

Institution:	Inter-American Commission on Human Rights
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Title/Style of Cause:	Eleazar Ramon Mavares v. Venezuela
Doc. Type:	Report
Decided by:	Chairman: Professor Claudio Grossman; First Vice Chairman: Ambassador John S. Donaldson; Members: Dr. Oscar Lujan Fappiano, Professor Robert Kogod Goldman, Dr. Jean Joseph Exume, Ambassador Alvaro Tirado Mejia. Commissioner Carlos Ayala Corao, national of Venezuela, did not participate in the discussion and voting on this case, in accordance to Article 19.2(a) of the Regulations of the Commission.
Dated:	17 October 1996
Citation:	Ramon Mavares v. Venezuela, Case 11.068, Inter-Am. C.H.R., Report No. 49/96, OEA/Ser.L/V/II.95, doc. 7 rev. (1996)
Represented by:	APPLICANTS: Dr. Liliana Ortega, Dr. Hector Faundez and Dr. Jose Miguel Vivanco
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I. PROCESSING OF THE CASE BEFORE THE COMMISSION

1. On September 21, 1992, the Inter-American Commission on Human Rights received a complaint according to which Eleazar Ramón Mavares,¹⁸ a resident of the city of Caracas, Venezuela was killed by members of the Metropolitan Police of the Federal District on Friday, March 3, 1989, at approximately 2:30 p.m. The events occurred when the victim was crossing the Urapal bridge, near the "La Pastora" parish church, Caracas, Venezuela.

2. The Commission began processing the case with a note to the Government of Venezuela dated October 19, 1992 asking for pertinent information about the events described in the complaint and for any other evidence that would enable the Commission to determine whether all remedies under domestic law had been exhausted.

3. The petitioner submitted additional information on November 3, 1992, which the Commission remitted to the Government on December 1 of the same year. For its part, on November 23, 1992 the Government of Venezuela requested a new copy of the pertinent parts of the complaint since they had arrived in an illegible state. The Commission transmitted that new copy on December 1, 1992.

4. In a note dated February 5, 1993, the Government of Venezuela requested an extension of the deadline in order to be able to complete the information required by the Inter-American

Commission. On February 8, 1993, the Commission granted the Government of Venezuela a further 30 days, from the date of the communication.

5. On November 1, 1993, the Inter-American Commission on Human Rights reiterated its request for information to the Government of Venezuela, warning it furthermore, that if it did not receive it within 30 days, it would consider applying Article 42 of the Regulations, according to which the truth of the events denounced is presumed unless other evidence leads to a different conclusion.

6. In a communication dated December 22, 1993, the Government of Venezuela asked the Commission to consider "the possibility of granting the Government of Venezuela additional time, in order to be able to supply the information required, given that the original correspondence sent directly to the attention of the Minister of Foreign Affairs had only just been received by his office on December 14."

7. On January 13, 1994, the Government of Venezuela replied to the Commission's request for information. That reply--which was remitted to the petitioner on January 25, 1994--contained a chronological list of the main legal proceedings undertaken in connection with file No. 274-89.

8. In a note dated February 7, 1994, the petitioner requested additional time in which to send his comments on the Government's reply. In a communication dated February 23, 1994, the Commission granted him a further 30 days.

9. On March 21, 1994, the petitioner sent his comments on the Government's reply. In his communication, the petitioner reiterated the events he had denounced. His comments were remitted to the Government on April 27 of the same year.

10. In a communication dated April 18, 1994, the Government of Venezuela sent the Inter-American Commission the Report of the Directorate of Human Rights in the Public Ministry, along with certified copies of the legal proceedings. That information was passed on to the petitioner on May 31, 1994.

11. In a note dated June 15, 1994, the Commission offered its good offices to the parties with a view to arriving at a friendly settlement based on respect for the human rights recognized in the American Convention on Human Rights. The Inter-American Commission granted the parties 30 days in which to reply to this proposal.

12. In a communication dated July 14, 1994, the petitioner formally accepted the friendly settlement procedure. In so doing, he requested that the Government of Venezuela take the following steps:

- a) Have national legal bodies conclude an exhaustive and impartial enquiry into the murder of Eleazar Mavares, so as to identify and punish those responsible.
- b) To separate the Technical Corps of the Judicial Police--currently attached to the Ministry of Justice--from the Executive Branch in order to render this auxiliary judicial unit genuinely independent, and to make criminal investigation its only function.

- c) To eliminate the possibility that the secret summary phase of criminal proceedings in Venezuela can last indefinitely, with a view to the parties gaining rapid access to the documents in case files. Article 204 of the Code of Criminal Proceedings of Venezuela should be amended to that effect. A period of 30 days should be sufficient for the summary phase to conclude and with it the secrecy surrounding the investigations carried out during that phase.
- d) To amend the Forensic Medicine Instruction Code, in such a way as to ensure effective investigation of cases of violation of human rights by adapting to, and to a large extent incorporating into that code the content of the following international legal instruments: Model Protocol for Legal Investigation of Extrajudicial, Arbitrary, or Summary Executions, Model Protocol for Autopsies, Model Protocol for Exhuming and Analyzing Bone Remains, and Principles Regarding Effective Prevention and Investigation of Extrajudicial, Arbitrary, and Summary Executions, adopted through resolution 1989/65 of May 24, 1989 by the UN Economic and Social Council and the appendix to that resolution.
- e) To eliminate the bare fact information procedure--pre-trial proceedings involving justifications and actions designed to ascertain the commission by a government official of a punishable offense--, which is contemplated in Article 374 and in the single paragraph contained in Article 375 of the Code of Criminal Proceedings, in conformity with Articles 101 and 92 of the same.
- f) To pay forty thousand US dollars (US\$40,000) compensation to the mother of the victim, Mrs. Nancy Mavares, Venezuelan identity card No. 642.683. Although it is true that the victim cannot have his infringed rights restituted, we consider that establishing a compensation payment for the mother forms part of the State's commitment to observe and guarantee human rights. In addition, account should be taken of the uncertainty that the mother of the victim has had to live with not being sure of the identity of her son's body five years after his murder, a situation that in this case amounts to property as well as moral damage.

13. In a note of July 18, 1994, the Government of Venezuela requested that the Inter-American Commission provide more information on the machinery for friendly settlement and extend the deadline so that it could respond to that proposal. On July 15 of the same year the Commission gave the Government an additional period of 30 days, and a detailed explanation of the procedure for friendly settlement.

14. In its communication of August 24, 1994--beyond the deadline set by The Inter-American Commission on Human Rights--the Government of Venezuela indicated "that in the case under consideration there do not exist conditions that lend themselves to a friendly settlement, since State responsibility in the death of Eleazar Ramón Mavares has not been established and because the damages requested by the petitioner are unacceptable as a solution in a particular case... It would be an act of irresponsibility on the part of the State to offer satisfaction for these petitions when, as has been noted, such can only result from a process involving various sectors of civil society, since it would be improper to accede to these types of demands on an individual basis unless use were made of legal recourse and established channels as provided by the State."

15. The Inter-American Commission on Human Rights approved report 24/94 at its 87 regular session, which was remitted to the Venezuelan Government on October 19, 1994, for its observations, to be submitted within 60 days from the date of remission.

16. The Venezuelan Government remitted its observations on December 19, 1994, within the deadline set by the Inter-American Commission on Human Rights.

17. In the course of its 88th regular session, the Inter-American Commission on Human Rights met with the parties involved in this case to sign an agreement that would comply with the recommendations made in paragraphs 7.1, 7.2, 7.3, 7.4, and 7.5. That agreement was concluded on February 15, 1995.

18. In the course of its 89th special session, the Inter-American Commission on Human Rights did not examine this case; it did, however, continue to monitor progress in implementing the measures.

19. The Commission, meeting at its 90th regular session, decided to approve this report and to give the Government of Venezuela 60 days to comply with the agreement entered into by the parties on February 15, 1995. It further decided to follow up on this case in order to monitor implementation of the recommendations made in paragraphs 7.1, 7.2, 7.3, 7.4, and 7.5.

II. THE EVENTS DENOUNCED

According to the information submitted to the Inter-American Commission on Human Rights, what happened was as follows:

A. EVENTS IN FEBRUARY AND MARCH 1989: ACTS OF VIOLENCE AND THE SUSPENSION OF CONSTITUTIONAL GUARANTIES

20. On February 27, 1989, an unspecified number of people from the poorer strata living in the shanty towns in run-down urban sectors, began a series of acts of violence in the city of Guarenas, in the State of Miranda, in protest against an increase in urban transport fares, and the authorities' refusal to recognize a reduced student fare. The people's protest spread to other parts of the metropolitan Caracas area, such as Caricuao, La Guaira, Maracay, Valencia, Barquisimeto, Guyana, Mérida, and the areas around the bus terminal. The acts of violence consisted in setting fire to public transport vehicles, and the pillaging and destruction of stores.

21. In response to the acts of violence, the Government issued Decree No. 49, dated February 28, 1989, which suspended the following constitutional guarantees: Article 60 (1), (2), (6), and (10) in respect of individual liberty; Article 62, on the inviolability of the home; Article 64, freedom of movement; Article 66, free speech; Article 71, the right to hold meetings; and Article 115, the right to peaceful protest. The text of that decree stated "that in the past few hours in Caracas and in other cities in the country there have been a series of events that constitute grave disturbance of public order and which have created alarm in the population." [FN1] The guarantees suspended by this decree were restored on March 22, 1989.

[FN1] Decree No. 49, issued by the Executive Branch of government and published in the Official Gazette No. 34.168 of February 28, 1989.

22. During the suspension period, State security units, together with the Metropolitan Police, the National Guard, and the Army carried out a number of operations designed to repress the violence. Members of the police and soldiers raided homes, detained numerous people, and committed serious abuse. It should be noted that the period in which constitutional guarantees were suspended was the one that saw most denunciations of extrajudicial executions and a large number of deaths occurring in the victims' own homes. The sectors of Caracas worst hit by arbitrary arrests and indiscriminate shooting by the security forces were: Petare, Catia, El Valle, and the urban settlement known as "23 de Enero." According to official figures, in the events of February and March 1989 277 people were killed. Large numbers were wounded and the physical damage was considerable. Despite this official count, the number of victims was later discredited by the appearance of mass graves.

B. THE DEATH OF ELEAZAR RAMÓN MAVARES

23. This was the political and social context in which Eleazar Ramón Mavares, an 18-year-old student and outstanding sportsman--in Venezuela he was a well-known karate expert--was murdered by members of the Metropolitan Police of the Federal District. On Friday, March 3, 1989, at approximately 2:30 p.m. Ramón Mavares was talking to a group of people in the "Alberto Rabell" district in Puente Miraflores, Caracas, when a nearby soldier ordered them to run by firing into the air. The group split up and was running into various different houses, when a soldier intercepted Ramón Mavares and ordered him to stop, put his hands on his head, and lie on the ground. According to eye witnesses, Ramón Mavares was shot in the leg by the soldier, who then went on his way. It was then that members of the Metropolitan Police arrived and asked the victim to produce his ID. After checking to see that it was in order, they ordered him to run, but when they saw that he could not get up because of the bullet wounds in his leg, they finished him off on the ground.

C. MISTAKE BY THE VENEZUELAN DEPARTMENT OF FORENSIC ANTHROPOLOGY IN IDENTIFICATION OF THE VICTIM'S CORPSE[FN2]

[FN2] The Department of Forensic Anthropology is a unit of the Institute of Legal Medicine, a body that forms part of the Technical Corps of the Venezuelan Judicial Police, which in turn comes under the Ministry of the Interior.

