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Title/Style of Cause:	Tomas Porfirio Rondin v. Mexico
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Decided by:	Chairman: Carlos Ayala Corao; First Vice Chairman: Robert K. Goldman; Second Vice Chairman: Jean Joseph Exume.
Dated:	18 February 1998
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I. EVENTS DENOUNCED

1. According to the complaint filed before the Inter-American Commission on Human Rights (hereinafter "the Commission") by the Democratic Revolution Party on July 17, 1995, on June 28, 1995, several members of the Organizacion Campesina de la Sierra del Sur (OCSS) [Rural Organization of the Southern Sierra] departed in two trucks for the city of Atoyac de Alvares. As they arrived at the Vado de Aguas Blancas, one of the trucks was stopped by agents of the Judicial Police of Guerrero. The policemen forced more than 60 rural people to get out of the truck and to lie on the ground. Ten minutes later, a second truck arrived at the same place, the passengers aboard the second truck were also forced to get out but, as they were getting off the truck, the police began to shot them indiscriminately. In all, 17 died and several others received severe wounds. When the shooting spree was over, the policemen told the survivors to go back to their towns. The policemen then placed weapons in the hands of the dead persons to lay the foundation for their version of the story, that is, that there had been a confrontation.

II. PROCESSING BEFORE THE COMMISSION

2. On July 17, 1995, the Commission received a petition denouncing the state of Mexico for its responsibility in the presumed violation of the human rights embodied in articles 4, 5, 8, 25 and 1.1 of the American Convention on Human Rights (hereinafter "the American Convention").

3. On July 26 of the same year, pursuant to Article 34 of its regulations, the Commission transmitted to the State of Mexico the pertinent parts of the complaint. It also requested the government to provide information on the events denounced and any other information that would help to determine whether all domestic remedies had been exhausted in this case. To do this, the Commission gave the government a term of 90 days.

4. On October 19, 1995, the government requested a 30-day extension to gather the documents needed for an adequate reply. The Commission granted this extension on October 28 of the same year.
5. On November 23, 1995, the government requested a second 30-day extension to give its reply. The Commission granted that request on November 28 of the same year.
6. On January 17, 1996, the Commission repeated its request to the State of Mexico to furnish information that it considered pertinent within a term of 30 days with respect to the case in question.
7. On January 24, 1996, the Commission requested the State of Mexico to take whatever precautionary measures were necessary to protect the life and physical integrity of all the witnesses to the Aguas Blancas massacre, particularly Mrs. Virgilia Galeana Garcia, as well as the family members of the victims.
8. On February 19, 1996, the Commission received the reply from the State of Mexico in connection with this case.
9. On February 21, 1996, a hearing on admissibility and merits of the case was held during the 91st regular session of the Commission.
10. The Commission received on March 7, 1996, additional information from the State of Mexico which provided subsequent elements involved in this case.
11. The petitioners sent additional information to the Commission on April 11, 1996, in addition to its observations on the State's reply.
12. On April 18, 1996, the Commission sent to the State of Mexico the petitioners' observations regarding its reply.
13. The Commission received additional information from the petitioners on May 9, 1996.
14. On May 31, 1996, the State sent its final observations to the Commission, along with additional information.
15. The petitioners presented additional information to the Commission on June 20, 1996, along with several pieces of evidence relating to the case.
16. On June 26, 1996, the Commission transmitted to the State the pertinent parts of the communication forwarded by the petitioners. At the same time, it sent to the petitioners the pertinent parts of the additional information presented by the State on May 31, 1996.
17. On January 15, 1997, the petitioners requested the Commission to issue its report pursuant to the terms of Article 50 of the Convention, and ruled out any type of friendly settlement of the case.

18. On January 16, 1997, the Commission transmitted to the State of Mexico the information provided by the petitioners on the preceding day.

