plant.”¹² The Commission found “that there was significant circumstantial evidence that Mr. Gómez Virula’s disappearance and murder may have been related to [those] activities,” given the broader context of “various kinds of retaliation against trade unionists in Guatemala.”¹³ Even to the extent that the violence was committed by private individuals, the State had “not exhaustively investigated [the circumstantial evidence] with the due diligence needed to comply with [its] truth and justice obligations in respect of human rights violations.”¹⁴ Earlier in the Merits Report, the Commission had found that the State’s failure to respond “immediately and diligently in the form of a search for Mr. Gómez in the five days during which he was disappeared until the finding of his body” constituted a failure to comply with the State’s duty to protect Mr. Gómez’s rights to life and personal integrity.¹⁵ As to freedom of association, in the

⁸ Merits Report ¶ 66.

⁹ La Comisión Presidencial coordinadora de la Política del Ejecutivo en materia de Derechos Humanos (“COPREDEH”) is a Presidential Commission charged with coordinating the Policy of the Executive of Guatemala in the matter of Human Rights.

¹⁰ Merits Report ¶ 68 (alteration in original).

¹¹ Merits Report ¶ 94. The Commission also found that Guatemala had violated various other provisions of the American Convention.

¹² Merits Report ¶ 92.

¹³ Merits Report ¶ 92.

¹⁴ Merits Report ¶ 93.

¹⁵ Merits Report ¶ 88.

absence of any other hypothesis, the Commission inferred a relationship between Mr. Gómez's disappearance and death and his trade union activities. Given the State's failure to investigate the indications that those activities were the motive for Mr. Gómez's disappearance and murder, the State's breach of its obligations to prevent violations in respect of life and personal integrity "addition[ally implied a] failure to comply with that duty in respect of his right to freedom of association."¹⁶

III. THE CONTEXT OF VIOLENCE AGAINST LABOR UNIONISTS IN GUATEMALA

Mr. Gómez was murdered in March 1995, prior to the peace accords that ended the 30-year Guatemalan civil war.¹⁷ As explained further below, the open and notorious situation facing human rights leaders like Mr. Gómez at that time was one of violence and fear. This context of fear and violence facing human rights defenders in Guatemala is one that has persisted for decades.

The Inter-American system, and the international community more broadly, acknowledge the important role that union leaders play in society. The Commission as well as other human rights observers have repeatedly recognized that union leaders are human rights defenders: "[u]nion leaders play a key role in defending the human rights of thousands of workers striving for better working conditions and are the political voice through which organized labor articulates its labor-related and social demands."¹⁸ Despite the important role they play in society—or, more accurately, because of it—Guatemalan labor unionists have faced threats and violence for decades. This reality has been acknowledged in public reports and analyses by labor organizations, NGOs, and the media, as well as by the Commission and by this Court.

Public Reports and Analyses. Public reports and analyses published around the time of Mr. Gómez's 1995 murder reflect an acute situation of violence and impunity facing human rights defenders in Guatemala. Indeed, petitioners are not alone when they allege that the acts at issue here occurred at a time of serious harassment against trade union activists by both private enterprises and State agents.¹⁹ In the view of the human rights office of the archdiocese of

¹⁶ Merits Report ¶ 93.

¹⁷ Merits Report ¶ 2; *see also* 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, at ¶134.9 ("In December 1996, the State of Guatemala and the representatives of the *Unidad Revolucionaria Nacional Guatemalteca* (UNRG) signed the peace accord . . . with the aim of ending the armed conflict").

¹⁸ Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, ¶ 257 (2011), (<https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>); *see also* Maina Kiai (Special Rapporteur on the rights to freedom of peaceful assembly and of association), *Report of the Special Rapporteur*, ¶ 2, U.N. Doc. A/71/385 (Sept. 14, 2016) ("[L]abour rights are workers' human rights."); *see also id.* at ¶ 17; Annalisa Ciampi (Special Rapporteur on the rights to freedom of peaceful assembly and of association), *Report of the Special Rapporteur*, ¶¶ 35, 40, U.N. Doc. A/72/135 (Jul. 14, 2017); Maina Kiai (Special Rapporteur on the rights to freedom of peaceful assembly and of association), *Report of the Special Rapporteur*, ¶ 11, U.N. Doc. A/HRC/26/29 (Apr. 14, 2014).

¹⁹ Merits Report ¶ 10.

Guatemala City, repression against the union movement had become a “systematic practice” in 1995.²⁰ A March 1995 report from the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (“MINUGUA”) found that widespread impunity in Guatemala was “the greatest obstacle to the effective exercise of human rights” and directly pointed to the failure to investigate human rights violations and bring to justice those responsible as a contributory factor to impunity in Guatemala.²¹ In parallel, Amnesty International found that the failure of the authorities to investigate violations against trade unionists and bring those responsible to justice created a climate of “virtual impunity.”²²

In addition, in November 1995, the General Secretary of the Trades Union Congress (“TUC”) in the U.K.,²³ John Monks, also observed that Guatemala was one of the five or six “most dangerous countries” in the world for a trade unionist to work in.²⁴ Baron Monks, who also served as General Secretary of the European Trade Union Confederation (“ETUC”), took note of the terrible cases of murder, torture, and intimidation of working people who were peacefully and lawfully attempting to defend their jobs and the typically very low standards of living, despite the commitment of the government to protect the exercise of basic human rights.²⁵ Citing the International Confederation of Free Trade Unions’ latest international survey of trade union rights violations, he saw an “alarming increase” in the numbers of trade unionists murdered and imprisoned in Guatemala.²⁶ The U.S. Department of State also confirmed in March 1996 that Guatemalan trade union leaders and members suffered instances of violence and abuse, including threats, assassination attempts, kidnappings, and physical harm in 1995.²⁷

Tragically, Mr. Gómez was not the only trade unionist that was murdered in 1995 in circumstances that appeared to point to industrial/political motives. In June 1995, having received documentation of more than a dozen cases of recent assassinations of trade unionists in Guatemala (several of them from UNSITRAGUA), the International Labour Organization

²⁰ Cent. Am. Human Rights Comm., *International Centre for Trade Union Rights and Central American Human Rights Committee Joint Campaign for Trade Union Tights in Guatemala*, World History Archives (Nov. 24, 1995), <http://www.hartford-hwp.com/archives/47/138.html>.

²¹ *Guatemala: Maquila Workers Among Trade Unionists Targeted*, Amnesty Int’l 2 (Nov. 1995), <https://www.amnesty.org/download/Documents/172000/amr340281995en.pdf>.

²² *Id.*

²³ The Trades Union Congress (“TUC”) is a national trade union center, a federation of trade unions in England and Wales, representing the majority of trade unions.

²⁴ Cent. Am. Human Rights Comm., *International Centre for Trade Union Rights and Central American Human Rights Committee Joint Campaign for Trade Union Tights in Guatemala*, World History Archives (Nov. 24, 1995), <http://www.hartford-hwp.com/archives/47/138.html>.

²⁵ *Id.*

²⁶ *Id.*

²⁷ U.S. Dep’t of State, *Guatemala Human Rights Practices, 1995* (1996), http://dosfan.lib.uic.edu/ERC/democracy/1995_hrp_report/95hrp_report_ara/Guatemala.html.

(“ILO”) committee in charge of responding to a complaint against the government of Guatemala (presented by several Guatemalan trade unions, including UNSITRAGUA), stated that it had, regrettably, not received all the information requested from the government concerning the deaths.²⁸ In 1997, after learning of more assassinations, including Mr. Gómez’s, the ILO committee deeply deplored the many violent deaths of trade union officials and trade unionists, as well as the disappearances, abductions, arbitrary arrests, acts of aggression and death threats which had occurred since the presentation of the complaints, and expressed its deep concern at the situation of impunity.²⁹ It insisted on the “absolute need” to open judicial inquiries on all the cases before the Committee with a view to ascertaining the facts and punishing the guilty parties.

Mr. Gómez’s case was also transmitted to the attention of the Special Rapporteur on extrajudicial, summary or arbitrary executions, among several other reports of violations of the right to life of trade unionists in 1995.³⁰ The Special Rapporteur was disturbed by the complaints that were continuously brought to his attention and requested that “exhaustive and impartial investigations of the reports of human rights violations should be carried out and that the guilty parties be identified and brought to justice.”³¹

Amnesty International found that trade unionists had been under constant attack by successive military regimes and civilian governments in Guatemala, on account of their efforts to form trade unions and to promote the rights of workers in Guatemala. Amnesty International documented cases in which trade unionists were victims of abduction, torture, attempted extrajudicial execution or death threats on account of their legitimate trade union activities. In their words, “[t]his apparent lack of political will to take concrete steps to protect Guatemalan human rights defenders, including witnesses, is evidence of the Guatemalan government’s refusal to recognize the legitimacy and value of their work.”³²

²⁸ Comm. on Freedom of Ass’n, Int’l Labour Org., Interim Report - Report No 299, Case No 1740 (Guatemala) ¶ 409 (1995), http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2902846#1.

²⁹ Comm. on Freedom of Ass’n, Int’l Labour Org., Interim Report - Report No 299, Case No 1740 (Guatemala) ¶ 406 (1995), https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2902846

³⁰ Bacre Waly Ndiaye (Special Rapporteur on extrajudicial, summary or arbitrary executions), *Report of the Special Rapporteur: Country Situations*, ¶ 188(b)(ii), U.N. Doc. E/CN.4/1997/60/Add.1 (Dec. 23, 1996).

³¹ *Id.* at ¶ 201.