24. After hearing about the death of her son, the mother of the victim, Mrs. Nancy Mavares, went to the Department of Forensic Anthropology at the Institute of Legal Medicine to collect his body. On March 4, 1989, that forensic institution handed over a corpse to the Mavares family that, as appears in the death certificate issued by the institute, had been identified by experts in the institution as being the body of Eleazar Ramón Mavares. Subsequently, the Mavares family proceeded to bury the body of the victim in the family vault in the "Cementerio General del Sur" cemetery. It should be pointed out that the body was observed by members of the family; however, due to the magnitude of the lesions inflicted on the corpse, it was almost impossible to

fully identify the body without technical assistance. Hence the importance of the work of the experts in identifying the body handed over to the family as that of the young Mavares.

25. There was a new development regarding the victim's body on July 12, 1991, when a nongovernmental organization representing the relatives of the victim was informed by staff of the Office of the Director of Forensic Anthropology that they needed Mrs. Nancy Mavares--the victim's mother--to appear in person because corpse No. 56 found in the mass graves dug after the events of February and March 1989 had been fully identified by finger print report No. 504 as the body of Eleazar Ramón Mavares.[FN3] Before reaching that conclusion, the forensic institute severed the hands from the body and sent them to the Microanalysis Division of the Judicial Technical Police of Venezuela in order to reactivate the finger tip pulp for finger printing.

[FN3] And so it appears in the Certificate issued by the Institute of Legal Medicine on July 15, 1991.

26. On July 15, 1991 the mother of the victim, accompanied by her legal representatives, went to the Institute of Legal Medicine in order "to compare pre-mortem records with post-mortem data on the deceased [desaparecido] Eleazar Mavares, which have to do with individual No. 56 exhumed from the 'La Peste' [the Plague] sector of the 'Cementerio General del Sur' cemetery." [FN4] So there are two bodies named Eleazar Ramón Mavares: the one handed over by the Institute of Legal Medicine to the mother of the victim on March 4, 1989, and the body found by the same institution on July 12, 1991, in the mass graves dug following the events of February and March 1989.

[FN4] Certificate issued by the Institute of Legal Medicine on July 15, 1991.

III. PROCESSING OF THE CASE BY NATIONAL LEGAL AUTHORITIES IN VENEZUELA

A. THE JUDICIAL PROCESS IN CONNECTION WITH THE DEATH OF THE VICTIM

PRE-TRIAL SUMMARY INVESTIGATION PHASE

27. On March 6, 1989, members of the victim's family filed a denunciation with the Government Attorney's Office [Fiscalía General de la República] and on October 18, 1989 the 74th Attorney of the Public Ministry filed an application for a Bare Facts Investigation [Averiguación de Nudo Hecho] with the 43rd First Instance Criminal Court in the Judicial District of the Federal District and the State of Miranda, as follows:

...in use of the powers conferred upon me by paragraph N° 16 of Article 6 of the Organic Law of the Public Ministry and in accordance with the provisions of Article 374 of the Code of Criminal

Procedure, I request you as the competent authority to open Bare Fact Information proceedings [Información de Nudo Hecho] against the following members of the Metropolitan Police: Miguel Angel Liscano Landaeta (corporal [Cabo 2º]); Alexis José Torres Flores (Distinguido 1295) Eliades Alejandro Blanco Vásquez (Distinguido); Omar Alexis Rodríguez Bautista (Distinguido); Luis Enrique Arandia Escobar (corporal [Cabo 2º] and José Delfín Acero Galvis (constable [agente]).

28. On February 20, 1990, the 74th Attorney of the Public Ministry filed a denunciation with the 43rd First Instance Criminal Court in the Judicial District of the Federal District and the State of Miranda, accusing Metropolitan Police officer Alexis José Torres Flores of first degree murder and unlawful use of a firearm. He also accused the following Metropolitan Police officers of being immediate accomplices in the crime of first degree murder: Miguel Angel Liscano Landaeta; Eliades Alejandro Blanco Vásquez; Omar Alexis Rodríguez Bautista; Luis Enrique Arandia Escobar; José Delfín Acero Galvis, and Nelson Alfredo Altuve Román. All of them are assigned to Police Zone No. 05, Police District 51 of the Metropolitan Police.

29. On February 23, 1990, the 43rd First Instance Court ordered the arrest of the above-mentioned police officers on the basis of several pieces of circumstantial evidence indicating their involvement in the murder of citizen Eleazar Ramón Mavares. Dr. Nélica Aleksic Molina, the judge in the 43rd First Instance Criminal Court wrote in the arrest warrant:

As can be seen from the above-mentioned factors, it has been sufficiently proved in the file that the above-mentioned officers are indeed guilty of the offenses described. Even though said officers totally deny having taken part in the acts of which they are accused, she who decides in this case considers that the evidence contained in the file indicates that those acts were carried out by the accused and that according to law in this case, and given that all the requirements of Article 182 of the Code of Criminal Procedure have been fully met, it is appropriate to order the judicial arrest of the following citizens: Alexis José Torres Flores, for having committed the crimes of First Degree Murder and Unlawful Use of a Firearm, and Miguel Angel Liscano Landaeta; Eliades Alejandro Blanco Vásquez; Omar Alexis Rodríguez Bautista; Luis Enrique Arandia Escobar; José Delfín Acero Galvis, and Nelson Alfredo Altuve Román, for committing the crimes of being immediate accomplices in First Degree Murder and Unlawful Use of a Firearm, in an act that occurred in the manner, time, and place already described in the body of this judgment, against the citizen known during his lifetime as ELEAZAR RAMÓN MAVARES. IT IS SO ORDERED.

30. On May 18, 1990, the Sixth Higher Court--following the appeal lodged by the defendants--confirmed the order to arrest police officer Alexis José Torres Flores, on the charges of First Degree Murder and unlawful use of a firearm, but reversed the warrant issued by the lower court judge for the arrest of the other police men charged with being Immediate Accomplices in the murder of Ramón Eleazar Mavares. On May 23, 1990, the 43rd Court declared that the pre-trial summary investigation phase had concluded.

THE PLENARY PROCEEDINGS PHASE

31. On June 7, 1990, the 74th Attorney of the Public Ministry filed charges against police officer Alexis José Torres Flores with the 43rd First Instance Criminal Court in the Judicial District of the Federal District and the State of Miranda. That document stated that "the commission, guilt, and consequent penal liability of the defendant ALEXIS JOSÉ TORRES FLORES for the crimes of FIRST DEGREE MURDER, defined and punishable according to the provisions of Article 408, paragraph No. 1 of the Criminal Code, and of Unlawful Use of a Firearm, contemplated and sanctioned in Article 282 of the same Code, is shown in the following evidence [elementos de convicción probatoria]: the statements made to the court of the instant case by the witnesses Nancy Josefina Mavares Paredes, Angélica Mercedes Aguilar, Bertha Elena Prado Aguilar, and Judith Coromoto Betancurt." Furthermore, the Attorney stated that:

For the reasons adduced above, this Attorney considers that the legal term to describe the events that occurred is: First Degree Murder, (...) in that it has been fully established that citizen ALEXIS JOSÉ TORRES FLORES was the person who killed citizen ELEAZAR RAMÓN MAVARES.

32. On June 14, 1990, the defendant was put on trial. His defense lawyers requested: " 1) That [the Court] summon the Metropolitan Police officers who testified that police officer Alexis Torres was not present at the scene of the events; 2) an examination of the Metropolitan Police weapon to determine whether the bullets were fired from that gun; 3) that an investigation be carried out by the ballistics division of the Judicial Technical Police; 4) that all the eye-witnesses be summoned for questioning; 5) that [the Court] summon the Metropolitan Police officers for them to say whether they transferred police officer Alexis Torres to the Vargas hospital; 6) that [the Court] summon the Metropolitan Police officers to determine whether or not they went to Miraflores and whether that sector had been taken over by the army; and 7) that [those officers] state whether police officer [Alexis Torres] patrolled or visited that day the place where Eleazar Mavares died."

33. On July 19, 1990, [the Court] declared the start of the period for finding and furnishing evidence. The 74th Attorney requested: a) that [the Court] summon the witnesses of the pre-trial summary investigation phase in order for them to ratify their statements in the plenary proceedings; and b) reserved the right to produce such other testimony and evidence as he deemed appropriate.

34. On November 26, 1990, the defense lawyer of the police officer requested that the case revert to the start of the summary investigation phase in order to determine whether soldiers participated in the events. On April 24, 1991, the 43rd Court declared the request contrary to law because the arguments presented by the defense were not solid.

35. On May 31, 1991, the presentation of reports took place. The defense presented reports. The representative of the Public Ministry did not attend.

36. On July 12, 1991, the 43rd First Instance Criminal Court in the Judicial District of the Federal District and the State of Miranda acquitted the police officer, on the grounds of insufficient evidence.

REFERRAL OF THE CASE TO THE COURT OF SECOND APPEAL

37. On July 18, 1991 the case was referred to the Seventh Higher Court's Distributing Tribunal, which remitted it to the Sixteenth Higher Court, which acknowledged receipt of the file and numbered it 4875-91.

38. On February 18, 1992, the Sixteenth Higher Court confirmed the acquittal on the charge of First Degree Murder and dismissed the charge of Unlaw Use of a Firearm. On February 21, 1992, the defendant, Alexis José Torres, was notified of the verdict, on the basis of which he requested to be released on bail. That request was granted by the same court on February 24, 1992.

EXECUTION OF JUDGMENT

39. On February 28, 1992, after the period for an appeal for reversal of the judgement had lapsed without the representative of the Public Ministry appealing, the Higher Court decided to remit the file to the 43rd First Instance Criminal Court, for judgment to be executed. That court received the file on March 4 of the same year, confirming the acquittal on the charge of First Degree Murder, since the Higher Court dismissed the charge of Unlawful Use of a Firearm. Consequently, it ordered the defendant Alexis Torres Flores to be set free, and, on March 24, 1992, the 43rd Court order the file to be remitted to the judicial archives of the Venezuelan Court Council Judicature [Consejo de la Judicatura de Venezuela].

B. ACTIVITIES UNDERTAKEN BY MEMBERS OF THE VICTIM'S FAMILY TO CLARIFY THE IDENTITY OF THE BODY

40. On August 14, 1991, after gathering the necessary evidence, the legal representatives of the relatives of Eleazar Mavares presented a document to the Office of the General Attorney of the Republic, requesting the following:

- a) that an exhaustive enquiry be started in order to establish with absolute certainty what happened;
- b) that the identities of the two bodies be fully established;
- c) that those responsible be identified;
- d) that the Institute of Legal Medicine be intervened in order to ensure correct handling of the case and transparency in the production of evidence.

41. On August 15, 1991, the relatives of the victim submitted a document to the Tenth First Instance Criminal Court, denouncing the events that had occurred with regard to the identification of the body of Eleazar Mavares. In that document they requested the following:

- a) the start of an exhaustive enquiry into the case.
- b) the exhumation of the bodies that had been confused, with the proviso that no experts from the Institute of Legal Medicine take part in the exhumation.
- c) that several officials in the Institute of Legal Medicine be summoned to testify concerning the events denounced.

d) that responsibilities for what had happened be assigned in accordance with the provisions of Venezuelan law, making it clear that responsibilities cannot be established with regard to individuals but in respect of the Institute of Legal Medicine as a whole.

e) that judicial inspections be carried out in the archives of the Microanalysis Division of the Judicial Technical Police and in the Directorate of Forensic Anthropology of the above-mentioned institute, in order to verify the contents of finger print card No. 504 in document No. 9700-131-0044 as well as the certificate [Acta] issued by that institute on July 15, 1991; that at the same time the authenticity of the certificate be established by experts given that, in statements to the press, the Director of the Institute of Legal Medicine expressed doubts as to its origins.[FN5]

[FN5] In the certificate issued by the Department of Forensic Anthropology, it states that the body of Eleazar Mavares was fully identified by the Division of Microanalysis, which means that there are two bodies belonging to the same person: the corpse handed over by the institute on March 4, 1989, and the one found in a mass grave and identified on July 12, 1991.