III. POSITION OF THE PARTIES

A. Position of the Petitioners

19. The petitioners stated that the domestic remedies had been ineffective since there was no desire to conduct a serious investigation into the events denounced. Since there was no willingness to conduct such a serious investigation of the events, to punish those responsible for them or to repair the damages these persons had done to the rights of others they had violated, it cannot be argued that domestic remedies have not been exhausted since demanding compliance with such a requirement under these circumstances is meaningless and constitutes a mere formality.

20. The petitioners likewise contend that the investigation has taken a very long time and serious irregularities have occurred. In addition, there have been government statements disputing the events, and in short, reflecting the State's unwillingness to clarify them. In this sense, the petitioners say that on the same day as the events, in the city of Chilpancingo, Governor Ruben Figueroa Alcocer denounced "the violent attitude of the leaders of the OCSS, who have fooled the rural people for their own ends, and one of the leaders, Benigno Guzman Martinez, has certain matters pending with the justice system, and there are nine arrest orders issued for him." In addition, the governor mentioned as evidence of their violent intent that "the truck driver involved in the occurrence of the events charged that he was actually acting as he was because he being kidnapped by the OCSS." According to the petitioners, the truck driver, who was also the owner of the truck, denied this statement in an interview that appeared in the La Jornada magazine.

21. The petitioners state that even though a large number of policemen, commanders and government officials have been arrested, the State continues denying that high government officials were involved in it. One of these high officials was the governor himself. This is so even though several eyewitnesses to the events stated that they saw them, and in the case of the governor, that he gave the order the day before the slaughter.

22. They add that the CNDH has issued a report describing many irregularities that were found in the prior inquiry No. TAB/3208/95, which was started because of the events that occurred at Aguas Blancas. This inquiry, they say, has denied, destroyed or falsified a number of pieces of evidence that has made it impossible to arrive at the truth regarding the events.

23. The petitioners maintain that even though a special prosecutor was appointed for this case, the investigation has continued experiencing irregularities. One of these was on February 25, 1996, when an unedited tape showing the operation at Aguas Blancas was shown on a television program. This tape clearly revealed the criminal nature of the operation, including all the aggravating factors of the applicable criminal law involving premeditation, treachery, gain and treason.

24. They also point out that on February 27 of 1996, the special prosecutor presented a conclusive report of the investigation to the Permanent Commission of the Guerrero State Congress in which he maintained, "this Office of Special Prosecutor reached the conclusion that attorney Antonio Alcocer Salazar, the former Attorney General of the State, and Mr. Gustavo Olea Godoy, the former director of the State Judicial Police Force, have no criminal responsibility. In addition, we agree with the National Human Rights Commission that Messrs. Ruben Robles Catalan, the former secretary general of government, and Ruben Figueroa Alcocer, the elected governor of the state, had no involvement or criminal responsibility in the regrettable events of June 28, 1995. Based on the foregoing, the Office of the Special Prosecutor decided to not file any criminal proceedings against these persons and approved this decision." In addition, on February 28, the CNDH publicly disavowed the statement of the special prosecutor by saying that its recommendation never exonerated the governor or his secretary general from responsibility.

25. The petitioners say that on March 4, 1996, the secretary of government released a petition from the President of the Republic calling upon the Supreme Court of Justice to exercise its constitutional powers, as ombudsman, "solely to determine the occurrence of any event or events that would constitute a serious violation of some personal freedom." They also say that on April 23 of the same year, the court, in plenary session, handed down its decision which, in addition to other matters, concluded that "there was a serious violation of the personal guarantees of the governed in the events of June twenty-eight of one thousand nine hundred and ninety-five at the Vado de Aguas Blancas, in the municipal district of Coyuca, Guerrero state, and in later events associated with the former," and that "the persons responsible for that violation are attorney Ruben Figueroa Alcocer, the governor, on indefinite leave of absence; Jose Ruben Robles Catalan, the former secretary general of government; Antonio Alcocer Salazar, the former attorney general of justice; Rodolfo Sotomayor Espino, the former assistant secretary general of justice; Gustavo Olea Godoy, the former director of the judicial police; Rosendo Armijo de los Santos, former assistant secretary of protection and transit; Adrian Vega Cornejo, former special prosecutor; and Esteban Mendoza Ramos, the former director general of government, all of whom are from the state of Guerrero.