³² Amnesty Int’l, *More Protection. Less Persecution: Human Right Defenders in Latin America*, at 45, AI Index AMR 01/002/1999 (June 1999). Amnesty International noted in 1999 that it “has continued to receive reports on harassment, illegal detention and murder of Guatemalan trade unionists,” including a report from the union Central General de Trabajadores de Guatemala (“CGTG”) that between 1992 and 1998, nine CGTG union leaders had been killed, and that “[s]uch incidents illustrate the serious risks still facing those who seek to defend their rights and channel their demands through a trade union organisation.” Amnesty Int’l Trade Union Action, *Guatemala: Trade Unionists Continue to Be Killed and Detained*, at 1, 3, AI Index AMR 34/22/99 (1999), <https://www.amnesty.org/download/Documents/144000/amr340221999en.pdf>. Other organizations report similarly distressing statistics. In October 2017, the International Labor Rights Forum reported that 87
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Against the backdrop of anti-union repression, UNSITRAGUA noted in 2008 that within the Economically Active Population, the rate of unionization had been reduced from 2,5% in 1995 to 0,59% in 2008 according to data provided by the government to the Committee on Freedom of Association of the ILO.³³

Yet despite these reports of violence and rampant impunity, in March 1996, the Guatemalan government spokesperson on human rights before the U.N. Human Rights Committee in New York saw it as “regrettable” that threats against human rights activists had been reported directly through the mass media, and often to international organizations and to non-governmental organizations, rather than to the competent authorities in the country. The government’s spokesperson argued that the government’s efforts to protect human rights had been hindered because the government had been “prevented” from showing its “readiness” to provide all necessary protection to those who were being threatened.³⁴

Inter-American Commission Findings. Similarly, the Commission has for decades recognized “persistent structural impunity with respect to severe human rights violations both the

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labor leaders had been murdered in Guatemala since 2004, a “reality that makes Guatemala one of the most dangerous countries in the world to be a trade unionist.” Gabriela Rosazza, *87th Labor Leader Murdered in Guatemala Since 2004*, International Labor Rights Forum (Oct. 10, 2017), <https://laborrights.org/blog/201710/87th-labor-leader-murdered-guatemala-2004> (also noting that “[t]he perpetrators of these crimes overwhelmingly go unpunished”). Guatemala’s Movimiento Sindical Indígena y Campesino Guatemalteco (“MSCIG”) reported that between 2007 and 2011, 50 trade unionists and defenders of union rights had been murdered; 45 of these were reportedly members of the MSICG at the time of their murder. See Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, ¶ 265 (2011), <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>; see also Kate Conratt, *Report Tallies Threats Against Guatemala Unionists*, Solidarity Ctr. (Apr. 28, 2016), <https://www.solidaritycenter.org/report-tallies-murder-threats-against-guatemalan-unionists-in-2015/> (noting that “[b]etween 2004 and 2013, 70 trade unionists were assassinated in Guatemala, most with impunity,” and that “[o]nly 18 cases from that period were investigated and successfully brought to trial”); Tula Connell, *Central American Trade Unionists Increasingly Targeted*, Solidarity Ctr. (Feb. 3, 2014), <https://www.solidaritycenter.org/central-american-trade-unionists-increasingly-targeted/> (noting that with 65 trade unionists having been assassinated since 2009, Guatemala “[had] surpassed Colombia as the most deadly nation in the world for union members” and reporting on threats and violence against unionists in Guatemala and Honduras); Guatemala Human Rights Commission/USA, *Who Will Defend the Defenders? Criminalization of Human Rights Defenders and Chronic Impunity in Guatemala* 4-5 (Dec. 2008), <https://www.ghrc-usa.org/Programs/HumanRightsDefenders/WhoWillDefendtheDefenders.pdf> (reporting that “[t]rade unionists suffered the most attacks [against human rights defenders] in the first half of 2008, with nearly 40% of all assaults on human rights defenders directed at labor organizers; that “those working to defend human rights in Guatemala live in an environment of fear, anxiety, and exhaustion,” and that while the “Guatemalan government is usually not directly responsible for violations against activists,” it “too often fails to prevent, investigate, punish, and rectify the harm caused by government and private agents” and “has consistently failed to ensure that defenders are able to carry out their work free from attacks, fear, and intimidation”).

³³ ITUC UNSITRAGUA, *Solicitud de afiliación (Membership Request)* (2008), https://www.ituc-csi.org/IMG/pdf/04GC_E_05_Affiliation_-_Appendix_1a_UNSITRAGUA.pdf.

³⁴ U.N. Human Rights Committee, 56th Sess., 1486th mtg. ¶ 33, U.N. Doc. CCPR/C/SR.1486 (Mar. 26 1996), http://www.bayefsky.com/summary/guatemala_ccpr_c_sr.14861996.php.

past and the present” in Guatemala.³⁵ In 1993, the Commission published its Fourth Report on the Situation of Human Rights in Guatemala.³⁶ The Commission reported on “patterns of violence” including “systematic attacks on leaders and activists of associations of peasants, unions, universities, journalists, and human rights defenders, that is, groups that by their very nature are independent and critical of many of the government’s actions.”³⁷ “[A]gainst each of these sectors,” the Commission reported, “there are systematic campaigns of threats, attacks, murder of leaders and activists, and harassment in general, with the obvious goal of maintaining a climate of terror and repression.”³⁸ The Commission also highlighted widespread poverty in Guatemala, under which conditions the “exercise of freedom of association for economic and labor purposes is crucial,” yet “in an attempt to curb it, union activity is the target of constant harassment in the form of arbitrary arrests, death threats, attempts against the lives of union leaders and their arbitrary dismissal.”³⁹ The Commission’s 1993 Report recorded various reported infringements of the right to freedom of association in Guatemala, and noted that as of May 1992, there was only one functioning union in the growing maquiladora assembly industry.⁴⁰ In its first country report following the signing of the 1996 peace accords, the Commission observed that “impunity for human rights violations – both past and present – remains the rule,”⁴¹ a situation that constituted a “serious systemic problem.”⁴² The Commission noted that the Guatemalan State itself acknowledged the “lack of institutional capacity to investigate and prosecute crime,” as well as “serious deficiencies in due process and the

³⁵ Inter-American Commission on Human Rights, *Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion* ¶¶ 2, 20, 38, 49 (2015), <http://www.oas.org/en/iachr/reports/pdfs/guatemala2016-en.pdf> (recognizing “distressing rates of impunity,” “the situation of widespread violence and insecurity, impunity, and corruption,” and “high levels of impunity”); see also Inter-American Commission on Human Rights, *Situation of Human Rights in Guatemala* ¶ 3 (2017), <http://www.oas.org/en/iachr/reports/pdfs/Guatemala2017-en.pdf> (“The information received consistently by the Commission during the visit [to Guatemala in July-August 2017] indicates that, fundamentally, more than twenty years after the signing of the Peace Accords, several of the reasons that generated the internal armed conflict persist: an economy based on the concentration of economic power in few hands persists, a weak State structure, with few resources due to scarce fiscal collection and high levels of corruption.”); Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas* ¶ 34 (2011), <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf> (noting that the “general figures on impunity in Guatemala are between 95 and 99%”).

³⁶ Inter-American Commission on Human Rights, *Fourth Report on the Situation of Human Rights in Guatemala*, (1993), <http://www.cidh.org/countryrep/Guatemala93eng/toc.htm>.

³⁷ Inter-American Commission on Human Rights, *Fourth Report on the Situation of Human Rights in Guatemala*, ch. IV (1993), <http://www.cidh.org/countryrep/Guatemala93eng/chapter.4.htm>.

³⁸ *Id.*

³⁹ *Id.* at ch. IX.

⁴⁰ *Id.*

⁴¹ Inter-American Commission on Human Rights, *Fifth Report on the Situation of Human Rights in Guatemala*, intro., ¶ 4 (2001), <http://www.cidh.org/countryrep/Guate01eng/intro.htm>.

⁴² Inter-American Comm’n on Human Rights, *Fifth Report on the Situation of Human Rights in Guatemala*, ch. I, ¶ 5 (2001), <http://www.cidh.org/countryrep/Guate01eng/chap.1.htm>.

administration of justice.”⁴³ In 2003, the Commission yet again noted a “a pattern of intimidation towards human rights defenders,” where the “main targets of attacks” included “defenders who participate in the promotion of economic, social and cultural rights and the rights of indigenous populations, such as unionists.”⁴⁴ More recently, the Commission once more recognized the “serious situation faced by human rights defenders in Guatemala,” who “are constantly subject” to “acts of violence and aggressions . . . ranging from murders, threats, harassment, criminalization, [and to] arbitrary arrests”⁴⁵ In short, over the past two decades, the Commission has repeatedly identified leaders of organized labor as being “especially exposed” human rights defenders and most at risk of having their human rights violated.⁴⁶

Inter-American Court’s Findings. This Court, too, has acknowledged the serious situation faced by human rights defenders in Guatemala both during the armed conflict and in the years following the peace accords. The Court has repeatedly concluded that “from 1962 to 1996 an internal armed conflict took place in Guatemala that had significant human, material, institutional and moral costs.”⁴⁷ The Court recognized that during this conflict, the State identified as “internal enem[ies]” not only guerrilla organizations, but also “all those persons who identif[ied] with communist ideology or who belonged to an organization – whether it be a trade, social, religious or student organization – or those who, for whatever reason, were not in favor of the established regime.”⁴⁸ Moreover, the Court has recognized that the context of violence against human rights defenders did not cease with the peace accords:

⁴³ *Id.* at ¶ 3.

⁴⁴ Inter-American Commission on Human Rights, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, ¶¶ 177-78 (2003), <http://www.cidh.org/countryrep/Guatemala2003eng/Chapter-III.htm>.

⁴⁵ Inter-American Commission on Human Rights, *Situation of Human Rights in Guatemala* ¶ 11 (2017), <http://www.oas.org/en/iachr/reports/pdfs/guatemala2016-en.pdf>.

⁴⁶ Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, ¶¶ 253, 256 (2011) (also noting that “[t]he perpetrators of these crimes overwhelmingly go unpunished”).