42. On August 21, 1991, the Tenth First Instance Court ordered the exhumation of the body handed over to the Mavares family by the Institute of Legal Medicine on March 4, 1989. Five experts took part in the exhumation, of whom three are staff of the above-mentioned institution and a fourth--although not a staff member at the time of the investigation--participated as a member of that institute during the initial phase of exhumation of the bodies found in the mass graves in the "La Peste" sector (following the events of February-March, 1989).

43. On September 4, 1991, the tenth First Instance Court ordered the exhumation of individual No. 56, found in the "La Peste" sector of the Cementerio General del Sur cemetery and whose body lay in the concrete vaults, since previously only the hands from the corpse had been sent for examination. This exhumation was attended by the same experts who were present during the exhumation of August 21, 1991. It should be pointed out that at first the presence of a legal representative of the family was not allowed--they were even requested through police officers to leave the premises. However, after the family's lawyers demonstrated legally the importance of a witness during the exhumation and after Public Ministry attorney's supported that argument, the Judge granted the petition. The witness was allowed only to verify where the body was and if it really was individual No. 56, after which he was told to leave. The exhumed remains were transferred to the Institute of Legal Medicine for analysis.

44. On September 12, 1991, the mother of the victim, Mrs. Nancy Mavares, wrote to the Tenth First Instance Criminal Court in the Judicial District of the Federal District and the State of Miranda stating that she rejected the findings of the analysis performed on the bodies that had been confused, because that analysis was carried out by experts from the Institute of Legal Medicine, which clearly distorted the findings, since those accused were also judging their own case.

45. The Tenth First Instance Court has not ruled to this date on responsibilities attached to the confusion in identifying the body of Eleazar Ramón Mavares, nor on its true identity.

IV. POSITION OF THE PARTIES

A. RESPONSE OF THE GOVERNMENT OF VENEZUELA DURING THE PROCEEDINGS:

46. In its communication dated April 18, 1994, the Government of Venezuela maintained that the Attorney of the Public Ministry acts as a good faith party in the criminal lawsuit. Thus he not only files charges against the accused; in the interests of the truth, he may also present evidence in defense of the accused's right should he have access to it. In this respect, the Public Ministry of Venezuela differs from Public Attorneys in other countries, who act exclusively as investigators or accusers. The Government also pointed out that the Public Ministry attorneys exercise the functions assigned to them by the Code of Criminal Proceedings and the relevant special laws regarding their participation in criminal lawsuits as good faith parties.

47. As regards the actions undertaken by the Public Ministry in the present case, the Government of Venezuela summarized as follows. On October 18, 1989, the 74th Public Attorney's Office of the Federal District and State of Miranda filed a request for a Bare Facts Information enquiry with the 43rd First Instance Criminal Court. Later, in February 1990, the 74th Public Attorney's Office formally denounced citizen Alexis José Torres Flores to the same tribunal. In June 1990, the 74th Public Attorney's Office pressed charges of First Degree Murder and Unlawful Use of a Firearm against that citizen, given that there were a number of pieces of circumstantial evidence to be established during the period of time for producing proof, a fact accepted by the judge dealing with the case. After all the judicial procedures had been completed, the lower court judge pronounced sentence of acquittal in July 1991, a ruling ratified by the Higher Court in March 1992.

48. The Government of Venezuela also answered a number of charges on the contradictions of whether or not there was sufficient circumstantial evidence to identify responsibilities and regarding the acquittal. The Government points out that the Attorney from the Public Ministry made the denunciation and later pressed charges during the trial; that, likewise, the judge issued an arrest warrant on the basis of the evidence obtained during the pre-trial investigations; that, nevertheless, the same judge, upon completion of the trial, acquitted the accused. In that regard, the Government of Venezuela points out that the burden of proof rules establish that a verdict of guilty shall be pronounced when there is full proof both of the commission of the crime and of the guilt of the accused and that there shall be acquittal when there is no proof for both or either. In cases of doubt, the ruling must favor the accused. The Government reiterated that the essentially procedural "in dubio pro reo" principle obliges a judge to acquit a defendant if there is doubt concerning proof of his guilt.

49. In this case--the Government adds--the judge concluded that the witnesses did not ratify their statements in the probatory stage of the trial and that doubt favors the defendant. Moreover, the judge rejected the police reports [actas] and the testimonies of some of the witnesses, and when he pronounced judgment he asserted that the events had not been fully proven, especially since the elements that arose in the pre-trial investigation were not reinforced in the probatory stage of the trial. In respect of the ruling of the Higher Court judge, the Government said that that

tribunal had confirmed the judgment of the lower court, rejecting the testimony of some witnesses "because they made conflicting statements about the shots that caused the murder," the statements made are not clear nor do they identify the person or police officer who fired the shots, and that some of those statements are just heresay. The Government pointed out, in addition, that the judge "considers that there is only one firm piece of evidence in one statement (folio 119),...but there is no other evidence corroborating this statement."

50. As for the petitioner's affirmations with regard to the failure of the Attorney General's Office to be present at the presentation of reports[FN6] convoked by the Sixteenth Criminal Court for August 16, 1991, the Government of Venezuela maintains that paragraph No. 9 of Article 42 of the Organic Law of the Public Ministry establishes that one of the attributes of the Public Attorneys is to "inform and present written conclusions, and to ask for a case to be dismissed where appropriate, or for the acquittal or condemnation of the accused, as the case may be." Nevertheless--the Government says--this power is left up to the Public Attorney's discretion, since the reporting session turns out to be a repetition of what was alleged in the records on the case, which is why, depending on how a case is going prior to sentencing, the Public Attorney evaluates the need to present reports or not. The Government ends by saying that in practice the Public Ministry only submits reports in criminal cases when it considers them pertinent, because the document pressing the charges should already clearly set forth the grounds on which those charges are brought.

[FN6] The reports are oral or written allegations presented by the parties in a case, and in this case they were particularly important since the 74th Public Attorney's Office was acting officially, since it was a criminal action case.

51. As for the refusal of the Office of the Public Attorney to appeal the acquittal, the Government of Venezuela argued that national laws envisage "whether or not there is an appeal, that any acquittal or condemnation in a first instance court will be consulted with a Higher Court in the same lapse of time and in the same cases in which an appeal could be lodged, as established in the preceding article." The only exception to that rule is that "when the sentence imposed is a fine or imprisonment of no more than one year, the sentence will be definitive unless it is appealed." (Article 51 of the Code of Criminal Proceedings). The Government concludes by saying that the Public Attorney in this case did not file an appeal because legal consultation [with the Higher Court] "is for the Representative of the Public Ministry and for the accused as if they had appealed," according to Article 336 of the Code of Criminal Proceedings.

52. Finally, the Government of Venezuela stated that the Public Ministry did not appeal for the judgment to be annulled--on grounds of substance or procedure---because it considered that the judgment of the Higher Court was in accordance with the law. In defending this position, the Government stated that "an appeal for reversal of a judgment proceeds against rulings or definitive judgments pronounced by Second Instance Criminal Courts and against appealable sentences or rulings, in accordance with the provisions of the Code of Criminal Proceedings, when such sentences do not conform to law (Article 333)."(...) "The Organic Law of the Public Ministry grants representatives of that institution legal powers to file such ordinary and

extraordinary appeals as they deem appropriate against interlocutory and definitive judgments pronounced by criminal courts."

53. In its last reply, of August 24, 1994, the Venezuelan Government said that "the government's obligation to investigate has been undertaken seriously and not as a simple formality condemned beforehand to be unsuccessful," nor does Venezuela have any police privilege protecting these officials, as petitioner alleges in his complaint. As reported in detail to the Commission, full judicial proceedings in this case were completed against the public officials who allegedly had taken part in the events, in order to clarify their involvement, as recognized and pointed out by the petitioners to the Commission."(...) "In Venezuela, there are effective judicial remedies for victims of human rights violations, which remedies must be backed up by due process of law, as the Commission has indicated. The acquittal of an official by the court in this case is due to the application of the principle IN DUBIO PRO REO, which is one more proof of our respect for human rights, both of the victim and of those prosecuted, who also have a right to a fair trial. The reasons for this acquittal are clearly shown in the file, which is a matter of public record and which has been summarized in our previous replies."

54. (...) "The families of the victims have the right to know the truth, an expectation the Government has tried to satisfy with every means at its disposal. However, the truth is not easy to arrive at in all cases. There are famous cases in history where the truth has not been found despite the efforts of governments to discover it. Our penal system contemplates, in addition to government action, the possibility that, in every criminal case that can be brought ex officio, any private party, whether injured or not, can bring charges before any competent court to be investigated by an examining magistrate. However, in this case, no person filed charges."

55. The Venezuelan Government pointed out that "while in the case under review, investigation of the public official was dismissed for lack of conclusive evidence, the investigation of the crime remains open in the Tenth Criminal Trial Court of the Judicial District of the Federal District and the State of Miranda, in order to clarify the facts and determine the responsibility for the death of the above-mentioned citizen, since thus far there is no other public official indicated in the case. However, a Public Prosecutor has been commissioned to reactivate the case in the above--mentioned court."

56. The Government reiterated that "as to the doubts of the victim's mother about the identity of the body that was buried as her son, it must be pointed out that the family of ELEAZAR RAMÓN MAVARES positively identified the body at the Forensic Medicine Institute and removed it for burial in accordance with their religious practices. Later because of the alleged confusion with another body identified as number 56, disinterred in the La Peste Sector of the General Cemetery of the South, on August 21, 1991, the court ordered that the body of the citizen that had been buried by his family as ELEAZAR RAMÓN MAVARES be disinterred in the presence of officials of the Public Prosecutor's Office, the mother and members of nongovernmental human rights organizations."

57. (...) "During the disinterment, the mother positively identified, before representatives of the Public Prosecutor's Office, the court and the experts, the body that had been buried. The findings of the experts' analysis were submitted to the court that ordered the body exhumed,

which also was investigating the responsibility for the alleged negligence by officials of the Forensic Medicine Institute of the Technical Division of the Investigative Police of the Ministry of Justice, in inspecting and correctly identifying the body of ELEAZAR RAMÓN MAVARES. However, there is the question as to whether the petitioners have exhausted all remedies in court or other government organs in this case. Actually, Venezuela has the remedy of Amparo as an effective means to protect the rights of citizens. We are not aware that petitioners have exhausted these avenues to defend their rights."

58. Regarding the payment of compensation, the Government said that "taking into consideration that a public official has been acquitted and that to date there is no new evidence to warrant opening a new investigation against any other official(s), the Venezuelan Government cannot agree to pay compensation to the victim's mother until the responsibility of a government agent is proven in this case. Nor can one speak of the State's passive responsibility for not having been diligent in conducting investigations to determine who committed this crime, because the Commission has in its possession the details of the entire proceedings." (...) "Compensation of victims is provided for in Venezuela's criminal law, and it can be applied for in two ways: a) when the interested party requests such compensation in a criminal trial, at the time charges are filed, with the party pressing charges, which the petitioner did not do in this case); and b) by an action other than in a criminal case, in other words, by a civil suit, which requires prior to that action that a conviction in a criminal case be handed down. The latter alternative could not have been employed because, despite the fact that the investigation remains open, there was no conclusive proof against the official indicated.