26. The petitioners state that on April 30, 1996, they expanded their complaint to the Attorney General of the Republic, and filed their petition to have the case taken up on the basis of subsequent evidence from the investigation conducted by the Supreme Court of Justice and the express statement by the attorney general of Guerrero that he lacked competence in the case. They say that on May 6, Attorney General Lozano stated that he lacked competence in a press bulletin, and remitted the documents to the attorney general of Guerrero who had already declared himself lacking competence to investigate the events.

27. They add that on May 2, 1996, the Democratic Revolution Party issued a wide demand for impeachment proceedings, presented on July 25, 1995, in the Chamber of Deputies, based on the court's investigation and other presumed evidence regarding the responsibilities of Governor Figueroa. On May 30, the majority of the government party exonerated the government in advance of any court proceeding and prevented the filing of any court proceeding. They also state that on June 13, 1996, the same PRI majority in the Guerrero Congress exonerated the

governor in a state legal proceeding and that the state office of attorney general maintained, one day later, that the court exonerated Figueroa and his cabinet level collaborators, thereby ratifying the exoneration.

28. Finally, they point out that the lack of government willingness to clarify the events pertaining to the massacre at Aguas Blancas is shown by the failure to adopt the recommendations made by the Supreme Court of Justice in connection with the investigation of the government officials presumably responsible for the events.

B. The Position of the State

29. The State states that domestic remedies have not been exhausted in this case and there is no exception to their prior exhaustion under the terms of Article 37.2 of the Regulations of the Commission. The State also points out that the statements made by the petitioners indicate that they are currently exercising their adequate domestic remedies and thus it is absurd for them to contend the opposite.

30. The State adds that in furtherance of recommendation 104/95, handed down by the CNDH on August 14, 1995, attorney Alejandro Varela Vidales, a person of recognized capacity, was appointed on November 9 of that year as the special prosecutor for the Aguas Blancas case.

31. The state of Mexico also expressed that it has shown its willingness to arrive at the truth in the Aguas Blancas case. It has brought more than 50 former officials to justice, and the President of the Republic made a request appeal on March 4, 1996, to the Judicial Branch of State, a measure that had not been used for more than 50 years. The outcome of this was a court opinion whose conclusion was that the state governor, Ruben Figueroa Alcocer, had incurred responsibility by taking an attitude of deceit, machination and cover-up of the truth in connection with the serious events that occurred at the Vado de Aguas Blancas. This created an artificial version of the events that was intended to make people believe that the resulting massacre of civilians came about because members of the OCSS boldly attacked the police force as they were being halted even though the police had merely stopped them to make an inspection. The Mexican reply adds that the conclusions and the investigation order and the file were handed over to the Office of the Attorney General of the Republic, the Office of the Secretary of State, the Office of the Secretary General of Justice for Guerrero and the Congress of Guerrero so that they could undertake criminal proceedings against those responsible and could strip the governor, Ruben Figueroa Alcocer, of his rights and could likely impeach him.

32. The reply states that Article 8 of the Convention requires, among others, that criminal disputes or others "must be resolved by a competent, independent and impartial tribunal," and that Article 25 of the same Convention requires that the recourses be effective even though the violation "may have been committed by persons acting in the course of their official duties." Even in this case, the State contends, the local judges who took up the matter acted effectively, independently and impartially, so that the persons charged could not escape justice and rigorous application of the law.

33. The reply also points out that the petitioners' statement reveals that adequate domestic remedies are being exercised, and since these remedies are being exercised, it therefore cannot be charged that the remedies have been exhausted. In fact, to the contrary, these remedies have proven to be effective and suitable to remedy the situation in question.

34. The State also states that with respect to the supposed unlawful, dependent and partisan performance of the special prosecutor, that allegation has still not been proven in that the prior inquiry DGAP/077/96, against the former special prosecutor, Alejandro Oscar Varela Vidales, is still in process in the office of the attorney general for the state of Guerrero, for the likely commission of the crimes of improper performance and abandonment of public service, cover-up and conflict of duties by a public servant. The State also contends that the petitioners have had court remedies available to them to object to the failure to file criminal proceedings against the responsible parties.