⁴⁷ *E.g.*, I/A Court H.R., Case of *Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala*, Merits, Reparations, and Costs, Judgment of November 20, 2012, Series C No. 253, at ¶ 54; *see also* I/A Court H.R., Case of *Plan de Sánchez Massacre v. Guatemala*, Merits, Judgment of April 29, 2004, Series C No. 105, at ¶ 42(1).

⁴⁸ I/A Court H.R., Case of *Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala*, Merits, Reparations, and Costs, Judgment of November 20, 2012, Series C No. 253, at ¶ 54 (second alteration in original) (citation omitted); *see also* I/A Court H.R., Case of *the Members of the village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 30, 2016, Series C No. 328, at ¶ 77. In *Gudiel Álvarez*, the Court relied on the Report of the Commission for Historical Clarification, *Guatemala: Memoria del Silencio*. As was also noted in the Commission’s Merits report in *Gudiel Álvarez*, the Commission for Historical Clarification observed that “[u]sing the National Security Doctrine as its justification, and acting in the name of anti-communism, crimes were committed which include the kidnapping and assassination of political activists, students, trade unionists and human rights advocates, all categorised as ‘subversives’ During most of the internal armed confrontation, attempts to form organisations for the defence of human rights resulted in the elimination of their leaders.” Commission for Historical Clarification, *Guatemala: Memory of Silence*, Conclusions and
(*cont’d*)

[A]fter the signing of the peace accords, which sought to end the internal armed conflict in Guatemala, human rights defenders in that country continued to face a context of threats and attacks on their lives and personal integrity, among other rights; that this created a particular situation of vulnerability for those working to protect and promote economic, cultural and social rights, and those seeking truth and justice for human rights violations committed during the conflict; that the main perpetrators of those threats and attacks were clandestine groups and the State's own security forces; and that the impunity arising from the failure to investigate and punish those responsible propitiated their continuity and increase during the period mentioned.⁴⁹

In light of this robust body of reporting and jurisprudence, there cannot be any doubt that the State was well aware of the dangerous situation faced by trade union leaders in Guatemala during the period in which Mr. Gómez disappeared and was murdered.

IV. LEGAL ANALYSIS

Article 16 provides that “[e]veryone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.”⁵⁰ As the Commission recognized in 1993,

The right of workers to associate for the legal defense of their rights is expressly guaranteed in Guatemala's Constitution, in the American Convention, and in several other international instruments which the Guatemalan State has pledged to respect. Legal exercise of that right by workers, and its preservation by State agencies and employers' associations are essential if the grievances and disputes

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Recommendations, ¶¶ 83-84 (1999), https://www.aaas.org/sites/default/files/migrate/uploads/mos_en.pdf; see also Merits Report ¶¶ 75-76.

⁴⁹ I/A Court H.R., Case of *Human Rights Defender et al. v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 28, 2014, Series C No. 283, at ¶ 78; see also 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, at pp. 45-47 (summarizing the expert opinion of Mónica Pinto, former United Nations Independent Expert on the human rights situation in Guatemala, and stating that during Ms. Pinto's tenure as Independent Expert from 1993-1997, there was a “circle of impunity” that existed in Guatemala). This Court has defined “impunity” as “[t]he overall lack of investigation, tracing, capture, prosecution and conviction of those responsible for violations of the rights protected by the American Convention, and that the State is obliged to combat this situation by all available legal means. Impunity promotes the chronic repetition of the human rights violations and the total defenselessness of the victims and their next of kin.” I/A Court H.R., Case of *Huilca Tecse v. Peru*, Merits, Reparations and Costs, Judgment of March 3, 2005, Series C No. 121, at ¶ 82 (citation omitted).

⁵⁰ American Convention on Human Rights, art. 16(1), http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm. Article 16 provides that this right may only be restricted as established by law “in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.” *Id.* at art. 16(2).

among various economic protagonists are to find an outlet and peaceful means of settlement.⁵¹

In this section, we first explain that freedom of association is a human right that is essential to a democracy and is a prerequisite for workers to enjoy a broad range of other rights. We next discuss Guatemala's obligations vis-a-vis Mr. Gómez under Article 16 of the American Convention. That provision required Guatemala to protect Mr. Gómez's right to freely associate, including by investigating any attacks to his right and even if the violence against him was perpetrated by a non-state actor. Given Mr. Gómez's status as a labor union leader in a period of open and notorious violence in Guatemala against labor unionists, the State should have conducted a prompt and serious investigation into Mr. Gómez's kidnapping after the authorities were notified of his disappearance. Articles 8 and 25 of the American Convention require the State to provide effective legal remedies (Article 25) that are substantiated in accordance with the rules of due process of law (Article 8(1)) in order to guarantee the full exercise of the association right. The State's failure to protect Mr. Gómez's Article 16 rights cannot be countenanced, as impunity has a chilling effect on the exercise of freedom of association by other citizens.

A. The Right of Free Association is Essential to a Democracy and is a Prerequisite for Workers to Enjoy a Broad Range of Other Rights.

Freedom of association is essential to democracy, and is of particular importance to labor unions and unionists. The U.N. Special Rapporteur on the rights to freedom of peaceful assembly and of association has said that the right of freedom of association (along with the closely-related right to peaceably assemble) is a "fundamental human right[]," that "lies at the core of any functioning democratic system."⁵² Indeed, these "fundamental rights . . . form the basis of the full enjoyment of other rights, as they enable the exercise of a number of civil, political, economic, cultural and social rights."⁵³ Similarly, the U.N. Human Rights Council has recognized that the right to freedom of association is an "essential component[] of democracy" that provides individuals with opportunities to express their political opinions, engage in cultural, economic and social activities, form and join trade unions and cooperatives, and elect leaders to

⁵¹ Inter-American Commission on Human Rights, *Fourth Report on the Situation of Human Rights in Guatemala*, ch. IX (1993), <http://www.cidh.org/countryrep/Guatemala93eng/chapter.9.htm>.

⁵² Annalisa Ciampi (Special Rapporteur on the rights to freedom of peaceful assembly and of association), *Report of the Special Rapporteur*, ¶¶ 17, 20, U.N. Doc. A/72/135 (Jul. 14, 2017).

⁵³ *Id.* at ¶ 15; *see also* Maina Kiai (Special Rapporteur on the rights to freedom of peaceful assembly and of association), *Report of the Special Rapporteur*, ¶ 2, U.N. Doc. A/71/385 (Sept. 14, 2016) ("Freedom of peaceful assembly and association are foundational rights precisely because they are essential to human dignity, economic empowerment, sustainable development and democracy. They are the gateway to all other rights; without them, all other human and civil rights are in jeopardy."); *see also id.* ¶ 17 ("[L]abour rights are human rights, and the ability to exercise those rights in the workplace is a prerequisite for workers to enjoy a broad range of other rights, whether economic, social, cultural, political or otherwise.").

represent their interests and hold them accountable.⁵⁴ In other words, freedom of association is crucial to fostering and preserving a democratic society.

The right of free association allows individuals to “organize collective action, engage constructively with stakeholders, including policymakers and legislators, and help to institutionalize . . . political, economic, or social change.”⁵⁵ It is a “fundamental worker right[]” that “enable[s] people to voice and represent their interests,” and as such is “key to the realization of both democracy and dignity, to holding governments accountable and to empowering human agency.”⁵⁶ Indeed, there is an “intrinsic and inherent link between democracy and the right[] to freedom . . . of association,”⁵⁷ and the ability to organize is critical to “level[ing] the unequal relationship between workers and employers.”⁵⁸ Thus, workers can “correct abuses and gain access to fair wages, safe working conditions and a collective voice.”⁵⁹ Indeed, in the case of labor unions, “the right to set up . . . organizations of [the workers’] choice and to freely affiliate themselves with them . . . is of the utmost importance for the defense of the legitimate interests of the workers, and falls under the *corpus juris* of human rights.”⁶⁰ Yet it is precisely those human rights defenders actively lobbying for the rights of vulnerable populations that face “considerable opposition, harassment, stigmatization and even physical attacks from State and non-State actors in many countries.”⁶¹ This violence by State and private actors against trade unionists, rights activists and peacefully striking workers “often deals the final blow to workers’ attempts to exercise their assembly and association rights.”⁶² In the absence of the

⁵⁴ Human Rights Council Res. 15/21, U.N. Doc. A/HRC/RES/15/21, at 1-2 (Oct. 6, 2010), [http://www.icnl.org/research/resources/dcs/-5-UNHRCResolution%20\(1\).pdf](http://www.icnl.org/research/resources/dcs/-5-UNHRCResolution%20(1).pdf).

⁵⁵ Annalisa Ciampi (Special Rapporteur on the rights to freedom of peaceful assembly and of association), *Report of the Special Rapporteur*, ¶ 22, U.N. Doc. A/72/135 (July 14, 2017).

⁵⁶ Maina Kiai (Special Rapporteur on the rights to freedom of peaceful assembly and of association), *Report of the Special Rapporteur*, ¶ 16, U.N. Doc. A/71/385 (Sept. 14, 2016).

⁵⁷ Annalisa Ciampi (Special Rapporteur on the rights to freedom of peaceful assembly and of association), *Report of the Special Rapporteur*, ¶¶ 24, U.N. Doc. A/72/135 (Jul. 14, 2017).

⁵⁸ Maina Kiai (Special Rapporteur on the rights to freedom of peaceful assembly and of association), *Report of the Special Rapporteur*, ¶ 16, U.N. Doc. A/71/385 (Sept. 14, 2016).

⁵⁹ *Id.*

⁶⁰ Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, 31 December 2011, at ¶ 171 (2011), <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>.

⁶¹ Maina Kiai (Special Rapporteur on the rights to freedom of peaceful assembly and of association), *Report of the Special Rapporteur*, ¶ 11, U.N. Doc. A/HRC/26/29 (Apr. 14, 2014).