59. (...) "Accordingly, while there is reason to believe that a public official murdered ELEAZAR RAMÓN MAVARES, the Government cannot undertake to compensate the victim's mother. There has been only one exception to this general principle, and that is the financial aid the Government awarded to the families of two Yupca Indians who were killed in the Sierra de Perijá. The compensation was based on a special rule in article 77 of the Venezuelan Constitution, taking into consideration the indigenous customs governing this kind of situation". (...) "Moreover, regarding the conditions established by petitioner with respect to legal reforms, as part of a friendly settlement in this case, the Government of Venezuela wishes to make the following observations:

As the Commission knows, studies have been proceeding for some time in the country on legal reforms affecting the entire system of justice administration. The new head of the Justice Department wishes to carry out a number of projects, primarily on jails and penitentiaries, one of the most pressing problems in the country in this field. So the Venezuelan Government pledges to the Commission that it will study and evaluate the reforms proposed by the petitioners, not as a condition for settling this case, nor under the friendly settlement procedure suggested in the case, but as some proposals to be taken into account when the time comes to decide on what legislative reforms should be taken in the field of justice administration in Venezuela.

It is important to note that legal reforms are submitted to a consultation process, which is essentially political, so that the ways and means of the political organ to improve the justice system and protect human rights may be different from those expressed or desired by the petitioner. The Government cannot accede to the wishes of the petitioner. The Government

cannot bow to the wishes of a single citizen, to carry out reforms in its institutions, and is not able to commit itself to a decision that must reflect the will of a political and social consensus, as a condition for settling a specific case.

Taking into consideration the elements indicated in this reply, it is the Venezuelan Government's view that the case under consideration does not meet the conditions for a friendly settlement arrangement, because the Government's responsibility in the death of ELEAZAR RAMÓN MAVARES has not been determined and because the conditions demanded by petitioner that go beyond material compensation cannot be accepted in settlement of a particular case. It would be irresponsible for the Government to offer to satisfy such petitions when, as has been indicated, they can only be the result of a process that will involve various sectors of civilian society. So it would be improper to accede to this kind of demand from an individual without making use of the recourses and channels available to the State for the reforms sought.

B. REPLY OF THE VENEZUELAN GOVERNMENT TO THE CONFIDENTIAL REPORT OF THE IACHR N° 24/94

60. "...this office is pleased to inform the Commission of the Venezuelan Government's willingness to accept the recommendations referred to in the referenced document, and to that end, we inform you that we are directing the Office of the Attorney General of the Republic, which is the organ having jurisdiction under the constitution, to take the necessary action to implement recommendations Nos. 7.1, 7.3, and 7.4."

61. "The Venezuelan Government wishes to express its surprise at the doubts that have been raised about the identification of the victim, since the cadaver suffered no injuries of such a nature (we are enclosing two photographs) that they would have prevented or hampered recognition by family members. In this regard, we point out that on March 4, 1989, the victim's mother, Mrs. Nancy Mavares, identified the body of the deceased as her son Eleazar Ramón Mavares, as shown in the testimony contained in the records of Criminal Court 43 of the Judicial District of the Federal District and the State of Miranda, which is transcribed as follows: 'I went looking for him in all the hospitals and could not find him. Then I went to the morgue, and he didn't seem to be there, but a man I know there helped me locate him.' (See attached copy of the testimony of Mrs. Nancy Mavares)."

62. "Regarding the compensation of the victim's family, we are asking the Office of the Attorney General of the Republic to begin, with the assistance of the Ministry of Foreign Affairs, conversations with the victim's family that might lead to a friendly settlement of this case."

63. "In due course, we will inform the Commission of the steps we are taking domestically to implement the recommendations made."

C. THE PETITIONER:

64. The petitioner summarizes his position in his latest communication (August 3, 1994), stating that "while it is true that a judicial enquiry was conducted on the murder of young

Mavares, it is clear that the investigation did not establish responsibility for the crime, nor has the appropriate punishment been imposed, despite the evidence in the record."

65. Moreover, "the bare fact investigation (averiguación de nudo hecho)---a preliminary enquiry to gather evidence and conduct proceedings to verify punishable acts committed by an official--has become a privilege of impunity in our system of justice, because, since no deadline is set for filing the prosecutor's charges, important evidence to clarify the facts or to order action can be lost."

66. As to the actions of the Attorney General's Office, petitioner asks, "How can it be explained that the Attorney General's Office has pressed charges before a competent court against four officers of the Metropolitan Police based on a number of items of evidence, and that, moreover, the trial court, concurring with the prosecutor's opinion, issued an arrest warrant for the police officers and that later the court disallowed the evidence and released the police officers, disregarding its own actions, without having taken other actions that convincingly contradict its prior actions." (...) "Why, if the trial court disallowed the initial evidence, because it was insufficient or contradictory, the court took no decision to again conduct a series of expert examinations and take depositions from witnesses to effectively clarify the investigations?"(...) "What explanation can justify the Forty-Third Criminal Trial Court's not leaving the investigation open, so that the reported acts could be cleared up?"

67. As to the failure of the victim's family to take action in the judicial proceedings, petitioner contends that such proceedings cannot depend on the action of private parties to be initiated. It is also pertinent to underscore that the case under review involves a crime of government action, which warrants ex officio proceedings without the need for a petition by a plaintiff. It is irrelevant, based on elementary human rights principles, for the victim's family to prefer charges in judicial proceedings.

68. The Venezuelan Government contends in its allegations that the investigation for the crime of homicide committed against Eleazar Ramón Mavares remains open in the Tenth Criminal Trial Court. However, on March 24, 1992, the Forty-Third Criminal Trial Court ordered that the records be transferred to the judicial records office, since an unappealable acquittal has been handed down in the case mentioned, and the case is therefore res judicata. It is noted that the court ordered the filing of the case since the identity of the victim's cadaver has not been positively identified, and this is of the highest importance in proving the corpus delicti as stipulated in the article 115 of the Venezuelan Code of Trial Procedure. In this regard, an enquiry has been under way since August 20, 1991 by the Tenth Criminal Trial Court on alleged negligence by the Forensic Medicine Institute--a department under the Technical Section of the Judicial Police--to identify the two cadavers. It is important to note that this investigation has been continuing in the secret investigative phase of criminal proceedings for 3 years, which shows an obvious unjustified delay in the administration of justice, since after such a long period there has been no official determination publicly of the definitive identification of the cadavers examined nor of the responsibility for the fact that an auxiliary organ of justice has confused the identification of a cadaver. Added to this is the uncertainty of young Mavares' mother because she does not know for sure the identity of her son's cadaver more than five years after his murder.

69. Petitioner also asserts that "It should be made clear that it was not the victim's mother who confused the body of her son with another; it was the Forensic Medicine Institute, which on July 15, 1991, had her come to the Directorate of Forensic Anthropology to compare pre-mortem with post-mortem data on the missing Eleazar Mavares. These data relate to individual N° 56 exhumed from the La Peste sector of the Cementerio General del Sur" (verbatim text from the records of the Forensic Medicine Institute.) (...) We stress the fact that in those records, issued by the Forensic Medicine Institute, the victim is described as the missing Eleazar Ramón Mavares.[FN7] The bodies that have been confused by the Forensic Medicine Institute were exhumed on August 21, 1991, and the record shows that the victim's mother recognized only the burial place of the body the Institute turned over to her in March 1989 as the body of her son.

[FN7] Note that the Forensic Medicine Institute is the technical organ trained to determine the identity of cadavers brought to it, as established in articles 77 and 84 of the Forensic Medicine Instruction Code and article 10 of the Judicial Police Law. On March 4, 1989, the Forensic Medicine Institute turned over to Mrs. Nancy Mavares a body identified as Eleazar Ramón Mavares, as stated in the death certificate of the young man.

70. Petitioner also says that "with regard to the Venezuelan Government's statement that during the disinterment the mother positively identified to the representatives of the Public Prosecutor's Office, the court and the experts, the body that had been buried, we observe that Eleazar Mavares' mother obviously does not have the technical knowledge required to identify skeletal remains exhumed in a particular place more than two years after the victim's death." (...) "It is also important to point out that members of the nongovernmental human rights organizations did not witness the disinterment of the cadavers because we were ordered by the trial judge to remain at a distance from the area, an order carried out by the Metropolitan Police, who were watching over the place where the remains were being disinterred."

71. "We note further that the cadavers being investigate were examined by experts from the Forensic Medicine Institute--a section of the Judicial Technical Police, under the executive branch--who were being criticized for alleged negligence in identifying the remains in question. (...) The experts assigned by the trial judge were César Romero, Martín Corona (forensic pathologists), Víctor Avidat, Morelia Quintana (forensic dentists), all of whom are active members of the agency criticized, and by specialists who although they are no longer members of that institution, as is the case of Maritza Garaicochea, performed official duties with it during the period in which the cadaver of Eleazar Ramón Mavares was surrendered. (...) In our view, the above facts constitute flagrant violations of the obligation of impartiality and due process, set forth in article 8.1 of the American Convention. (...) We could not conclude this observation without pointing out that independence in gathering evidence in a fair trial should be subject to the application of the technical knowledge required, in accordance with the science that is applicable, and be free from any pressure or interference that might be exerted by any interested party."

72. "As to the remedy of amparo indicated in the Government's reply, we consider that it was not appropriate, because how could a right violated be restored if the person involved had been murdered? (...) The family asked that an investigation be opened by a competent organ having jurisdiction over the matter, such as appeal to a court capable of establishing the facts. (...) Since an acquittal has been handed down as *res judicata*, no domestic remedy whatever can be filed."

73. "The request for compensation in this case is not in accordance with domestic law, because as the Venezuelan Government pointed out, acceding to this request would require that the accused be convicted so that a civil suit could be brought against him, but in this case an unappealable verdict of acquittal has been handed down by the court, so that this action is an illusory recourse for satisfying the just petitions of the victim's family."

D. AGREEMENT CONCLUDED BETWEEN THE PARTIES:

74. At 4:30 p.m. on February 15, 1995, the parties involved in this case met at the headquarters of the Inter-American Commission on Human Rights to reach an agreement on the implementation of the recommendations made by the Commission in its restricted report N° 24/94 approved during the course of its 87th regular session and forwarded to the Government of Venezuela on October 19, 1994.

75. Representing the Government of Venezuela was Dr. Asdrúbal Aguiar, and representing the victim's family was Dr. Liliana Ortega, Executive Director of Cofavic, the petitioner in this case.

76. The Inter-American Commission on Human Rights was represented by Professor Claudio Grossman, Rapporteur for Venezuela, and Dr. Milton Castillo, staff attorney at the Executive Secretariat.

77. The Inter-American Commission on Human Rights considers it appropriate to copy the agreement, verbatim:

1. The Venezuelan Government undertook to request, in the next few days, that the Public Prosecutor's Office appoint an impartial public prosecutor to carry out an investigation of the events that led to the death of Eleazar Ramón Mavares.

2. The Government of Venezuela will request from the Public Prosecutor's Office that it call for a final decision from general criminal jurisdiction regarding the identification of the victim's body, and if necessary, will request that an independent expert be appointed for that purpose. With regard to this item of the agreement, the Inter-American Commission on Human Rights is offering its services in finding such an expert.

3. With regard to recommendation 7.2 of Confidential Report No. 24/94, approved by the IACHR at its 87th session that "Venezuela take the necessary administrative action to discipline those responsible and members of the security forces involved in the incidents in this case, the Government of Venezuela has said that this recommendation is subject to the investigation and

punishment of those responsible for the death of Eleazar Ramón Mavares. The Inter-American Commission on Human Rights will continue to monitor implementation of this recommendation.

4. With regard to compensation for loss and damages, the parties undertake to report to the Inter-American Commission on Human Rights on the state of compliance with this obligation by the Government of Venezuela, within a 30-day period as of the date of this agreement.

5. In accordance with the legal framework of the American Convention on Human Rights, the Inter-American Commission will continue to take up this matter.