35. Finally, the state points out that adequate measures have been taken internally to remedy the situation in conformity with the American Convention, both as pertains to the identification and punishment of the presumed responsible parties and with respect to reparation of damages. The reply states that family members of the victims as well as the wounded persons have received compensation already and since compensation is a normal means of reparation when it is not possible to restore the pre-existing situation, the petitioners cannot argue any lack of willingness in this regard. The reply also indicates that, as concerns moral damages, the Civil Code for the Federal District in common matters, and for the Republic of Mexico as a whole in federal matters, establishes in Article 1916 that the form of reparation is "the publication of an extract of the judgment that reflects adequately the nature and scope of the ruling through the communications media that are considered advisable." In this sense, it concludes that since points and conclusions of the report issued on February 27, 1996, by the then special prosecutor for the case was amply disseminated to the public, it is clear that in this case there has also been reparation of a moral type.

IV. GENERAL CONSIDERATIONS

A. Considerations with Respect to the Competence of the Commission

36. The Commission is competent to hear this case, as required by Article 44 of the American Convention to which Mexico has been a party since April 3, 1982, since it involves allegations regarding rights recognized in the same: Article 1.1, pertaining to the obligation to respect rights; Article 4, the right to life; Article 5, the right to humane treatment; Article 8, the right to a fair trial; and Article 25, the right to judicial protection.

B. Considerations with Respect to the Formal Requirements of Admissibility

37. This petition meets the formal requirements of admissibility as set out in Article 46.1 of the American Convention and articles 32, 37, 38 and 39 of the Regulations of the Commission. In effect, the petition contains the data of the petitioners, a description of the events that presumably violate human rights protected by the American Convention and identification of the state considered the responsible party for the presumed violation. In addition, the claim was filed

within the term established; it is not pending in any other international settlement proceedings and is not a reproduction of a petition already examined by the Commission.

38. With regard to the requirement of prior exhaustion of remedies under internal jurisdiction, the petitioners have stated that even though a large number of policemen, commanders and public officials of the State of Guerrero have been arrested, the State continues denying that high government officials were involved, the state governor among them. The petition also says that despite the resolution issued on April 23, 1996, in which the Supreme Court of Justice, in plenary, concluded that several high government officials of the State of Guerrero --including the governor on leave of absence, Ruben Figueroa Alcocer-- are responsible for that violation, to this time the corresponding criminal proceedings have not been filed.

39. In this sense, the State of Mexico pointed out that the petitioners have been free to turn to the courts to file their objections regarding the failure to take criminal action against the presumed responsible persons. They could have objected to this failure through the proceeding for relief provided for in Article 21 of the Political Constitution of Mexico.

40. With respect to this point, the Commission has already said the following:

the point made by the Mexican government addressing the application of Article 21 of the Federal Constitution of Mexico is not in order because the available remedy must have the characteristics of being simple, prompt and effective under the terms of Article 25 of the American Convention. The reason is that even though an interpretation allowing exercise of the indirect relief has been used in some cases, this has not been accepted unquestionably and in a widespread manner in Mexican courts and furthermore, as the State of Mexico has pointed out, there is another totally opposite interpretation regarding this matter, according to which the remedy to which Article 21 of the Constitution refers must be the object of legal regulation.[FN1]

[FN1] Report No. 25/96 of the Inter-American Commission.

41. The Commission has also stated that:

in cases where the Public Ministry refrains from filing criminal proceedings, the Inter-American Commission has been able to verify a situation of legal uncertainty regarding the use of Article 21 of the Constitution to exercise a jurisdictional remedy that is capable of controlling such inaction. To establish effective responsibilities, it is essential for there to be clarity regarding the scope of Article 21 of the Constitution and it must be possible to effectively apply it in practice.[FN2]

[FN2] Letter released by the IACHR on July 24, 1996, at the conclusion of the on-site visit to Mexico.