⁶² Maina Kiai (Special Rapporteur on the rights to freedom of peaceful assembly and of association), *Report of the Special Rapporteur*, ¶ 14, U.N. Doc. A/71/385 (Sept. 14, 2016).

right to freely associate, “workers have little leverage to change the conditions that entrench poverty, fuel inequality and limit democracy.”⁶³

B. Guatemala Was Obligated—But Failed—to Protect Mr. Gómez’s Right to Freedom of Association (American Convention Art. 16).⁶⁴

Guatemala had a clear duty to protect the right of Mr. Gómez to freely associate as that right is understood in the American Convention on Human Rights, by this Court, and under broader international law. This Court has stated that the right to freedom of association has a “special scope and nature,” in that it has both an individual dimension and a social dimension.⁶⁵ The individual dimension includes the right to form trade unions, but also the right to use any appropriate means to exercise this freedom.⁶⁶ In the social dimension, the right enables members of a group or society to attain certain purposes together and to benefit from them.⁶⁷

In addition, this Court has recognized that Article 16 imposes both negative and positive obligations upon a State. As for the negative obligations, the Court has held that Article 16(1) establishes the right for individuals to associate freely with other persons in order to collectively achieve any lawful purpose; the State may not intervene to limit or obstruct the exercise of this right, nor may the State exercise pressure or interfere in the achievement of a common lawful goal in a manner that alters or impairs the nature of that purpose.⁶⁸ However, the State’s obligations under Article 16 are not limited merely to refraining from interfering with Article 16

⁶³ Maina Kiai (Special Rapporteur on the rights to freedom of peaceful assembly and of association), *Report of the Special Rapporteur*, ¶ 11, U.N. Doc. A/71/385 (Sept. 14, 2016); *see also id.* ¶ 15 (in the absence of the ability to safely practice the right of free association, workers are left “without any realistic legal or democratic political recourse” and are “condemned to a new poverty.”).

⁶⁴ See Commission Merits Report Section VI ¶¶ 81-95 (finding that Guatemala failed to protect Gómez’s Article 16 rights); *see also id.* ¶ 93 (“[T]he Commission considers it reasonable to infer that the disappearance and death of Alexander Gómez Virula were related to his trade union activities and that there was therefore a failure to comply with the duty to prevent [violations] in respect of his rights to life, human treatment (personal integrity), and personal liberty. That implies, in addition, failure to comply with that duty in respect of his right of freedom of association, in that there were aspects not duly investigated by the State that allow one to conclude that his role as a trade unionist was the motive for what happened.”).

⁶⁵ I/A Court H.R., Case of *Huilca Tecse v. Peru*, Merits, Reparations and Costs, Judgment of March 3, 2005, Series C No. 121, at ¶ 69.

⁶⁶ I/A Court H.R., Case of *Huilca Tecse v. Peru*, Merits, Reparations and Costs, Judgment of March 3, 2005, Series C No. 121, at ¶ 70.

⁶⁷ I/A Court H.R., Case of *Huilca Tecse v. Peru*, Merits, Reparations and Costs, Judgment of March 3, 2005, Series C No. 121, at ¶ 71.

⁶⁸ 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, at ¶ 144; *see also* I/A Court H.R., Case of *Huilca Tecse v. Peru*, Merits, Reparations and Costs, Judgment of March 3, 2005, Series C No. 121, at ¶ 69 (“[T]hose 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 . . .”); I/A Court H.R., Case of *Kawas-Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, at ¶ 143.

rights; rather, the State must also affirmatively protect an individual's right to freely associate.⁶⁹ This Court has therefore also held that Article 16 articulates "positive obligations" on the State, including the obligation to prevent attacks on the freedom of association, to protect those who exercise it, and to investigate violations.⁷⁰ As discussed further in Section IV.C., *infra*, this includes protecting and preventing violations even in relations between private persons.⁷¹

These Article 16 protections extended to the right to organize and participate in trade unions.⁷² This Court has acknowledged that "in trade union matters, freedom of association is of the utmost importance for the defence of the legitimate interests of the workers."⁷³ The State must guarantee that people can freely exercise their freedom of association rights without fear that they will be subjected to violence, because without this guarantee, the ability of groups to organize themselves to protect their interests could be reduced.⁷⁴ Trade union participation is an aspect of human rights protection and Article 16 requires that the State refrain from and protect against activities that inhibit the exercise of the right to organize, join, and participate in unions. The Inter-American Commission and this Court have both highlighted the State's obligation to protect defenders when they are in danger due to their activity. The Commission's 2006 Report on the Situation of Human Rights Defenders in the Americas called for "a comprehensive policy of protection for human rights defenders . . . in order to prevent attacks against human rights."⁷⁵ The Commission reiterated that goal five years later.⁷⁶ This Court's jurisprudence also recognizes the importance of protecting human rights defenders, including trade union leaders.⁷⁷

⁶⁹ 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, at ¶ 144.

⁷⁰ *Id.*

⁷¹ I/A Court H.R., Case of *Kawas-Fernández v. Honduras*, Merits, Reparations and Costs, Judgment of April 3, 2009, Series C No. 196, at ¶ 144; *cf.* I/A Court H.R., Case of *Huilca Tecse v. Peru*, Merits, Reparations, and Costs, Judgment of March 3, 2005, Series C No. 121, at ¶ 76; 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, at ¶ 144.

⁷² *See* I/A Court H.R., Case of *Huilca Tecse v. Peru*, Merits, Reparations, and Costs, Judgment of March 3, 2005, Series C No. 121, at ¶ 77; 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, at ¶ 144.

⁷³ I/A Court H.R., Case of *Baena-Ricardo et al. v. Panama*, Merits, Reparations and Costs, Judgment of February 2, 2001, Series C No. 72, at ¶ 158.

⁷⁴ I/A Court H.R., Case of *Huilca Tecse v. Peru*, Merits, Reparations, , and Costs, Judgment of March 3, 2005, Series C No. 121, at ¶ 77; *see also* Section IV.D.3, *infra*.

⁷⁵ Inter-American Commission on Human Rights, *Report on the Situation of Human Rights Defenders in the Americas*, Recommendation 5 (2006), <http://www.cidh.org/countryrep/Defenders/defenderstoc.htm>.

⁷⁶ Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, ¶ 474(2011), <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf> ("The IACHR must again underscore the point it made in its 2006 report, which is that one of the essentials in a global program of protection for human rights defenders is fostering a culture of human rights in which the fundamental role played by human rights defenders in guaranteeing democracy and the rule of law is recognized

(*cont'd*)

These protections are not unique to the American Convention on Human Rights or to the Inter-American system. Several other international conventions articulate a right to freedom of association and explicitly note its extension to trade union participation. The International Covenant on Civil and Political Rights declares that “Everyone shall have the right . . . to form and join trade unions for the protection of his interests.”⁷⁸ The European Convention on Human Rights has identical language.⁷⁹ The Charter of Fundamental Rights of the European Union grants the right “to freedom of association at all levels, in particular in political, trade union and civic matters.”⁸⁰ Additionally, the African Charter on Human and Peoples’ Rights states, “Every individual shall have the right to free association provided that he abides by the law.”⁸¹ As this Court has previously recognized, the Preamble of the ILO Constitution includes the “recognition of the principle of freedom of association” as an indispensable requirement for the attainment of “universal and lasting peace.”⁸² The ILO’s Committee on Freedom of Association has also promoted these rights as they relate to trade unions in order to “contribute to the effectiveness of the general principles of freedom of association, as one of the primary safeguards of peace and social justice.”⁸³

Statements by the European Court of Human Rights (“ECHR”), the African Commission on Human and Peoples’ Rights (“ACHPR”), and the U.N. Special Rapporteur further underscore the centrality of protecting the freedom of association to our internal system of laws and norms, particularly for trade union leaders. The ECHR has stated that “[g]enuine, effective exercise of [a] freedom does not depend merely on the State’s duty not to interfere, but may require positive measures of protection.”⁸⁴ The duty to protect the right of free association also includes an

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publicly and unequivocally and that the States publicly acknowledge that engaging in the protection and promotion of human rights is a worthy mission.”).

⁷⁷ See, e.g., I/A Court H.R., Case of *Huilca Tecse v. Peru*, Merits, Reparations, and Costs, Judgment of March 3, 2005, Series C No. 121, at ¶¶ 69-77; 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, at ¶ 144.

⁷⁸ International Covenant on Civil and Political Rights, art. 22(1), <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

⁷⁹ European Convention on Human Rights, art. 11(1), https://www.echr.coe.int/Documents/Convention_ENG.pdf.

⁸⁰ Charter of Fundamental Rights of the European Union, art. 12(1), http://www.europarl.europa.eu/charter/pdf/text_en.pdf.

⁸¹ African Charter on Human and Peoples’ Rights, art. 10(1), http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf.

⁸² I/A Court H.R., Case of *Baena-Ricardo et al. v. Panama*, Merits, Reparations and Costs, Judgment of February 2, 2001, Series C No. 72, at ¶ 157 (quoting ILO Constitution of 1919, Preamble).

⁸³ Int’l Labour Org., *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* ¶ 1 (5th ed. 2006), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_090632.pdf.