E. INFORMATION PROVIDED BY THE GOVERNMENT OF VENEZUELA ON THE IMPLEMENTATION OF THE IACHR'S RECOMMENDATIONS

78. In a communication dated May 30, 1995, the Government of Venezuela stated the following:

1. By note N° 13.938 dated May 4, 1995, the Public Prosecutor's Office advised this office that it had commissioned Dr. Jaime Espinoza Chaffardeth, prosecutor for the 35th jurisdictional area of the Metropolitan Area of Caracas to hear the proceedings initiated before the forty-third criminal court of original jurisdiction in that judicial district and in which the judicial authority was urged last January 31, 1995 to pursue the investigation until the possible guilt of the person or persons responsible for the death of Eleazar Ramón Mavares was established. That prosecutor replaced the previous one, which gave rise to certain reservations on the part of the petitioners in this case.

2. With regard to the identification of Eleazar Ramón Mavares' body, the Public Prosecutor's Office has made a point of noting in his correspondence 12.562 signed on March 29, 1995 that there is no legal uncertainty whatsoever as to this matter. It states the following in this regard:

a) With the completion of the finger print report No. 504 which has been passed on to the forty-third criminal court of original jurisdiction, it has been fully demonstrated that the body handed over to Mrs. Nancy Mavares was that of her son Eleazar Ramón Mavares.

b) That the forensic report confirms that the body in question was not decomposed at the time of the autopsy and was clearly identifiable at the morgue, since the victim's family readily recognized him when they took him to bury him.

c) The public prosecutor went on to note that as a result of some subsequent confusion that had arisen for reasons that are explained in the file, the mother, in the presence of witnesses, recognized the exhumed body of Eleazar Ramón Mavares as being that of her son--the clothing he was wearing was the same clothing in which he had been buried. All of this is irrefutably recorded in the photographic testimony conducted for the purpose and included in the case records opened in connection with the case.

In any case, the Public Prosecutor's Office has noted that a case concerning the alleged liability of the forensic experts as a result of the extraordinary confusion that arose in connection with the burial of Eleazar Ramón Mavares' body was before the 10th criminal court of original

jurisdiction. That case continues but no reference is made to the identification of the body, which bears no discussion insofar as the Venezuelan justice system is concerned and in light of the foregoing.

Finally, with regard to the compensation that was considered appropriate for the victim's mother, Nancy Mavares, we wish to report that the necessary administrative and legal steps are now being taken to give her a fair and equitable government pension.

F. OBSERVATIONS OF THE PETITIONER WITH REGARD TO PROGRESS REGISTERED IN LOCAL VENEZUELAN JURISDICTION IN FULFILLING THE TERMS OF THE AGREEMENT CONCLUDED BETWEEN THE PARTIES ON FEBRUARY 15, 1995

79. In a communication dated June 28, 1995, the petitioner stated that "with regard to the judicial investigation, we feel we should point out that while it is true that the public prosecutor's office recently asked the Forty-third Criminal Court of Original Jurisdiction of the Metropolitan Area of Caracas to continue the line of investigation followed in case 274-89 concerning the assassination of Eleazar Ramón Mavares, that court, had already decided on March 24, 1992 to file case 274-89 in the judicial records offices of the Consejo de la Judicatura following its final acquittal of police officer Alexis José Torres."

80. "In our view continuance of the investigation in the Forty- Third Criminal Court of Original Jurisdiction would be an ineffectual remedy in terms of a thorough and effective investigation into Mr. Mavares' assassination since it is this court that handed down a final decision on the incidents reported."

81. "With regard to the positive identification of the body, we feel it is appropriate that the Public Prosecutor's Office and the competent judicial authority submit formally to the victim's mother the results of the identification of the body. With regard to criminal liability that must be determined in light of the confusion regarding the identity of Mr. Mavares' body, we wish to note that the investigation being pursued at the Tenth Criminal Court of Original Jurisdiction has taken four years and a preliminary decision on the incidents reported has yet to be taken. This constitutes an undue delay and is incompatible with the human rights obligations assumed by Venezuela."

82. Dr. Aguiar has informed us off the record that the Venezuelan Government is looking into the compensation payment to Eleazar Mavares' mother, point four of the agreement signed on February 15, 1995. With regard to compensation for the victim's mother, we formally reiterate our desire that any agreement in this matter, as in the case of execution of the agreement, should have prior approval by the Commission."

V. GENERAL CONSIDERATIONS

A. CONSIDERATIONS WITH REGARD TO THE JURISDICTION OF THE COMMISSION AND FORMAL ADMISSIBILITY REQUIREMENTS

83. The Inter-American Commission on Human Rights is competent to consider the present case inasmuch as it deals with violations of the rights recognized in the American Convention on Human Rights: Article 1.1 on the obligation to respect rights; Article 4, right to life; Article 5, right to humane treatment; Article 8.1 on right to a hearing; and Article 25 on the right to judicial protection, as provided for under Article 44 of that Convention, to which Venezuela has been a State Party since August 9, 1977.

84. The petition meets the formal admissibility requirements set forth in the American Convention on Human Rights and in the regulations of the Commission. In this case national legal remedies have been exhausted, in accordance with generally recognized principles of international law.[FN8]That is proved by the judgment of the Sixteenth Higher Court on February 18, 1992, confirming the sentence acquitting police officer Alexis José Torres of the crime of First Degree Murder and by the dismissal of the case with respect to the crime of unlawful use of a firearm. Moreover, on March 24, 1992, after the time allowed for an appeal for annulment of the sentence had lapsed without the representative of the Public Ministry lodging an appeal, the 43rd Court ordered the file to be remitted to the judicial archives of the Venezuelan Court Council.

[FN8] The case pending in the Eleventh Court of the First Instance is only for the purpose of determining the presumed negligence of officials of the Institute of Legal Medicine in the identification of the victim's corpse.

85. The denunciation was submitted to the Inter-American Commission on Human Rights on October 19, 1992, that is to say within six months of the definitive judgment of the Venezuelan courts, as required under Article 46.1 b of the American Convention. Moreover, the claim is not pending in any other international forum, nor is it a copy of a previous petition already examined by the Commission.

B. CONSIDERATION WITH REGARD TO THE MATERIAL RESPONSIBILITY FOR THE ACTS AND ANALYSIS OF THE EVIDENCE

86. In this case documents have been submitted that throw light on the events denounced, which were, moreover, published by the Venezuelan press. The documents submitted to the Inter-American Commission on Human Rights include testimony from the following people who were close to the scene of the events at the time they occurred on March 3, 1989: Angélica Mercedes Aguilar, Bertha Elena Prado Aguilar, and Judith Coromoto Betancurt. The following are syntheses of those testimonies:

ANGÉLICA MERCEDES AGUILAR:...some shooting began, in the middle [broma?] of the shooting we ran under the bridge, where there were houses, and as they were open we ran into them, but he [Eleazar Ramón Mavares] entered a house where there were a lot of people and the owner of the house brought him out and he continued running under the bridge looking for another house. It was then that the soldier told him to stop. He stopped and threw himself on the ground. The soldier told him to open his legs and then fired at him, and walked a bit further on.

Then the police came by, the shooting was continuing, and the soldier was still there. He [Eleazar Ramón Mavares] lay there for about half an hour. A group of policemen came up and one of them shouted that he was wounded. Then an officer [comandante] shouted at one of the policemen to kill him because they were not going to be stuck with wounded people. Then they killed him; with a burst of [submachine] gun fire. The soldiers picked up the body, then they--that was the officer [comandante]--began asking who had killed him, and a soldier stepped forward and said "I was the one who stopped him and wounded him." Then the officer [comandante] asked: "Who killed him?" and the soldier replied: "It was someone dressed in blue." Then he asked what his name was and I heard him say Alfredo, or Roberto Torres, I didn't catch the name very well...

BERTHA ELENA PRADO AGUILAR:...when we peeped out of the window, Lisbeth and I, and we saw him walking, I said "what are you doing there, get inside." It was then that we heard the voice of a soldier who shouted at him to halt. Then he told him to put his hands on his head and turn round. Then to throw himself face down on the ground. He said: "open your legs." Then we heard a shot and threw ourselves on the floor, because they were pointing their guns at the house. Then we peeped out again and saw a line of blood where he was...It was then that we saw the Metropolitan Police get down and they started shouting "Here's a corpse." They checked him and said "No, no, this one is wounded". And it was then that they said to an officer [comandante], here is someone wounded, what shall we do with him--in fact what they really said was "sir [mi distinguido], what are we going to do with him?"--and the officer [comandante] said "kill him, because I am not going to get stuck with wounded people". The other policeman said "but what are we going to do with him?" and he replied "well, kill him, then, kill him". It was then that there was a burst of gunfire and all of them climbed up... Then a colonel said: "Who killed this guy?" A soldier spoke and said: "It was me who wounded him, but one of the little guys in blue clothes killed him ["lo mató uno vestidito de azul"]. The colonel asked again "who was it who killed him?" and a Metropolitan [policeman] said: "I did." He asked him: "what's your name?" and he answered Alfredo or something like that, but I do know the family name was Torres...

JUDITH COROMOTO BETANCURT:...in twenty minutes the Metropolitan [police] arrived, they talked on the radio and said they had found someone wounded. Then one of them said "kill him, one lout less," and Eleazar replied "don't kill me. I give myself up." Then they shot him and put a revolver beside him, wrapped in the jacket he was wearing. They took his wallet and his money. Then they wrapped him up. The officer in charge came up and asked who had killed him. The soldier [guardia] replied: "It was me, captain, I was the one who wounded him." Then he asked again who killed him and a policeman came forward and said "I did, commander [comandante]., Jorge Torres", well I am not sure about the first name but the family name was Torres. Then the officer [comandante] said "the one who wounded him and the one who killed him stay here. Then they lifted him on/[into?] the vehicle."

87. The testimony of the eye witnesses proves not only that they were present at the place and time of the events that occurred on March 3, 1989, but also that they point to several agents of the Venezuelan state as those materially responsible. Indeed, the Public Ministry Attorney, Dr. Hernando Cuenca Govea, stated the following in his denunciation of February 20, 1990:

... the statements of the [police] officers is totally disproved by the testimony of the three witnesses: ANGÉLICA MERCEDES AGUILAR, BERTHA ELENA PRADO AGUILAR, and JUDITH COROMOTO BETANCURT, since although? it is true that when asked in a line-up to point out the officers she had seen (folio 117), Angélica Mercedes Aguilar recognized police officer ALEXIS JOSÉ TORRES FLORES as the person who killed citizen ELEAZAR RAMÓN MAVARES, and MIGUEL ANGEL LISCANO LANDAETA and JOSÉ DELFIN ACERO GALVIS as the policemen in the patrol car, it is no less true that in the line-up confrontation with suspects, registered on folio 118, citizen JUDITH COROMOTO BETANCURT recognized all those in the group of detained persons as policemen who were present at the place, on the day and at the time the events occurred. In addition to all the above, we have the [police] new occurrences report, the Daily Report of District 51, and the Daily Report of the Supervision Department [Departamento de Control], from pages 14 to 16 of the file, where Miguel Liscano registers the death of Eleazar Ramón Mavares. Moreover, on pages 190 to 196 of the file, we have the taking possession and swearing-in records and the register of personnel movements for the above-mentioned police officers, which show that they were on duty the day of the events.

88. The testimonies show that on Friday, March 3, 1989, between about 2:00 and 3:00 p.m. Eleazar Ramón Mavares was unarmed and talking with a group of people near the Miraflores bridge, Caracas. The witnesses agree that Ramón Mavares was shot in the legs by a soldier, who continued on his way, and that later members of the Metropolitan Police executed him after finding out that the victim could not run because of the bullets wounds in his legs.

89. The copy of Certified New Occurrences issued by the Intelligence Division of the Metropolitan Police for March 3, 1989 expressly registers the following:

Corporal [Cabo 2do] 4545 Miguel Liscano reported in Report-5111, that at 15:40, returning from Miraflores Bridge, he had entered Vargas Hospital in a private car...(…) likewise in the above-mentioned place citizen Eleazar Mavares, Venezuelan, 21 years old, died instantly. There were bullet wounds in different parts of the body.