42. The petitioners have also stated that the domestic remedies that have been exhausted have been ineffective since there has not been a willingness to conduct a serious investigation into the events denounced, to punish those responsible for them and to repair the damages that these persons caused to the rights that were violated.

43. For its part, the State has expressed that in this case, domestic remedies have not been exhausted and there are no exceptions, as required by Article 37.2 of the Commission's regulations. The State adds that more than 50 former officials have been brought to criminal justice and a request appeal has been exercised by the President of the Republic, to the Judicial Branch of State, a remedy that has not been exercised for more than 50 years.

44. With respect to this matter, the Inter-American Court of Human Rights has stated, "Article 46.1 of the Convention speaks to the principles of generally accepted international law. These principles do not refer only to the formal existence of such recourses but that they also be adequate and effective, as seen through the exceptions provided for in Article 46.2." [FN3]

[FN3] Inter-American Court of Human Rights, the Velasquez Rodriguez case, judgment of July 29, 1988, page 16, paragraph 63.

45. That the remedies must be adequate means that the function of these remedies, under the system of internal law, must be suitable to protect the juridical situation infringed upon. [FN4]

[FN4] Inter-American Court of Human Rights, the Velasquez Rodriguez case, judgment of July 29, 1988, page 16, paragraph 64.

46. That they must be effective means capable of producing the results for which they were conceived. [FN5]

[FN5] Inter-American Court of Human Rights, the Velasquez Rodriguez case, judgment of July 29, 1988, page 16, paragraph 66.

47. It can be concluded from the analysis made in the preceding paragraphs and from the narration of the events by both parties that even though significant progress has been made for the purpose of investigation and judging those responsible for the so-called massacre of Aguas Blancas, the progress has not been sufficient to this time regarding high government authorities from the state government of Guerrero, whose responsibility is the subject of clear presumptions. This was pointed out by the Supreme Court of Justice in its decision of April 23, 1996. This Commission must recognize the initiative taken by the President of the Republic for having

exercised the very extraordinary remedy, that has been so little used in contemporary Mexican history, but, it is regretted that the nature of the resolution issued only has moral force and thus the requirements of adequate and effective remedy cannot be achieved through true jurisdictional remedies. Consequently, the decision of the Office of the Attorney General of the Republic considering itself not competent to hear the case, and of the attorney general for the state of Guerrero, to not file criminal proceedings, cannot be contested in court since, as has already been expressed, the remedy stipulated in Article 21 of the Constitution does not currently meet the requisites of being simple, prompt and effective.

48. In addition, the petitioners have pointed out that the irregularities that exist in this case, as well as the lack of willingness to clarify them, have brought about an unjustified delay in the case. In connection with this point, the Commission considers that since almost two years have gone by since the events occurred at the Vado de Aguas Blancas and there has still been no investigation of the circumstances that gave rise to those events, nor any clarification of all the persons responsible for the tragedy, this itself constitutes unjustifiable delay in the execution of the investigation. However, the point will be examined more fully in the analysis of the fundamental issues in this case.

49. Based on the arguments set out above, the Commission concludes that the exceptions to the exhaustion of internal remedies set out in Article 46.2.a and c of the American Convention are applicable to this case and therefore, the petitioners are released from the need to comply with this requirement for admissibility.

V. CONSIDERATIONS REGARDING THE BASIC ISSUES

50. The Commission goes on record about its new practice of initially deciding, in principle, on the admissibility of the cases that are processed in it, as long as one of the states opposes some of the exceptions of inadmissibility that are enshrined in the Convention or in the Regulations of the Commission. The Commission has deemed advisable to adopt this practice, because it thinks that it produces more clarity and legal security in its procedures and clears the ways to bring the parties together in a process of friendly settlement. Nevertheless, it must be underscored that this practice can not be absolute since the specific circumstances of each case must be analyzed and especially the advantages that might derive from that decision.