⁸⁴ *Appleby v. United Kingdom*, no. 44306/98, ¶ 39, ECHR 2003-VI.

obligation to take investigative and protective measures to protect against violence and intimidation.⁸⁵ The ACHPR has stated that “the right to freedom of association is both an individual and collective right which allows individuals to join together to pursue and further collective interests in groups, such as NGOs, political parties and trade unions.”⁸⁶ The ACHPR recognizes the right to freedom of association as closely connected to the right to work, including “the rights to collective bargaining, to strike and other related organisational and trade union rights.”⁸⁷ States have both negative and positive obligations regarding rights protected under the African Charter, including to investigate allegations of wrongdoing and to take measures to afford an adequate remedy to victims.⁸⁸ The U.N. Special Rapporteur on freedom of association and peaceful assembly has emphasized the unique status of trade unions, noting that “[s]tates are obligated under international law to respect, protect and fulfil workers’ rights to freedom of peaceful assembly and of association,” and similarly acknowledged that this obligation includes “both positive and negative duties.”⁸⁹

Thus, it is clear that Guatemala had a responsibility to protect Mr. Gómez’s right to freely associate. That responsibility is even more important in the context of Mr. Gómez’s work as a trade union member and leader because both the inter-American system and broader international law emphasize the responsibility to protect trade union rights because of their role in promoting democracy.⁹⁰

C. Guatemala Was Obligated to Protect Mr. Gómez’s Right to Freely Associate, Where the Perpetrator of the Violence Was a Non-State Actor.

The petitioners here argued before the Commission that Mr. Gómez had been prevented from exercising his right to freedom of association, and that his death was “no isolated incident, but rather part of a pattern of attacks on trade unionists,” such that the State had violated Mr. Gómez’s Article 16 rights.⁹¹ In this section, we explain that Article 16 imposed upon the State positive obligations to protect Mr. Gómez’s right to freedom of association, even if the violence was perpetrated by non-State actors.

⁸⁵ See *Özgür Gündem v. Turkey*, no. 23144/93, ¶¶ 42-46, ECHR 2000-III.

⁸⁶ *Monim Elgak et al. v. Sudan*, no. 379/09, ¶ 118, ACHPR (2014).

⁸⁷ African Commission on Human and Peoples’ Rights, Principles and Guidelines on the Implementation of Economic, Social, and Cultural Rights in the African Charter on Human and Peoples’ Rights, ¶ 59(b) (Oct. 24, 2011).

⁸⁸ African Charter on Human and Peoples’ Rights, Article 1; *Abdel Hadi et al. v. Republic of Sudan*, no. 368/09, ¶ 92, ACHPR (2013).

⁸⁹ Maina Kiai (Special Rapporteur on the rights to freedom of peaceful assembly and of association), *Report of the Special Rapporteur*, ¶ 3, U.N. Doc. A/71/385 (Sept. 14, 2016).

⁹⁰ See *id.* at ¶ 11.

⁹¹ Merits Report ¶ 14.

The Special Rapporteur previously recognized that international law demands that states “respect, protect and fulfil workers’ rights to freedom of peaceful assembly and of association.”⁹² States such as Guatemala are thus obligated not only to respect and fulfill their citizens’ right to freely associate, but also “to protect[] [those] rights holders from violations and abuses by others.”⁹³ This obligation includes “protect[ing] workers’ peaceful assembly and association rights from interference by non-State actors, such as private-sector employers and enterprises,” and “tak[ing] steps to prevent, punish and provide redress abuses through effective law, policies and adjudication.”⁹⁴ The Commission noted that the fact that private actors were the perpetrators “does not relieve the State of its obligation to protect the lives and personal integrity of trade union leaders.”⁹⁵ As is often the case, “[t]he implementation of the norms is as significant as the norms themselves.”⁹⁶

This Court has consistently upheld the principle that Article 16 protects an individual’s right to association free from incursions by both the State and private parties.⁹⁷ This Court recognized that it would be incompatible with Article 16 to reduce the right “to an obligation on the part of the State not to interfere,” and thus, the right requires the adoption of positive measures, even in the sphere of relations between individuals.”⁹⁸ In *Kawas-Fernandez v. Honduras* this Court stated that “States have the duty to . . . protect [human rights defenders] when they are subject to threats in order to ward off *any* attempt on their life or safety.”⁹⁹ Similarly, the African Commission on Human and Peoples’ Rights has stated that “States shall protect associations, including their principal and most visible members, from threats,

⁹² Maina Kiai (Special Rapporteur on the rights to freedom of peaceful assembly and of association), *Report of the Special Rapporteur*, ¶ 3, U.N. Doc. A/71/385 (Sept. 14, 2016).

⁹³ Maina Kiai (Special Rapporteur on the rights to freedom of peaceful assembly and of association), *Report of the Special Rapporteur*, ¶ 9, U.N. Doc. A/HRC/26/29 (Apr. 14, 2014).

⁹⁴ Maina Kiai (Special Rapporteur on the rights to freedom of peaceful assembly and of association), *Report of the Special Rapporteur*, ¶ 73, U.N. Doc. A/71/385 (Sept. 14, 2016).

⁹⁵ Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas* ¶ 268 (2011) (also noting that “[t]he perpetrators of these crimes overwhelmingly go unpunished”).

⁹⁶ Maina Kiai (Special Rapporteur on the rights to freedom of peaceful assembly and of association), *Report of the Special Rapporteur*, ¶ 73, U.N. Doc. A/71/385 (Sept. 14, 2016).

⁹⁷ I/A Court H.R., Case of *Kawas-Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, at ¶ 144; *see also* I/A Court H.R., Case of *Huilca Tecse v. Peru*, Merits, Reparations, and Costs, Judgment of March 3, 2005, Series C No. 121, at ¶ 76; I/A Court H.R., Case of *Cantoral-Huamani and García-Santa Cruz v. Peru*, Preliminary Objection, Merits, Reparations and Costs, Judgment of July 10, 2007, Series C No. 167, at ¶ 144.

⁹⁸ I/A Court H.R., Case of *Huilca Tecse v. Peru*, Merits, Reparations, and Costs, Judgment of March 3, 2005, Series C No. 121, at ¶ 76 (citing Eur. Court H.R. *Plattform “Ärzte für das Leben” v Austria*, Judgment of 21 June 1988, Series A no. 139, ¶ 32 (analyzing analogous provision of the European Convention on Human Rights)).

⁹⁹ I/A Court H.R., Case of *Kawas-Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, at ¶ 145 (emphasis added).

harassment, interference, intimidation or reprisals by third parties and non-state actors.”¹⁰⁰ This duty includes a State obligation to “hold to account private individuals and corporations, including private military and security companies, that are responsible for causing or contributing to arbitrary deprivations of life in the State’s territory or jurisdiction.”¹⁰¹ The European Court for Human Rights also agrees that “[g]enuine, effective exercise of [a] freedom . . . may require positive measures of protection, even in the sphere of relations between individuals.”¹⁰² Thus, as required by international law and by this Court, the State had a duty to protect Mr. Gómez’s freedom of association under Article 16 rights even where the perpetrator was a non-state actor.

D. Protection of Mr. Gómez’s Article 16 Rights Required Guatemala to Conduct a Serious and Prompt Investigation of His Disappearance.

Here, the Court should find that the State failed to comply with its obligations under Article 16 of the American Convention. First, the State was obligated to conduct a serious and prompt investigation of Mr. Gómez’s disappearance and murder. Second, that obligation was heightened given the State’s knowledge of both Mr. Gómez’s status as a union leader and the context facing union leaders in Guatemala at the time. Third, the State’s failure to meet its obligations takes on special importance in light of the chilling effect that the State’s inaction would be expected to have on other unionists’ exercise of their rights to free association.

1. Guatemala was obligated to conduct a serious and prompt investigation.

The general obligations to guarantee rights outlined in Article 1(1) of the American Convention requires the State to ensure the free and full exercise of the rights established in the Convention, including Article 16’s freedom of association.¹⁰³ That general requirement includes the obligation to investigate human rights violations.¹⁰⁴ Additionally, to ensure the free and full exercise of the rights as articulated in Article 1(1), Articles 8 and 25 of the Convention, the State is required to provide effective legal remedies that are substantiated with the rules of due process

¹⁰⁰ African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, ¶ 30 (Sept. 21, 2017).

¹⁰¹ African Commission on Human and Peoples’ Rights, General Comment No. 3 on the African Charter on Human and Peoples’ Rights: The Right to Life (Article 4), ¶ 18 (Dec. 12, 2015).

¹⁰² *Appleby v. United Kingdom*, no. 44306/98, ¶ 39, ECHR 2003-VI.

¹⁰³ 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, at ¶ 97; *see also* American Convention on Human Rights, art. 1(1), http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm (“The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms . . .”)

¹⁰⁴ 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, at ¶ 98; *see also id.* ¶ 91 (States must “investigate effectively and efficiently violations committed against [human rights defenders], in order to combat impunity”).

of law.¹⁰⁵ The obligation to investigate is “one of means rather than results,” and the State’s “obligation to investigate must be carried out diligently in order to avoid impunity.¹⁰⁶ Once the authorities have knowledge of the event, they should initiate a serious, impartial and effective investigation without delay, utilizing all the legal means available to the State.¹⁰⁷ In fact, “[t]he most effective way to protect human rights defenders in the hemisphere is by effectively investigating the acts of violence against them, and punishing the persons responsible.”¹⁰⁸ Thus, Guatemala’s obligation to guarantee freedom of association required that the State immediately search for Mr. Gómez’s whereabouts upon learning about his disappearance and death and

¹⁰⁵ I/A Court H.R., Case of *Human Rights Defender et al. v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 28, 2014, Series C No. 283, at ¶ 199; *see also* American Convention on Human Rights, art. 8(1), http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm (“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 . . . for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.”); *id.* art. 25(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 . . . even though such violation may have been committed by persons acting in the course of their official duties.”).

¹⁰⁶ 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, at ¶ 100; *see also* 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, at ¶ 144; 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. 168, at ¶ 100; I/A Court H.R., Case of *Kawas-Fernández v. Honduras*, Merits, Reparations and Costs, Judgment of April 3, 2009, Series C No. 196, at ¶ 76 (“[T]he State is . . . obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim’s full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.”).