90. It is evident that that copy of the police's New Occurrences record contradicts the statements made by the policemen before the courts. Indeed, the 74th Attorney of the Public Ministry declared in his written statement of February 20, 1990:

For their part, citizens: ALEXIS JOSÉ TORRES FLORES, MIGUEL ANGEL LISCANO LANDAETA; ELIADES ALEJANDRO BLANCO VÁSQUEZ; OMAR ALEXIS RODRÍGUEZ BAUTISTA; LUIS ENRIQUE ARANDIA ESCOBAR; JOSÉ DELFIN ACERO GALVIS, AND NELSON ALFREDO ALTUVE ROMAN, all police officers assigned to District No. 51 of the Metropolitan Police, when they make the statements contained in the file, absolutely deny having patrolled the Miraflores Bridge to Urapal, in the La Pastora parish, on March 3, 1989, and deny any knowledge of the death of the citizen known in his lifetime as: ELEAZAR RAMÓN MAVARES.

91. As a result of the information provided and the evidence submitted to the Inter-American Commission on Human Rights, it is fully established that the perpetrators of the murder of

Eleazar Ramón Mavares--in the circumstances surrounding events in Caracas, Venezuela, on March 3, 1989--were government employees acting under cover of their official function.

C. CONSIDERATIONS REGARDING THE SUBSTANTIVE QUESTIONS

92. The Inter-American Commission on Human Rights considers that there are three fundamental questions in this case that must be examined to establish the international responsibility of the Venezuelan State:

I. The violation of the right to personal security of Eleazar Ramón Mavares and the Venezuelan State's obligation to make restitution for the damages caused.

II. The Venezuelan State's duty to investigate and punish responsible parties when human rights of persons under its jurisdiction have been violated.

III. The Venezuelan State's obligation to identify the victim's cadaver and the right of relatives to know its whereabouts in order to give it Christian burial.

93. From a review and analysis of the facts and evidence in the present case, it is clear that the State of Venezuela has not complied with its obligation to ensure the enjoyment of the basic human rights set forth in the American Convention. Noncompliance is the result of the direct participation by agents of the state in the death of Eleazar Ramón Mavares on Friday, March 3, 1989. For purposes of determining the international responsibility of the Venezuelan State in the victim's murder it is irrelevant whether Alexis José Torres Flores was the police officer who committed the crime. The essential point is that it be demonstrated that the victim's murderers were State agents acting under the aegis of public duty. In the case under study this has been amply demonstrated, especially if we take into account the depositions of Angélica Mercedes Aguilar, Bertha Elena Prado Aguilar, and Judith Coromoto Betancurt.

94. It is therefore clear that "any infringement on human rights recognized in the Convention that can be attributed under the rules of international law to acts or omissions of any public authority constitutes an action attributable to the State, for which it is responsible under the terms of the Convention."^[FN9] The essential elements for establishing international responsibility may be summarized as follows:

A) Existence of an act or omission that violates an obligation established by a valid rule of international law.

B) The illicit act must be attributable to the State as a legal person.

C) There must be harm or damages as a result of the illicit act.^[FN10]

[FN9] Inter-American Court, Velásquez Rodríguez, Page 67, paragraph 164.

[FN10] Manual of International Public Law, Max Sorensen, Fondo de Cultura Económica, Mexico City, 1985, page 508.

95. The present case contains all three elements. In the first place, we have the actions taken by military and police personnel, who killed Eleazar Ramón Mavares on March 3, 1989, while

he was in a passive situation. In the second place, Venezuela as a State party to the Convention has violated its basic obligation to respect the rights and freedoms recognized therein and to ensure to all persons subject to its jurisdiction the free and full exercise of those rights and freedoms. It is further demonstrated that the illicit acts are attributable to the State, because the persons responsible for them acted under the aegis of a public function. Finally, the damages caused by the illicit acts are the murder of the victim and the subsequent denial of justice, inasmuch as despite the time elapsed--five years and six months--the perpetrators have not been punished and the victim's relatives have not been compensated. Nor has there been any administrative proceeding for disciplinary sanctions of the responsible parties and the members of the security forces that took part in the acts.

96. On this question, the Inter-American Court of Human Rights has ruled in several cases that it is a principle of international law that any violation of an international obligation that causes damages carries an obligation for reparation. The obligation to pay compensation does not derive from domestic law, but from violation of the American Convention. That is, it results from an obligation of an international nature.[FN11]

[FN11] See the case *Alobotoe et al*, Compensatory Damages, Judgment of September 10, 1993, Series C, No. 12, paragraph 44; *Velasquez Rodríguez Case*, Compensatory Damages, Judgment of July 21, 1989, Series C, No. 7, paragraph 25; *Godínez Cruz Case*, Compensatory Damages, Judgment of July 21, 1989, Series C, No. 8, paragraph 23.

97. Reparation of harm brought about by the violation of an international obligation--in this case, the rights guaranteed in the American Convention--consists in full restitution (*restitutio in integrum*), which includes restoration of the prior situation, the reparation of the consequences of the violation, and indemnification for patrimonial and non-patrimonial damages, including emotional harm.[FN12]

[FN12] *Velásquez Rodríguez*, supra, paragraph 26.

98. It is also clear that the doctrine of international law lays great stress on the matter of reparation when a State is internationally responsible for infraction of an obligation emanating from a treaty. Anzilotti comments on responsibility in these terms: "Responsibility is a consequence of conduct contrary to the rule of law....The violation of international legal order by a state subject to that order gives rise to a duty to make reparation." [FN13]

[FN13] Anzilotti D., *Curso de Derecho Internacional*, Ed. Reus, Madrid, 1935, page 467.

99. Verdross expresses a similar view: "It is commonly held that a subject of international law to which an internationally illegal act is attributed is obliged to make reparation for harm

caused."[FN14] Even more forceful is Freeman, who says: "responsibility is nothing more than a duty to repair harm caused by criminal action of the state."[FN15]

[FN14] Verdross, Alfred: *Derecho Internacional Público*, Ed. Aguilar, Madrid, 1957, page 290.

[FN15] Freeman: *The International Responsibility of States for Denial of Justice*, 1938, pages 17- 18.

100. García Amador states that: "it is of undeniable interest to stress the fact that, even in the traditional concept of responsibility, there is not only the element of reparation *stricto sensu*, but also the element of sanction or punishment. Upon examination of the legal nature and functions of reparation, it is evident that some forms it has assumed in practice clearly respond to a punitive intent, to the extent that recently there has been a generalized view that the traditional practice of reparation has at times assumed the nature of genuine punitive damages. In other words, at times reparation measures have demanded or imposed a punishment or penalty for violation or non-observance of an international obligation."[FN16]

[FN16] García Amador, *Principios de Derecho Internacional que Rigen la Responsabilidad*, Madrid, 1963, page 37.

101. The arguments contained in the doctrine and the fact that participation of State agents in the murder of Eleazar Mavares has been proved, together with the lack of identification and punishment of the perpetrators, confirms Venezuela's international liability as a State party to the American Convention. It is therefore obliged to aid the victim's relatives and order indemnification for patrimonial and non-patrimonial damages, including emotional harm.

102. As regards its duty to investigate the case, the Venezuelan Government said in its reply of August 24, 1994 that: "while in the case under review, investigation of the public official was dismissed for lack of conclusive evidence, the investigation of the crime remains open in the Tenth Criminal Trial Court of the Judicial District of the Federal District and the State of Miranda, in order to clarify the facts and determine the responsibility for the death of the above-mentioned citizen, since thus far there is no other public official indicted in the case. However, a Public Prosecutor has been commissioned to reactivate the case in the above-mentioned court."

103. The Venezuelan Government's assertion that "the investigation of the crime remains open in the Tenth Criminal Trial Court ... in order to clarify the facts" of the victim's death is not true, because on March 24, 1992, the 43rd District Court ordered that the Mavares case be filed. In this proceeding there was a definitive sentence constituting a *res adjudicata*. This clearly demonstrates that there was no investigation pending to clarify the facts and determine the responsibility for the death of Eleazar Ramón Mavares. What is pending--since August 20, 1991--in the Tenth Criminal Trial Court is a determination of criminal negligence allegedly committed by the Institute of Legal Medicine of the Technical Judicial Police in identification of the victim's cadaver.

104. It is therefore evident that the crime of murder of Eleazar Ramón Movers by agents of the Venezuelan State has gone unpunished, with no possibility for clarifying the facts and identifying and punishing the perpetrators. In this context, it is important to note that Article 1.1 of the American Convention imposes a generic and complex obligation on the States parties which implies, on the one hand, the duty to respect the rights and freedoms recognized in the Convention, and, on the other, to ensure to all persons subject to their jurisdiction the free and full exercise of each of those rights. This article must be interpreted in relation to each of the rights protected in the Convention to determine whether a violation of human rights may legally be attributed to a State Party. (Velásquez && 162-164): (Godínez && 171-173).

105. In accordance with the above-mentioned Article 1.1 of the Convention, every State accepts, freely and in good faith, the obligation to abstain from violating the human rights recognized in the Convention. Thus, the Inter-American Court of Human Rights has interpreted this provision as a duty of States to prevent and investigate with all seriousness any violations occurring in their jurisdiction, in order to identify those responsible, to punish them accordingly and to indemnify the victims with adequate compensation. The Court adds that "the obligation to investigate, like that of preventing, is one that should be undertaken with all seriousness, and not as a simple formality destined from the start to be fruitless. It must be purposeful and be taken up by the State as a legal duty proper to it, and not as a result of moves made by private interests, depending on the degree of initiative taken in the proceedings by the victim or his relatives, or on evidence submitted by private individuals, without the authorities trying to ascertain the truth...(…) If the State apparatus acts in such a way that such a violation goes unpunished and the victim is not restored, as far as is possible, to the full exercise of his rights, it can be said that it has failed to comply with its duty to ensure their free and full exercise for persons under its jurisdiction." [FN17]

[FN17] Inter-American Court on Human Rights, Judgment of July 29, 1988, in the Velásquez Rodríguez case, pp. 71, 72, 73; parr. 174-176-1772.

106. The Inter-American Commission on Human Rights understands that the Venezuelan Government considered it necessary to suspend some constitutional guarantees because of the violence occurring at the time; however, the American Convention, in Article 27.2 does not condone violation of certain fundamental rights, including the right to life, and the failure to investigate and punish human rights violations committed by public authorities in abuse of their duties.

107. On this subject, the Inter-American Court of Human Rights has stated the following in its Advisory Opinion N° 8:

When constitutional guarantees are suspended, some legal limits of the action of public authorities may differ from those in force in normal conditions, but they should not be considered nonexistent, and it should not be construed that the government has more absolute powers beyond those authorized under that system of legal exception.

If, as emphasized by the Court, the suspension of guarantees should not exceed that which is strictly called for by the emergency, any action by public powers that goes beyond the limits that should be precisely defined in the state of emergency is also illegal, even in the context of the prevailing special legal regime.[FN18]

[FN18] Inter-American Court of Human Rights, Advisory Opinion No. 8, January 30, 1987, pages 16, 21, and 22, paragraphs 24 and 38.

108. The Inter-American Commission therefore considers that Venezuela as a State party to the American Convention did not comply with its duty to prevent, investigate, and punish the murder of Eleazar Mavares, because in spite of the time elapsed--five years and six months--that crime has gone unpunished and any possibility of clarifying the case has been foreclosed because it was ordered filed on March 24, 1992.