51. In this sense, in the case under analysis, although the State repeatedly opposed the exception on the lack of exhaustion of domestic remedies, the petitioners expressly communicated their non-willingness of exhausting the friendly settlement course. Therefore, under the circumstances, an exclusive report on admissibility would not have the practical effect of bringing the parties closer to solve the case. Moreover, the Commission deems that the basic issue of the case was sufficiently debated, argued and proved by the parties before the Commission, and in the documents there are sufficient elements so as to render a decision on the merits of the case. This was also complemented with information obtained during the visit to Mexico in July 1996. This is the reason why this Commission now goes on to analyze aspects related to basic issues of the complaint.

52. From the statements made by the parties, it has been shown that both parties agree that the events that occurred at the Vado de Aguas Blancas on June 28, 1996, were perpetrated by agents of the motorized police force of the state of Guerrero. This is also made clear by the videotape provided by the petitioners. This tape, shown in Mexico on a well known television channel, shows how the police agents killed 17 persons and wounded more than 20. Furthermore, and in the knowledge that the material acts of the events narrated are not subject to question and are thus viewed by the Commission as recognized facts, the Commission had the opportunity during its on-site visit to Mexico in July of 1996 to visit the place where the massacre occurred and to speak with family members, eyewitnesses and victims of the events at Aguas Blancas. These persons described their experiences during the unfolding of the events and afterward, and agreed with the description given by the petitioners in their complaint, and with the video images of the massacre. Furthermore, it has been shown that the events were started by the actions of the police officers. Further evidence of this comes from the words of the Supreme Court of Justice which pointed out in its decision on the case, "One thing is very clear and manifest: two police officers received minor wounds, caused by cutting weapons which were identified as machetes; all the dead and wounded, on the other hand, were passengers and were hurt by firearms. All the eyewitnesses we interviewed are in agreement in pointing out that the policemen acted compulsively, coldly and heedlessly, without thinking in the least logical of terms, since there is no record that they were responding to an attack against them with firearms." [FN6] As a consequence of the points made above, this Commission expresses that it has no doubt about the connection of the agents of the Guerrero state police force as the material perpetrators of the aforementioned massacre, nor about the excessive and compulsive manner in which they acted in the events.

[FN6] Judgment of April 23, 1996, of the Supreme Court of Justice of the Nation, case No. 3/96, page 98.

53. With respect to the diligence with which the state of Mexico has acted in the investigation of other persons responsible for the events, there appear to be some discrepancies between the parties. In this sense, the petitioners have pointed out that even though a large number of policemen, commanders and state officials of the State of Guerrero were arrested, the State continues denying that high government officials, the state governor included, participated. They add that on February 27, 1995, the special prosecutor designated for the case filed a conclusive report on the investigation with the Permanent Commission of the Guerrero State Congress in which it is contended that the State governor, as well as other officials of the Guerrero State government, were not responsible for the events at Aguas Blancas. They also point out that the decision released on April 23, 1996, by the plenary meeting of the Supreme Court of Justice of the Nation at the request of the President of the Republic mentions among the persons responsible the governor on leave of absence, Ruben Figueroa Alcocer, and other state government officials. Because this decision was not binding, it was not followed by either the Office of the Attorney General of the Republic nor by the Office of the Attorney General for the state of Guerrero.

54. For its part, the State has said the diligence with which the State of Mexico has acted to conduct a serious investigation can be seen in the request appeal filed by the President of the Republic on March 4, 1996, with the Judicial Branch of State. The result of that request was a court opinion whose conclusion was that Governor Ruben Figueroa Alcocer was responsible. The State adds that if it is true that the corresponding criminal proceedings have not been exercised, it is the consequence of decisions made by the competent organs which have not been turned to by the petitioners in accordance with Article 21 of the Constitution.

55. The Inter-American Court of Human Rights has pointed out in this connection the following:

The action of investigating is, like the action of preventing, an intermediary obligation or a behavior which does not fall short of compliance by the mere fact that the investigation does not produce a satisfactory result. However, it must be undertaken with a serious attitude and not as mere formality that is condemned in advance to be fruitless. It should have a meaning and should be undertaken by the state as a proper juridical duty and not as a simple gesture of private interest which depends on the procedural initiative of the victim or his family members or the private contribution of elements of evidence, without the public authority attempting effectively to find the truth.[FN7]

[FN7] Inter-American Court of Human Rights, the Velasquez Rodriguez case, July 29, 1988, page 72, paragraph 177.