¹⁰⁷ 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. 168, at ¶ 101; *see also* 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, at ¶ 130; Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, ¶¶ 235-36 (2011) (“In terms of the duty to investigate human rights violations, once State authorities have knowledge of a violation ‘they should initiate a serious, impartial and effective investigation, *ex officio*, and without delay. . . . Investigations of human rights violations should be carried out with diligence, that is, using all legal means available and oriented towards determining the truth.”); I/A Court H.R., Case of *Bulacio v. Argentina*, Merits, Reparations and Costs, Judgment of September 18, 2003, Series C No. 100, at ¶ 114; Case of *the Gómez-Paquiyaury Brothers v. Perú*, Merits, Reparations and Costs, Judgment of July 8, 2004, Series C No. 110, at ¶ 146; 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, at ¶ 119.

¹⁰⁸ Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas* ¶ 233 (2011) (also noting that “[t]he perpetrators of these crimes overwhelmingly go unpunished”); *see also id.* ¶ 241 (“[T]he States should pay particular attention to matters related to the violation of the rights of human rights defenders, and should direct their efforts toward reducing the continuing impunity in these matters.”).

conduct a prompt, diligent, and impartial investigation on the circumstances surrounding his death.

2. The State had a heightened obligation to investigate because it was aware of both Mr. Gomez’s status as a union leader and of the context facing union leaders in Guatemala at the time.

The Commission noted in its Merits Report that “in certain cases, [the] duty to prevent” impairment of the disappeared person’s personal integrity and life “is heightened by the specific at-risk situation of the individual in question.”¹⁰⁹ This Court has said that while the State “cannot be responsible for every human rights violation committed by individuals subject to its jurisdiction,” the obligation of the State to protect individuals in their relationships with one another arises when (i) the State is “aware[] of a situation of real and imminent risk for a specific individual or group of individuals,” and (ii) there is a “reasonable possibility of preventing or avoiding that danger.”¹¹⁰

Here, the Commission concluded that “from the moment family members filed their complaint, it should have been abundantly clear to the State authorities that the victim was in a situation of serious danger. The Commission considers that from that moment on the State knew that Mr. Gómez was at serious risk.”¹¹¹ Further, the Commission also stated that “the preventive obligation of the State was heightened by the fact that the impairment of trade unionists’ rights was not only public knowledge at the time; the trade union’s public complaints to the Ministry of the Interior between the moment of his disappearance and the finding of his body had, in addition, all made reference to Mr. Gómez’s job as the secretary of finance of a trade union,” and that “[b]ased on that knowledge, the State was obliged to take immediate and specific steps to ascertain Mr. Gómez’s whereabouts.”¹¹² However, the State undertook virtually no efforts to find Mr. Gómez or investigate the case. This Court previously concluded that the State is responsible when authorities fail to act with the due diligence required to adequately prevent the death and violence that were reasonably to be expected based on the context of the case and the facts known by the State.¹¹³ Moreover, because Guatemala has the means to verify acts or omissions within its territory, and because the evidence regarding the State’s ability to prevent or avoid the danger to Mr. Gómez would be obtainable only with the State’s cooperation, the State cannot be heard to claim that the complainants here have failed to present such evidence.¹¹⁴

¹⁰⁹ Merits Report ¶ 84.

¹¹⁰ 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, at ¶¶ 78.

¹¹¹ Merits Report ¶ 85.

¹¹² *Id.*

¹¹³ I/A Court H.R., Case of *Velásquez Paiz and Others v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 19, 2015, Series C No. 307, at ¶ 133.

¹¹⁴ See I/A Court H.R., Case of *Velásquez-Rodríguez v. Honduras*, Merits, Judgment of July 29, 1988, Series C No. 4, at ¶ 135.

Plainly, however, during his captivity and after his murder, Mr. Gómez’s ability to exercise the right to free association was clearly “[non]existent or . . . limited so that it [could not] be implemented.”¹¹⁵

The significant body of contemporaneous reports and jurisprudence discussed in Section III, *supra*, demonstrates that the State undoubtedly was aware—or at a minimum, should have been aware¹¹⁶—of the dangers facing labor unionists in Guatemala in March 1995. During the civil war, the State itself had stigmatized trade unions as “internal enemies,” with violence against trade unionists going notoriously unpunished. Nor does the State deny that Mr. Gomez’s family first notified the police of his disappearance, followed by multiple public communications by the Trade Union to the Ministry of the Interior, notifying it of Mr. Gómez’s disappearance and his status as a trade union leader. These factors clearly triggered the State’s prevention and protection obligations, conditioned as they are on the knowledge 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.¹¹⁷

3. Prompt and effective investigation of violence against union leaders is critical given the chilling effect that impunity has on others’ ability and willingness to exercise their Article 16 rights.

The Court should reaffirm its interpretation of Article 16 as requiring a heightened obligation to take effective investigative measures where, as here, the danger to the human rights defender was predictable and where impunity perpetuated by the State’s ineffective investigation chills the exercise of freedom of association by others. The Court has previously recognized that “the State must guarantee that people can freely exercise their freedom of association without fear that they will be subjected to any violence; otherwise, the ability of groups to organize themselves to protect their interests could be reduced.”¹¹⁸ Moreover, the Court has recognized that to fully guarantee the Article 16 right, the State has an obligation to provide legal remedies in accordance with due process as set forth in Articles 1(1), 8 and 25.¹¹⁹

¹¹⁵ I/A Court H.R., Case of *Huilca Tecse v. Peru*, Merits, Reparations and Costs, Judgment of March 3, 2005, Series C No. 121, at ¶ 77.

¹¹⁶ See 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., at 192 ¶¶ 78-79 (quoting the European Court of Human Rights’ “knew or should have known” standard for establishing a positive obligation by the State to protect an individual from another individual).

¹¹⁷ See I/A Court H.R., Case of *the Pueblo Bello Massacre v. Colombia*, Merits, Reparations and Costs, Judgment of January 31, 2006, Series C No. 140, at ¶¶ 123-24 (quoting *Kiliç v. Turkey*, no. 22492/93, ¶¶ 62-63, ECHR 1998-VIII).

¹¹⁸ 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, at ¶ 146.

¹¹⁹ I/A Court H.R. Case of *Human Rights Defender et al. v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 28, 2014, Series C No. 283, at ¶ 199.

It is broadly accepted that violence against human rights defenders, including trade union leaders, “send[s] an intimidating message to society as a whole . . . aimed at causing widespread fear and thus at discouraging all other human rights defenders.”¹²⁰ The intimidation caused by violence “imped[es] the full realization of the rule of law and democracy.”¹²¹ In the specific context of trade unions, this Court has noted that violence has “an intimidating effect on the workers of the . . . trade union movement and thereby reduce[s] the freedom of a specific group to exercise [its freedom of association] right.”¹²² Threats and attacks on trade union leaders have “not only individual, but also collective effects.”¹²³ An individual cannot enjoy the full exercise of the right to freely associate if that right is so limited by fear of intimidation or violence that it cannot be realized.¹²⁴

When trade union leaders are subjected to violence that goes uninvestigated and unpunished, the result is a situation of impunity that magnifies the chilling effect. It is for this reason that this Court and other courts have held that the State has a duty to promptly investigate violence against trade union leaders effectively and with due diligence.¹²⁵ Indeed, this Court has clearly stated that the required due diligence is “*accentuated* in contexts of violence against the trade union sector.”¹²⁶ The European Court on Human Rights has similarly held that where freedom of association has been interfered with, “the competent authorities have an *additional* obligation to take effective investigative measures.”¹²⁷ The African Commission on Human and Peoples’ Rights has likewise found that State responsibility for preventing, investigating, and prosecuting killings by private individuals is “*heightened* when an observable pattern has been

¹²⁰ Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas* ¶ 21 (2011).

¹²¹ *Id.*

¹²² I/A Court H.R., Case of *Huilca Tecse v. Peru*, Merits, Reparations, and Costs, Judgment of March 3, 2005, Series C No. 121, at ¶ 78; 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, at ¶ 146 (noting the ILO Committee on Freedom of Association’s observation that “an environment of violence constitute[s] a grave obstacle for the exercise of freedom of association,” which “can only be exercised in a situation in which the fundamental human rights are fully respected and guaranteed, in particular the right to life and safety”).

¹²³ 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, at ¶ 96.

¹²⁴ I/A Court H.R., Case of *Huilca Tecse v. Peru*, Merits, Reparations and Costs, Judgment of March 3, 2005, Series C No. 121, at ¶ 77 (citing Eur. Court H.R. *Young, James and Webster v United Kingdom*, Judgment of 13 August 1981, Series A no. 44, para. 56; and Eur. Court H.R. *Plattform “Ärzte für das Leben” v Austria*, Judgment of 21 June 1988, Series A no. 139, para. 32.).

¹²⁵ See 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, at ¶ 146; *Ouranio Toxo and others v. Greece*, no. 74989/01, ¶ 43, ECHR 2005-X.

¹²⁶ See 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, at ¶ 146 (emphasis added).

¹²⁷ *Ouranio Toxo and others v. Greece*, no. 74989/01, ¶ 43, ECHR 2005-X (emphasis added).

overlooked or ignored.”¹²⁸ The Commission has further stated that “[t]he right to life cannot be enjoyed fully by individuals whose lives are threatened.”¹²⁹ When the perpetrators of violence are able to act with impunity due to the state’s failure to conduct a prompt and thorough investigation, there are broader effects because “society is prevented from learning the truth concerning the observance or the violation of the rights.”¹³⁰ Impunity encourages the repetition of human rights violations and, in turn, those violations inhibit the exercise of the fundamental right of freedom of association.¹³¹ Thus, a state’s failure to investigate “has an intimidating effect, which prevents the free exercise of trade union rights.”¹³²

Here, the State’s cavalier reaction to Mr. Gómez’s disappearance and eventual murder not only constituted a failure to protect Mr. Gómez’s own Article 16 rights, but it undoubtedly had a broader impact as well. A State’s failure to protect a labor union leader’s right to freely associate discourages participation in trade unions and inhibits the full exercise of the freedom of association. The message sent by the State’s inaction is that individuals who commit violence against trade union leaders can act with impunity, and need not be concerned that they will be subject to an effective and diligent investigation, or that they will be brought to justice.¹³³ The combination of the violence and the virtually nonexistent investigation creates an environment where individuals cannot effectively practice their freedom of association rights.