109. Once more, the Commission must express its understanding of the difficult situation experienced by Venezuela during that period. However, it must stress that once order was restored, the Government had the obligation to identify the victim's corpse correctly. The Venezuelan Government's obligation to the victim's relatives is clearly established in the jurisprudence of the Inter-American Court of Human Rights:

...crimes against the person must be officially investigated in accordance with the State's duty to safeguard public order (...). The obligation to investigate acts of this type subsists as long as there is any uncertainty as to the final fate of the disappeared person. Even supposing that legitimate circumstances of the domestic legal order should not make it possible to apply the corresponding sanctions against the individuals responsible for crimes of this type, the right of the victim's relatives to know what happened to him or her and the whereabouts of the body, is a just expectation that the State should comply with the resources at its disposal.[FN19]

[FN19] Inter-American Court of Human Rights, Judgment of July 29, 1988 in the Velásquez Rodríguez case, pp. 74 and 75, paragraphs 180-181-182.

110. In this regard, it is particularly serious that the Venezuelan State, in its reply of August 24, 1994, attempts to deny its responsibility with the phrase "as to the doubts of the victim's mother about the identity of the body," since it has been demonstrated that the Institute of Legal Medicine, an agency of the Technical Division of the Investigative Police, was the one whose experts identified the first body delivered to the Mavares family on March 4, 1989, and later informed the same family on July 12, 1991 "that cadaver number 56, exhumed from the common graves [in the events of February and March, 1989] had been fully identified through fingerprint report Number 504 as that of Eleazar Ramón Mavares." [FN20] It is clear that the Venezuelan State has given a contradictory response, and admits its responsibility by saying that "the result of the expert analysis is in the court that ordered the exhumation and is considering

responsibilities for negligence by personnel of the Institute of Legal Medicine of the Technical Division of the Judicial Police of the Ministry of Justice, in recognition and positive identification of the cadaver of Eleazar Ramón Mavares."

[FN20] Reflected in the report of the Institute of Legal Medicine, July 15, 1991.

111. It is therefore clear that the victim's mother lacks the technical skills to identify the cadavers that have been mixed up, especially after the Venezuelan courts themselves have not cleared the matter up to this date, although more than three years have gone by since the Institute of Legal Medicine informed the relatives of the existence of a second body.

112. On the basis of the foregoing facts, the Inter-American Commission on Human Rights considers that the Republic of Venezuela is not just internationally liable for the death of the victim, but also for lack of diligence in investigating the facts, since the whole investigation phase was based on a body that did not belong to the victim. Indeed, the physical inspection carried out in the Morgue of the Institute of Legal Medicine by Domingo Germán Ríos and Salvador Moreno, both of whom belong to the Physical Evidence Division of the Technical Corps of the Judicial Police, clearly registers the following:

In the above-mentioned place, on a metal table designed for post-mortem examinations, there was a naked, male body, face up... External examination of the body revealed numerous round-shaped wounds in different parts of the body.

113. The arrest warrant issued by the 43rd First Instance Court reads:

8) Medical-legal expert opinion and certificate of autopsy on the body of the person known during his lifetime as Eleazar Ramón Mavares, signed by forensic doctors Ernesto González Isea, Verónica Sopp, and Alfredo Terlizzi, who conclude:

death resulted from INTERNAL HEMORRHAGING DUE TO GUNSHOT WOUNDS IN THE CHEST AND ABDOMEN.

11) Blood tests and legal identification carried out by Guillermo Acosta Rodríguez and Jacqueline García Guzmán, of the Department of Microanalysis of the Technical Corps of the Judicial Police.

13) Burial certificate issued by the Cementerio General del Sur cemetery referring to the citizen known during his lifetime as Eleazar Ramón Mavares.

114. Under international law, if a State is responsible in such cases, it is solely because it failed to comply with the international duty to use "due diligence" within the means at its disposal, to prevent such acts. "Due diligence" is not a subjective factor, but rather the very content of the pre-existing obligation which the State is responsible for violating. The State's liability does not depend on the existence of an act of malice, negligence, or carelessness by any

individual agent; it may consist of a general defect or a flaw in the structure of the State, or in its public administration, and may have nothing to do with any subjective intention.

115. In this regard, the Codification Conference of the Hague makes no distinction between government employees of lower or higher rank with regard to international liability. Both authorities proclaim that the State is liable under international law "as a result of an act or omission by the Executive Branch, which is incompatible with the international obligations of the State" (Article 7), and "as a result of acts or omissions by [government] officials while acting within their purview, when such acts or omissions transgress the international obligations of the State." (Article 8).[FN21]

[FN21] Cited by Max Sorensen, *Manual de Derecho Internacional Público*, op. cit., p.519, League of Nations, Official Journal.

116. In the case we are dealing with, the acts committed by agents of the State which caused the victim's death, the failure to clarify what happened and punish those responsible, and the fact of having concluded a judicial process--and, ultimately, the enquiries into a violation of the right to life--without the final whereabouts of the body of the victim having been established, constitute a failure on the part of Venezuela to comply with the obligations acquired under Article 1.1 of the American Convention, which committed it to guaranteeing Eleazar Ramón Mavares full and free exercise of his human rights.

117. Moreover, it is a matter of grave concern that one trial should have ended with the acquittal of those allegedly responsible, when another trial is still going on regarding the identity of the body of the victim. Indeed, on August 21, 1991, the Tenth First Instance Court ordered exhumation of the body handed over by the Institute of Legal Medicine to members of the victim's family on March 4, 1989, and on September 4, 1991, the same tribunal ordered the exhumation of individual No. 56 found in the mass grave in the "La Peste" sector, who allegedly had identical features. The Tenth First Instance Court has not yet ruled on responsibilities resulting from the confusion in the identification of the body of Eleazar Ramón Mavares, nor on which body is really his.

D. CONSIDERATIONS WITH REGARD TO VIOLATION OF DUE PROCESS

118. Article 8 of the American Convention establishes the requirements to be observed at the different stages of a lawsuit in order to ensure that true and proper judicial safeguards exist.[FN22] This article comprises different rights and guarantees derived from a common legal value or good which, taken as a whole, constitute a unique body of law which is not specifically defined but whose unmistakable purpose is definitely to ensure the right of everyone to a fair trial.[FN23] That right is a basic guarantee of respect for the other rights recognized in the American Convention, because it sets a limit to misuse of power by the State.[FN24]

[FN22] Inter-American Court of Human Rights. Judicial Guarantees in States of Emergency (Articles 27.2, 25 and 8 of the American Convention on Human Rights), Advisory Opinion OC 9/87 of October 6, 1987, Series A. No. 9, paragraph 27.

[FN23] See European Court of Human Rights, Golder case, Judgment of February 21, 1975, Series A., No. 18, paragraph 28, in respect of Article 6 of the European Convention on Human Rights, which basically includes the same rights and guarantees as Article 8 of the American Convention.

[FN24] The right to a fair trial is regulated in various articles of the Convention, such as 7, 8, 9, and 25.

119. According to Article 33 of the American Convention on Human Rights, the Convention's organs are competent to determine whether the actions or omissions of any State organ, including the judiciary, are at variance with the responsibilities that State assumed with regard to the international commitments it undertook in good faith when signing said Convention. Thus the Commission is fully entitled to examine whether in specific legal proceedings the legal guarantees established in Articles 8 and 25 of the American Convention were respected or not. The determination of whether specific legal proceedings meet the requirements of Articles 8 and 25 of the American Convention should be based on the particular circumstances of the case and on an examination of the proceedings as a whole.[FN25]

[FN25] See the jurisprudence of the European Court of Human Rights: the Barberá, Messegue, and Jabardo case, Judgment of December 6, 1988, Series A, No. 146, paragraph 83; the Asch case, cit. up supra note 9, paragraph 26; and the Delta case, cit. ut supra, note 9, paragraph 35.

120. The course of the judicial proceedings in this case is as follows: In its written communication dated April 18, 1994, the Government of Venezuela pointed out that the First Instance Judge issued a warrant for the arrest of the police officers on the basis of evidence obtained during the pre-trial investigation phase, but that the same judge acquitted the police at the end of the trial because he found no full proof of the facts. Here it is fundamental to demonstrate the contradiction involved in the First Instance Judge, Dr. Mérida Aleksik Medina, ordering the arrest of the police on February 23, 1990 and later acquitting them on July 12, 1991. The arrest warrant stated:

As can be seen from the above-mentioned factors, it has been sufficiently documented that the above-mentioned officers are indeed guilty of the offenses described [First Degree Murder and Unlawful Use of a Firearm]... she who decides in this case considers that the evidence contained in the file indicates that those acts were carried out by the accused and that according to law in this case... it is appropriate to order the judicial arrest of the following citizens [police officers]...

121. In her acquittal judgment, the same judge wrote:

the corpus delicti of the crimes of first degree murder and unlawful use of a firearm...against the citizen known in his lifetime as Eleazar Ramón Mavares (murdered) is evident, it is nonetheless

true that one of the legal requirements established by Article 43 (Code of Criminal Proceedings),[FN26] which is the guilt of the accused, is not met; that is why the sentence regarding the accused ALEXIS JOSÉ TORRES FLORES must be acquittal...

[FN26] Article 43 of the Code of Criminal Proceedings: A verdict of guilty shall be pronounced when there is full proof both of the commission of the crime and of the guilt of the accused. It shall be acquittal when there is no proof for both or either.

122. There is a clear contradiction between the two decisions, because the first confirms that the assassination is "sufficiently documented" and the "police officers... are accused of the stated crimes," and that "the evidence confirms the guilt of the accused." However, one year and five months later the judge decides that there is no "clear proof" to convict the accused. Furthermore, as already noted in this report, the First Instance judge acquits the police on the same day that Mrs. Nancy Mavares, the victim's mother, was notified by the Institute of Legal Medicine (an agency of the Ministry of Justice) that the cadaver of her son was located in the common grave, and there had been an error in identification of the first cadaver that was turned over to her by the same Institute on March 3, 1989.

123. Another important criteria for determining the lack of due process in the present case is the reasoning of the First Instance judge that ended the acquittal sentence:

Under the principle in dubio pro-reo, the accused is given the benefit of the doubt when it is not known with certainty which person or persons took the life of the citizen known as Eleazar Mavares (deceased), because although the Venezuelan government is democratic, and the right to life is inviolable pursuant to Article 58 of the Constitution, free movement in the national territory was prohibited during certain hours because of the events that occurred on February 27, 1989 in Caracas; citizen ... Mavares disobeyed the presidential order, and had the misfortune to be killed...

124. It is true that freedom of movement was restricted because of the suspension of constitutional guarantees, but it is also true that the curfew established by the decree on that date was from 6 p.m. to 6 a.m. According to witnesses, the victim was assassinated at about 2:30 p.m.

125. The First Instance judge takes into account in her verdict the certified copies of the blotter of the Register and Control Section of the Metropolitan Police, which states that:

it is evident that the citizen known during his life as ELEAZAR RAMÓN MAVARES (deceased) died from several wounds on his body, moments after he and others in flight exchanged shots with army troops. It is clear that this element offers no proof that citizen Alexis José Torres Flores was the person who killed the deceased. On the contrary, it indicates to us that army troops were the persons involved in these acts, and Alexis Torres should not be held responsible for the death of the deceased.

126. Aside from the identification of the presumed culprit of the murder of Eleazar Ramón Mavares, it is proved that agents were acting under the aegis of a public function, and for the purpose of determining the liability of the Venezuelan State, "it is liable for any violation of human rights recognized in the Convention by a public authority or persons who act in an official capacity." [FN27] In the case under consideration it is demonstrated that:

- 1) Eleazar Ramón Mavares was assassinated on March 3, 1989.
- 2) Public authorities took part in his extrajudicial execution.

[FN27] Inter-American Court of Human Rights, Judgment of July 29, 1988, Velásquez Rodríguez Case, page 70, paragraph 172.