56. In connection with this, the Commission considers that while the Executive of the State of Guerrero complied "partially" with the recommendations made by the National Human Rights Commission in its report of August 14, 1995, one of whose points was the appointment of a special prosecutor to continue processing the prior inquiry started as a result of the events at Aguas Blancas, the conclusive report of that investigation was not shared in its entirety by the local people of Guerrero. This same concern was shown by the federal executive when he exercised the request appeal provided in Article 97 of the Political Constitution of Mexico. In effect, the federal executive points out in the petition submitted to the Supreme Court of Justice, "despite the intervention of several authorities competent to take up the matter under the terms of their powers and the results that have been reached to date, there remains among the national community a feeling of concern for full clarification of the events and determination of its consequences in accordance with the law." [FN8] On this matter, the Supreme Court commented, "from the description of events, and especially the latest assessment made by the federal executive, one reaches the conviction that all ordinary means have been attempted to determine the criminal responsibility of the perpetrators of the aforementioned events, but there has been no satisfactory finding for society, and to this time it has not been established whether such events do or do not constitute serious violations of individual rights and who might have been responsible for them." [FN9] From the foregoing it is clear that the federal government itself recognized to the Supreme Court of Justice that the investigations conducted to that time had not been sufficiently clear to determine all the persons truly responsible for the events at Aguas Blancas.

[FN8] Supreme Court of Justice of Mexico, file 3/96, April 23, 1996, page 17.

[FN9] Op.cit., page 17.

57. The Commission also believes that while it is true the federal executive filed the request appeal with the Supreme Court of Justice, the function of the court, pursuant to Article 97 of the Constitution, is merely declarative and is not binding. This gives the decision only a moral impact. However, the Supreme Court, for the purposes of attempting to utilize the result of its investigation, points out in the fourth point of its decision:

FOURTH - As the President of the Republic requests, through the Secretary of Government, in the second petitory point of the letter dated March four of the present year, this Supreme Court of Justice of the Nation suggests that the measures and actions be taken by the competent authorities that follow from the necessary measures which are reviewed below:

A - Notify the President of the Republic, through the Secretary of Government, of these agreements, and attach a certified copy of them so that the president is able to reach all determinations that motivated his request for intervention by this Supreme Court of Justice, under the terms ordered by Article 97 of the Constitution.

B - A certified copy of this resolution should be sent to the Congress of the Union, for its information and attendant effects.

C - Also send a copy to the Attorney General of the Republic, for the purposes of his representation.

D - The Acting Governor of the state of Guerrero, the Congress and Superior Court of Justice of that entity should also take note of this resolution, through copies of it.

58. However, the case is that after all these authorities were notified, in particular, the Attorney General of the Republic, who, based on the opinion of the Supreme Court, appeared to be competent to take up the case, declared himself not competent and remitted the documents to the Office of the Attorney General of Justice for the state of Guerrero, which had already declared itself not competent to take up the case. In addition, on May 30, 1996, the Congress of the Federation exonerated the governor prior to any legal proceeding, and this prevented the holding of any impeachment proceeding. The same occurred in the local legislature on June 13 of that same year. As a consequence of its examination, this Commission considers that the investigations conducted by the state of Mexico for the purposes of judging and sanction those responsible for the "Aguas Blancas massacre" have not been undertaken with the necessary seriousness in the terms established by the Inter-American Court.

59. With respect to the remedy provided by Article 21 of the Constitution, the Commission has already stated in advance its interpretation of this matter. For this reason, it will not develop this point any more to avoid any needless repetition.