V. APPROPRIATE REMEDIAL MEASURES

A. The Court Has the Power to Order Reparations.

This Court has stated many times the principle of international law that “any violation of an international obligation that has resulted in harm entails the obligation to repair it

¹²⁸ African Commission on Human and Peoples’ Rights, General Comment No. 3 on the African Charter on Human and Peoples’ Rights: The Right to Life (Article 4), ¶ 39 (Dec. 12, 2015) (emphasis added).

¹²⁹ *Id.* at ¶ 40.

¹³⁰ 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, at ¶ 96; *see also* 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, at ¶ 76.

¹³¹ 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, at ¶ 100; *see also* Inter-American Commission on Human Rights, *Justice and Social Inclusion: The Challenges of Democracy In Guatemala*, ¶¶ 180, 185 (2003), <http://www.cidh.org/countryrep/Guatemala2003eng/Chapter-III.htm>, (noting the “notorious link between impunity in [Guatemala] and the situation of vulnerability of defenders,” which impunity breeds “new violations to human rights defenders, which at the same time limits their work”).

¹³² 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, at ¶ 146.

¹³³ This Court has said that “an environment of violence constitutes a grave obstacle for the exercise of freedom of association.” 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, at ¶ 146.

adequately.”¹³⁴ In instances of State responsibility, an unlawful act attributable to the State creates an obligation for the State to “cause the consequences of the violation to cease and to repair the damage caused.”¹³⁵ Article 63 of the American Convention imbues this Court with the authority to order appropriate reparations, which provides, “[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall . . . rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.”¹³⁶ The Court has developed a robust Article 63 jurisprudence on reparations, including in cases with similar violations of the American Convention, as occurred here.

B. The Court Should Order Reparations Appropriate to Mr. Gómez and His Family

The Court should order remedies appropriate to the crimes against Mr. Gómez and the State’s violations of fundamental human rights.

1. The Court should order investigation, identification and punishment of those responsible for Mr. Gómez’s disappearance and death.

The Commission’s Merits Report and the arguments above demonstrate that the State violated, among other rights, Mr. Gómez’s right to freedom of association in Article 16 of the American Convention and failed to adequately investigate his disappearance. Following from that conclusion, the Commission’s Merits Report appropriately called for a “full, effective, impartial judicial investigation” into the circumstances of Mr. Gómez’s disappearance and death and the punishment of “all those who participated in the acts.”¹³⁷ Such a reparation is appropriate here and commensurate with the facts of disappearance and death.

We recognize that much time has passed since Mr. Gómez’s death, but the need for a full and diligent investigation has not diminished with time. The State failed to adequately investigate Mr. Gómez’s disappearance and death in 1995 and the State has never undertaken a full investigation. The State’s failure to do so violates the American Convention, sends a signal to other human rights and union leaders that the State will not protect their human rights despite its obligation to do so, and sends a similarly dangerous signal to other states in the Western Hemisphere that repercussions will not accompany human rights violations. Consequently, this Court has recognized that a full and diligent investigation is itself a non-repetition measure, as it

¹³⁴ 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, at ¶ 198 (Reparations and Costs Opinion); *see also* I/A Court H.R., *Case of Huilca Tecse v. Peru*, Merits, Reparations and Costs, Judgment of March 3, 2005, Series C No. 121, at ¶¶ 85-89.

¹³⁵ I/A Court H.R., *Case of Huilca Tecse v. Peru*, Merits, Reparations and Costs, Judgment of March 3, 2005, Series C No. 121, at ¶ 87.

¹³⁶ American Convention on Human Rights, art. 63(1), http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.

¹³⁷ Merits Report ¶ 133, Recommendation 2.

sends a signal to future perpetrators that the State will bring them to justice, serving to deter future crimes against human rights and union leaders.¹³⁸

Mr. Gómez's family and fellow human rights defenders deserve better than the State's incomplete and lackadaisical investigation. The Court should order the State to undertake a full investigation, using all appropriate resources, to remedy its earlier failure to fully investigate Mr. Gómez's disappearance.¹³⁹ Consistent with the Court's decisions in other cases, Mr. Gómez's family must have full access to the investigation and the trial.¹⁴⁰

2. The Court should order public dissemination of the Court's judgment.

Publication of the Court's merits judgment is a standard reparation in the Court's jurisprudence. In other instances, the Court has ordered publication of its decision in the State's official gazette, newspapers with widespread national circulation, on appropriate official websites and in press releases from government agencies.¹⁴¹ Such a reparation is appropriate to

¹³⁸ See 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, at ¶ 246 (“[T]he State must remove all *de facto* and *de jure* obstacles that impede the required investigation of the facts, and it must use all available means to expedite that investigation and the related proceedings, in order to avoid the repetition of such grave facts as those of the instant case.”); I/A Court H.R., Case of *Kawas-Fernández v. Honduras*, Merits, Reparations and Costs, Judgment of April 3, 2009, Series C No. 196, at ¶ 190 (“The Court repeats that the State is required to fight such impunity by all means available, as impunity fosters the chronic repetition of human rights violations and renders victims – who have a right to know the truth of the facts – completely defenseless.”).

¹³⁹ See I/A Court H.R., Case of *Kawas-Fernández v. Honduras*, Merits, Reparations and Costs, Judgment of April 3, 2009, Series C No. 196, at ¶ 192.

¹⁴⁰ I/A Court H.R., Case of *Huilca Tecse v. Peru*, Merits, Reparations and Costs, Judgment of March 3, 2005, Series C No. 121, at ¶ 107; 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, at ¶ 233 (“[T]he State must ensure that the next of kin of the victims have full access and capacity to act at all stages and in all instances of these investigations and proceedings so that they may submit pleas and motions, receive information, offer evidence, formulate arguments and, in brief, assert their interests.”); 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, at ¶ 247 (“Additionally, taking into account the Court's case law, the State must ensure that Heliodoro Portugal's next of kin have full access and capacity to act at all stages and in all instances of the said investigations and proceedings, in accordance with domestic law and the provisions of the American Convention.”).

¹⁴¹ See I/A Court H.R., Case of *Ibsen Cárdenas and Ibsen Peña v. Bolivia*, Merits, Reparations, and Costs, Judgment of September 1, 2010, Series C No. 217, at ¶ 244 (publication in official gazette, newspaper and official websites); I/A Court H.R., Case of *Las Palmeras v. Colombia*, Reparations and Costs, Judgment of November 26, 2002, Series C No. 96, at ¶ 96(3) (publication in official gazette and press releases from the National Police and the Armed Forces of Colombia); I/A Court H.R., Case of *Trujillo Oroza v. Bolivia*, Reparations and Costs, Judgment of February 27, 2002, Series C No. 92, at ¶ 119 (publication in official gazette); I/A Court H.R., Case of *Ticona Estrada et al. v. Bolivia*, Merits, Reparations and Costs, Judgment of November 27, 2008, Series C No. 191, at ¶ 160 (publication of excerpts of judgment in two nationally circulated newspapers); I/A Court H.R., Case of *Huilca Tecse v. Peru*, Merits, Reparations and Costs, Judgment of March 3, 2005, Series C No. 121, at ¶ 112 (publication of sections of judgment in the official gazette and newspaper with national circulation).

Mr. Gómez's case as well. Publication of the Court's merits judgment forces the State to take responsibility for violations of the American Convention, encourages public discussion of Guatemala's history, and constitutes a part of the full acknowledgement of Mr. Gómez's death that his family and fellow human rights defenders deserve.¹⁴² In the case of Mr. Gómez, the State should have to publish the Court's decision in the official gazette, a newspaper with widespread national circulation, and on official websites of the State. As discussed above, the Court and other international bodies have repeatedly recognized Guatemala's long history of conditions of "persistent structural impunity" regarding human rights violations. Widespread publication and State acknowledgement of the Court's decision will help to turn the tide in favor of robust protections for human rights and union leaders in Guatemala.

3. The Court should order commemoration of Mr. Gómez in consultation with Mr. Gómez's family.

Similarly, in other forced disappearance cases, the Court has ordered the State to publicly commemorate the victim, including reaching an agreement on the appropriate commemoration with the victim's family.¹⁴³ The public commemoration could take a variety of forms, but it should fulfill the need for public acknowledgement of Mr. Gómez's disappearance as an example of the State's long history of negligence, violence and intimidation against human rights and union leaders. In *Ibsen Cárdenas and Ibsen Peña v. Bolivia*, for example, the Court ordered the naming of a public place in honor of the victim alongside the display of a commemorative plaque.¹⁴⁴ In *Huilca-Tecse*, a case similar to the present one involving a union leader, discussed in detail above, the Court approved the State's proposal to erect a commemorative bust for the victim and mandated consultation with the victim's family on the location and the inscription.¹⁴⁵ The Court also ordered the establishment of an annual university course on human rights and labor law. And in *Valle-Jaramillo et. al v. Colombia*, the Court accepted the State's offer to provide a plaque to be erected at the courthouse.¹⁴⁶ Public commemoration for Mr. Gómez must be imbued with historical importance commensurate with the gravity of the human rights violations present in this case and stand in perpetuity. This reparation must inform Guatemalans both of the struggle of human rights defenders and labor leaders in Guatemala, and the specific

¹⁴² Notably, the Court has held that the State's acknowledgement of responsibility, which is not present here, does not provide a rationale to avoid publication of its decision. I/A Court H.R., Case of *Trujillo Oroza v. Bolivia*, Reparations and Costs, Judgment of February 27, 2002, Series C No. 92, at ¶¶ 118-19.