127. The Government of Venezuela has not categorically denied the facts, saying simply that the court seized of the case acquitted a certain public servant for lack of conclusive evidence, and by application of the principle of *in dubio pro-reo*. On this point the Inter-American Commission on Human Rights must state that it is totally immaterial whether said public official was acquitted in the case. What is important for the Commission is to determine whether it was State agents that killed the victim. This has been abundantly proved in this case, especially if we consider the sworn statements and the finding of the First Instance judge that there is "no proof that citizen Alexis José Torres Flores was the person who killed the deceased. On the contrary, it indicates to us that army troops were the persons involved in these acts, and Alexis Torres should not be held responsible for the death of the deceased."

128. With regard to the Venezuelan State's assertion that "in this case there is no accuser," it is important to emphasize what the Inter-American Court of Human Rights said to the effect that any investigation of human right violations "must have an objective and be assumed the State as its own legal duty not as a step taken by private interests, that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the Government." [FN28]

[FN28] Inter-American Human Rights Court, Judgment of July 29, 1988, Velásquez Rodríguez Case, page 156, paragraph 177.

129. In this context, it is essential to recall as well that both Article 8 and Article 25 of the American Convention on Human Rights constitute "necessary conditions for the procedural institutions regulated by the Convention to be considered judicial guarantees." [FN29] It should be noted that "the guarantees serve to protect, ensure, or enforce the validity or exercise of a right." [FN30] Article 25.1 of the American Convention includes the principle recognized in international human rights law of effective recourse to tribunals to guarantee human rights. [FN31] For this recourse to exist, the Convention requires that it be truly suited to determining whether a violation of rights recognized by the Convention has occurred and provide the necessary remedies. [FN32]

[FN29] Inter-American Court of Human Rights, Advisory Opinion OC-9/87, supra note 1, paragraph 30.

[FN30] Inter-American Court of Human Rights, Advisory Opinion OC-8/87 of January 1987, Habeas Corpus in emergency situations (Articles 27.2, 25.1, and 7.6), Paragraph 25.

[FN31] Inter-American Court of Human Rights, Advisory Opinion OC-9/87, supra 1, paragraph 24.

[FN32] Idem, paragraph 24.

130. In this regard, Article 8.2 (h) of the American Convention requires States parties to grant affected parties the right to appeal judgments to a higher court, including judicial review of the sentence and all substantive procedural steps, including the legality of evidence, the interpretation of the procedural rules that influenced the decision on the case, so that the review court can relatively easily examine the validity of the sentence in general, as well as respect for due process.

131. In view of the foregoing, the Inter-American Commission on Human Rights considers that in this case the lack of clarification of the crime of homicide against Eleazar Ramón Mavares (five years and six months), aggravated by negligence of public officials in the identification of the victim's body, and the lack of punishment for those responsible for these unfortunate events constitute a violation of Article 25 of the Convention. Therefore, Venezuela as a State party to the American Convention has not complied with its obligation to grant a simple, rapid, and effective trial to compensate the relatives of the victim for actions of State agents that violated the fundamental rights of Eleazar Ramón Mavares on March 3, 1989.

132. Similarly, Venezuela has failed to fulfill its obligation to consider appeals that should have been resolved within a reasonable period according to the rules of due process, as part of the obligation to provide full and free enjoyment of the rights recognized by the Convention by all persons subject to their jurisdiction.[FN33]

[FN33] See Article 8 of the American Convention on Human Rights.

E. COMMENTS ON THE VENEZUELAN GOVERNMENT'S OBSERVATIONS ON IACHR CONFIDENTIAL REPORT N° 24/94

133. The Inter-American Commission on Human Rights takes note of the Venezuelan Government's willingness to take "the necessary actions to implement recommendations Nos. 7.1,7.3, and 7.4." However, the Commission notes that, in the Venezuelan Government's reply of December 19, 1994, no mention is made of recommendation No. 7.2 of Confidential Report No. 24/94, which states that "It is recommended that the Venezuela State take the necessary administrative actions to discipline the responsible members of the security forces who took part in the events described in this case." The Inter-American Commission on Human Rights

considers that punishing all those responsible who took part in the events that resulted in the death of Eleazar Ramón Mavares on March 3, 1989 is a basic part of this report, and accordingly, cannot be omitted. Indeed, the Inter-American Court of Human Rights has stated on many occasions that states parties have the obligation to guarantee the free and full exercise of the rights recognized in the Convention to everyone under their jurisdiction and that "as a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized in the Convention and, if possible attempt to restore the right violated and provide compensation as warranted for moreover damages resulting from the violation." [FN34]

[FN34] Inter-American Court of Human Rights, Judgment Velásquez Rodríguez of July 29, 1988, pags. 68 and 69, par. 166.

134. As to the confusion in identifying the victim's cadaver, the Venezuelan Government states, "it wishes to express its surprise about the doubts regarding identification of the victim, since the cadaver suffered no injuries (...) that would have prevented or hampered recognition of it by the family..." This assertion, however, is not consistent with the material facts of this case. In effect, in the case sub-lite, the victim's mother, Mrs. Nancy Mavares, was informed on July 12, 1991--by officials of the Directorate of Forensic Anthropology--who requested her presence that "cadaver No. 56, disinterred from the common graves, had been positively identified through fingerprints (necrodactilia No. 504), as the body of Eleazar Ramón Mavares." [FN35] Additional evidence that Nancy Mavares was not the one who was confused in identifying her son's cadaver was the work performed by the Department of Forensic Anthropology -- a division of the Forensic Medicine Institute under the Technical Corps of the Judicial Police and subordinate to the Ministry of Justice --which severed the hands from the first body buried and sent them to the Police Microanalysis Division to reactivate the fleshy part of the fingertips.

[FN35] The document issued by the Forensic Medicine Institute, dated July 15, 1991, is a piece of documentary evidence that exists in the files of the Inter-American Commission on Human Rights.

135. The Inter-American Commission on Human Rights must state in this regard that it is manifestly evident that the Venezuelan Government is responsible for failing to be properly diligent in identifying the victim's body, because it was the Government's own officials who informed Mrs. Nancy Mavares that there was another body with the same characteristics as her son's. It should be noted that the Venezuelan Government admits in its reply of August 24, 1994, that the court that ordered the disinterment discussed "the responsibilities for alleged negligence by the staff of the Forensic Medicine Institute (...) in recognizing and conclusively identifying the body of Eleazar Ramón Mavares."

136. As to the compensation to the victim's family, the Venezuelan Government states that it will begin talks with them to seek a satisfactory settlement of this matter. The Inter-American Commission on Human Rights wishes to express its hope that Venezuela, as a state party to the

Inter-American Convention on Human Rights, will take the necessary steps to ensure full compliance with all the recommendations made in this report.

F. CONSIDERATIONS REGARDING THE AGREEMENT CONCLUDED BETWEEN THE PARTIES

137. On February 15, 1995, the Venezuelan Government undertook --by agreement concluded between the parties-- to comply with the recommendations made by the Inter-American Commission on Human Rights in its Restricted Report No. 24/94.

138. In this regard the Inter-American Commission on Human Rights wishes to express the hope that, as a state party to the American Convention on Human Rights, Venezuela will comply with these recommendations in order to resolve the legal matter of infringement.

139. Once again, the Inter-American Commission on Human Rights wishes to state that it is prepared to cooperate with the Government of Venezuela in bringing about full observance of human rights in that country. Consequently, it will continue to follow up on the case to see to it that the recommendations made in this report are fully implemented.

VI. CONCLUSIONS

140. The State of Venezuela is responsible for violation of the right to life, personal integrity, judicial guarantees, and judicial protection of Eleazar Ramón Mavares (Articles 4, 5, 8.1 and 25 of the Convention), because of what happened in Caracas, Venezuela, on March 3, 1989.

141. The State of Venezuela has violated article 27.2 of the Convention, which provides that suspension of constitutional guarantees does not authorize that specified fundamental rights shall be suspended, including the right to life, nor does it suspend the judicial guarantees essential for protecting those rights.

142. The State of Venezuela has not fulfilled its obligations to observe the human rights and guarantees established by Article 1.1 of the American Convention on Human Rights, of which Venezuela is a State Party.

143. The Government of Venezuela --in its note of August 24, 1994--did not accept the friendly settlement procedure proposed by the Inter-American Commission on Human Rights pursuant to Article 48.1f of the American Convention and Article 45 of its Regulations.

VII. RECOMMENDATIONS

144. That the State of Venezuela conduct an exhaustive enquiry designed to punish those responsible for the death of Eleazar Ramón Mavares on March 3, 1989.

145. That the State of Venezuela take the necessary administrative actions to discipline the responsible members of the security force who took part in the events involved in this case.

146. That the State of Venezuela initiate an exhaustive enquiry to clear up correct identification of the victim's body and that it punish the government officials who did not proceed with due diligence to identify it.

147. That, when the victim's body is identified, the State of Venezuela proceed ex officio to resume the investigations to clarify the events that ended the life of Eleazar Ramón Mavares.

148. That the State of Venezuela pay a fair indemnity to the victim's family for material and nonmaterial damages, including emotional harm.

VIII. COMPLIANCE WITH THE RECOMMENDATIONS CITED IN PARAGRAPHS 146 AND 148 BY THE VENEZUELAN GOVERNMENT

149. The Inter-American Commission on Human Rights must attest to the compliance of the Venezuelan Government with recommendation No. 146 in Report 49/96, which the Commission approved on October 17, 1996, pursuant to Article 51.3 of the American Convention on Human Rights. On February 28, 1997, the Tenth Court of First Instance in Penal Affairs and Protection of the Public Patrimony in the Metropolitan Area of Caracas handed down a judgment wherein the following text cleared up the confusion that had arisen concerning the identity of the victim's corpse: "The dental study shows that the remains examined are those of an individual approximately 18 to 20 years of age. The results of a comparison of dental records made of ELEAZAR RAMÓN MAVARES PAREDES when he was alive (provided by Mrs. Nancy Josefina Mavares Paredes) with odontological studies of the disinterred cadaver showed that they matched. All of the foregoing factors lead to the conclusion that the cadaver which was exhumed on the 21st day of this month in the Southern General Cemetery correspond to the individual who in his lifetime was called ELEAZAR RAMÓN MAVARES."

150. In regard to Recommendation No. 148, concerning payment "of a fair compensatory indemnification to members of the victim's family for physical and nonphysical damage, including emotional distress," the Government of Venezuela--in the course of the hearing held on October 10, 1997--presented the Commission's Executive Secretary, Ambassador Jorge Taiana, two checks in the amounts of 7,116,327 bolivars and 7,883,673 bolivars, payable respectively to Mrs. Nancy Josefina Mavares, thereby complying with the aforesaid recommendation. A record of the proceedings that took place on that same date certifies that the Executive Secretary delivered the checks to Dr. Liliana Ortega, Dr. Hector Faundez and Dr. José Miguel Vivanco, as representatives of the victim in the present case. Thereafter, in a note dated October 14, 1997, Dr. Ortega (the Executive Director of COFAVIC) sent the Commission formal documents attesting to the delivery of those checks to Mrs. Nancy Josefina Mavares Paredes.

151. The Inter-American Commission on Human Rights recognizes the efforts being made by the Government of Venezuela to carry out the recommendations cited in this report, and trusts that Venezuela--as a State party to the American Convention on Human Rights--will continue to take the necessary steps to comply with the rest of the recommendations contemplated in the paragraphs bearing numbers 144, 145 and 147.

152. Accordingly,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

AGREES:

153. To continue its monitoring of the present case in order to ensure that the recommendations set forth in this report are carried out in their entirety.

154. To publish the present report immediately, pursuant to Article 48 of the Commission's Rules of Procedure and Article 51.3 of the Convention; and to include it in its forthcoming Annual Report to the General Assembly of the OAS.