¹⁴³ I/A Court H.R., Case of *Ibsen Cárdenas and Ibsen Peña v. Bolivia*. Merits, Reparations, and Costs, Judgment of September 1, 2010, Series C No. 217, at ¶ 249 ("[I]nitiatives designed to preserve the memory of victims of human rights violations must be implemented in coordination with their families.")

¹⁴⁴ *Id.*

¹⁴⁵ I/A Court H.R., Case of *Huilca Tecse v. Peru*, Merits, Reparations and Costs, Judgment of March 3, 2005, Series C No. 121, at ¶ 115.

¹⁴⁶ 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, at ¶ 227(c)(2); see also I/A Court H.R., Case of *Trujillo Oroza v. Bolivia*, Reparations and Costs, Judgment of February 27, 2002, Series C No. 92, at ¶ 122 (ordering the naming of an educational establishment for the victim in a public ceremony and with the victim's family present).

story of Mr. Gómez, who represents an important, if unpleasant, part of Guatemala's modern history.

4. The Court should order appropriate compensation to the family of Mr. Gómez.

As this Court has recognized, “[i]nternational case law has established repeatedly that the judgment constitutes, per se, a form of reparation.”¹⁴⁷ But when the victim or next of kin have suffered, the Court has ordered appropriate compensation to the victim and/or the victim's family. Indeed, the Court has held that the “relatives of the victim may [experience] suffering, anguish and pecuniary damage, within the family environment” sufficient to deserve compensation.¹⁴⁸ In cases where the victim is dead, the Court has contemplated both pecuniary damages (lost wages and income)¹⁴⁹ and nonpecuniary damages (*inter alia*, pain and suffering for the next of kin),¹⁵⁰ with each case needing to be “examined in the light of its particularities.”¹⁵¹ The Court and Mr. Gómez's representatives are better-equipped to calculate the appropriate damages than *amicus*,¹⁵² but it should be noted that the State has not provided any settlement or compensation to the victim's family. The Court should use its standard methodology to calculate appropriate compensation for Mr. Gómez.

¹⁴⁷ I/A Court H.R., Case of *Huilca Tecse v. Peru*, Merits, Reparations and Costs, Judgment of March 3, 2005, Series C No. 121, at ¶ 97; *see also* 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, at ¶ 224.

¹⁴⁸ I/A Court H.R., Case of *Ticona Estrada et al. v. Bolivia*, Merits, Reparations and Costs, Judgment of November 27, 2008, Series C No. 191, at ¶ 109; *see also* I/A Court H.R., Case of *Kawas-Fernández v. Honduras*, Merits, Reparations and Costs, Judgment of April 3, 2009, Series C No. 196, at ¶ 179 n. 221 (“Nonpecuniary damage may include distress and suffering caused directly to the victim or its relatives, tampering with individual core values, and changes of a non pecuniary nature in the victim's or relatives' everyday life.”).

¹⁴⁹ I/A Court H.R., Case of *Huilca Tecse v. Peru*, Merits, Reparations and Costs, Judgment of March 3, 2005, Series C No. 121, at ¶ 93.

¹⁵⁰ *See* 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, at ¶ 219 n.159 (“Nonpecuniary damage may comprise the pain and suffering caused to the direct victim and his next of kin, the impairment of values that are significant to an individual, and also the nonpecuniary damage caused by alterations in the living conditions of the victim and his next of kin. Since it is not possible to allocate a precise monetary amount to such damage, it can only be compensated by the payment of a sum of money or the delivery of goods or services with a pecuniary value that the Court establishes, in equity, as well as by means of acts or works of a public scope or impact designed to acknowledge the dignity of the victim and avoid the occurrence of human rights violations.”).

¹⁵¹ I/A Court H.R., Case of *Trujillo Oroza v. Bolivia*, Reparations and Costs, Judgment of February 27, 2002, Series C No. 92, at ¶ 82.

¹⁵² 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, at ¶ 222 (Commission stating that the Court is better-placed to calculate pecuniary damages).

5. The Court should order rehabilitation facilities for Mr. Gómez's family members.

The Commission's Merits Report calls for "rehabilitation facilities for the family members that desire them." Such a reparation is common in the Court's jurisprudence in forced disappearance cases and otherwise.¹⁵³ Given the traumatic nature of Mr. Gómez's death and disappearance, the length of time that Mr. Gómez's family has waited for resolution of this case, and the atmosphere of hostility to human rights and union leaders that has been present in Guatemala for a long time, Mr. Gómez's family should be entitled to rehabilitation and medical treatment. The State should provide treatment at no cost to Mr. Gómez's family, for as long as they will need it.

6. The Court should order nonrepetition measures.

The Commission's Merits Report calls for Guatemala to "[i]mplement 'non-repetition' measures" to ensure proper investigations into disappearances and violent deaths, and "heightened capacity to investigate the deaths of human rights defenders," especially trade unionists.¹⁵⁴ Such a reparation is appropriate to the case presented here because Mr. Gómez's disappearance and death is just one of the many examples of the State's failures to adequately protect freedom of association. The modern history of Guatemala, as shown above and in the Commission's Merits Report, includes decades of intimidation and attacks against human rights defenders, which continue today. Last year, a prominent union leader named Tomás Francisco Ochoa Salazar was killed by two gunmen on a motorcycle while leaving his factory.¹⁵⁵ In the year prior, Brenda Marleni Estrada Tambito, another prominent union leader, was killed after dropping her father off at a bus terminal in Guatemala City.¹⁵⁶ All in all, the Solidarity Center says that 87 union leaders have been killed in Guatemala since 2004.¹⁵⁷ Similarly, the International Trade Union Confederation ("ITUC") calculated that 73 trade unionists were killed between 2007 and 2014 and that Guatemala was the most dangerous place in the world for trade

¹⁵³ See, e.g., I/A Court H.R., *Case of Anzualdo Castro v. Peru*, Preliminary Objection, Merits, Reparations and Costs, Judgment of September 22, 2009, Series C No. 202, at ¶ 203 (ordering medical, psychological and psychiatric treatment); 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, at ¶ 256 (free medical and psychological care including medications).

¹⁵⁴ Merits Report ¶ 133, Recommendation 4.

¹⁵⁵ Gabriela Rosazza, *87th Labor Leader Murdered in Guatemala Since 2004*, International Labor Rights Forum (Oct. 10, 2017), <https://laborrights.org/blog/201710/87th-labor-leader-murdered-guatemala-2004>.

¹⁵⁶ Tula Connell, *Guatemala Union Leader's Murder a Cowardly Act*, Solidarity Center (June 23, 2016), <https://www.solidaritycenter.org/guatemalan-trade-unionist-murdered/>.

¹⁵⁷ Kane Conrardt, *Guatemala: Another Union Leader Murdered*, Solidarity Center (Sept. 7, 2017), <https://www.solidaritycenter.org/guatemala-another-union-leader-murdered/>.

unionists.¹⁵⁸ The International Labor Rights Forum said that not a single person was convicted for any of the 73 killings identified by the ITUC.¹⁵⁹

It is true that Guatemala has taken important steps in ensuring adequate protections for human rights and union leaders.¹⁶⁰ But the recent history of violence against union leaders in the State demonstrates that Guatemala is one of the most hostile and violent places in the world for human rights and union leaders like Mr. Gómez, and that little has changed since his death in 1995. The failure to convict many perpetrators for these crimes, if any at all, is particularly galling, and supports the need for diligent investigations highlighted in the Commission’s Merits Report. Guatemala must move immediately to increase capacity for investigations and institute measures to increase the diligence of those investigations. Disappearances and murders must merit an immediate investigatory response from the State.

VI. CONCLUSION

As the U.N. Special Rapporteur on the rights to freedom of peaceful assembly and of association recently observed, “labour rights are workers’ human rights. Freedom of peaceful assembly and association are foundational rights precisely because they are essential to human dignity, economic empowerment, sustainable development and democracy. They are the gateway to all other rights; without them, all other human and civil rights are in jeopardy.”¹⁶¹

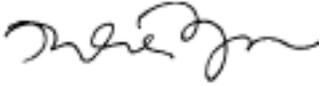
In the case before the Court, Mr. Gómez was robbed of his life and his own fundamental rights, and Guatemalan workers were robbed of an advocate for their rights. This is an excellent opportunity for this Court to explain the scope of the human rights of which Mr. Gómez was deprived, and to order reparations to rectify the situation of impunity that has prevailed in Guatemala for so many years.

¹⁵⁸ *United States Steps Up Pressure on Guatemala Over Labor Rights*, Reuters (Sept. 18, 2014), <https://www.reuters.com/article/us-usa-trade-guatemala/united-states-steps-up-pressure-on-guatemala-over-labor-rights-idUSKBN0HD2AK20140918>.

¹⁵⁹ Gabriela Rosazza, *87th Labor Leader Murdered in Guatemala Since 2004*, International Labor Rights Forum (Oct. 10, 2017), <https://laborrights.org/blog/201710/87th-labor-leader-murdered-guatemala-2004>.

¹⁶⁰ An agreement with the United States in recent years ensured increased protections for labor rights, following from an arbitration under the Central American Free Trade Agreement (CAFTA). *See In the Matter of Guatemala – Issues Relating to the Obligations Under Article 16.2.1(a) of the CAFTA-DR*, Off. U.S. Trade Representative, <https://ustr.gov/issue-areas/labor/bilateral-and-regional-trade-agreements/guatemala-submission-under-cafta-dr> (last visited Sept. 1, 2018). But the CAFTA agreement did not cover violence against trade unionists, which has continued unabated.

¹⁶¹ Maina Kiai (Special Rapporteur on the rights to freedom of peaceful assembly and of association), *Report of the Special Rapporteur*, ¶ 2, U.N. Doc. A/71/385 (Sept. 14, 2016).



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