60. Regarding the eventual responsibility of the governor on indefinite leave of absence, and of other high officials of the Guerrero State government, this Commission considers itself not

competent to give an opinion of that type in this case. However, it wishes to express its concern over the manifest irregularities and the serious contradictions that have been observed over the length of these proceedings. This situation has made it impossible to this point to determine in some court the responsibility of former Governor Figueroa Alcocer and of other high officials of his government. In effect, from the written documents it is clear that there are serious signs of the eventual responsibility of the former governor and other high officials of his government. This can be verified more exactly following the decision published by the Supreme Court of Justice of the Nation. Quite clearly, the doubts that these unfortunate events at Aguas Blancas have cast on public opinion and the government itself should be cleared up, once and for all, if the decision to file criminal proceedings against all the government officials of the state of Guerrero who might be implicated in the events were made. This includes the former governor himself. This would put into the hands of a competent, independent and impartial judge, under the terms of Article 8 of the Convention, the determination of those responsible in this case.

61. The petitioners have requested the Commission to rule that in this case the state of Mexico has violated the human rights embodied in articles 4, 5, 8, 25 and 1.1 of the Convention. In this sense, the Commission must rule on whether they were violated:

A. Right to a Fair Trial and to Judicial Protection

62. Article 8.1 of the Convention establishes the right that every person has to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal.

63. With respect to the reasonable time requirement, there are precedents in the jurisprudence of international organs according to which consideration has been given, in the light of a particular circumstances of each case, to the following criteria: complexity of the litigation; the behavior of the plaintiffs and the court authorities; and the manner in which the investigation stage of the proceeding has been processed.[FN10]

[FN10] See, for example: IACHR, Resolution No. 17/89, Report of Case No. 10037 (Mario Eduardo Firmenich), in the Annual Report of the Inter-American Commission on Human Rights 1988-1989, page 38; European Tribunal of Human Rights: the Konig case, judgment of June 28, 1978, Series A, No. 27, pp. 34 to 40, paragraphs 99, 102-105 and 107-111; the Guincho case, judgment of July 10, 1984, Series A, No. 81, page 16, paragraph 38, Union Alimentaria Sanders S.A., judgment of July 7, 1989, Series A, No. 157, page 15, paragraph 40; the Buchholz case, judgment of May 6, 1991, Series A, No. 42, page 16, paragraph 51, pp. 20-22, paragraphs 61 and 63; the Kemmache case, judgment of November 27, 1991, Series A, No. 218, page 27, paragraph 60.

64. In connection with the complexity of the litigation, this Commission should point out that even though the investigations and the several criminal proceedings that have been filed against a large number of public officials presumably linked to the events in question might be difficult, there exists a body of clear, precise and mutually agreeable signs that lead to the presumption that other officials who worked in the office of the executive of the state of Guerrero on the date

when the events occurred have some level of responsibility for them. For this reason, it is thought that the competent authorities have had to open the corresponding criminal proceedings. This is further corroborated by the decision reached by the Supreme Court of Justice of the Nation which pointed to the former governor and other officials of his government as the persons responsible to some extent for the events. No matter how complicated this case might be, the information exists to reach a decision on undertaking criminal proceedings against those officials and to leave in the hands of a competent, independent and impartial judge the decision on their responsibilities. Such a decision has not been taken and there are no signs that lead the Commission to believe that it will be immediately taken.

65. As to the behavior of the plaintiffs and the court authorities, as well as the manner in which the inquiry stage of the proceedings has been conducted, the Commission must express that even though the court authorities are currently processing the public officials against whom the Public Ministry filed criminal proceedings, it would appear that these have experienced no type of delay. However, the problem arises in connection with the other cases in which serious signs of responsibility have been found and for them the Public Ministry has not opened the corresponding criminal proceedings despite the repeated claims made by the petitioners and the many remedies that they have pursued. In these cases, the Commission believes that these proceedings cannot be used as the foundation for this examination since they are not before a court body. Consequently, the fact that almost two years have passed without any filing of criminal proceedings against former Governor Ruben Figueroa Alcocer and other high officials of his government, and that there exist no signs that this might occur, lead the Commission to the conclusion that the state of Mexico has not complied with the reasonable time requirement stipulated in Article 8 of the Convention.

66. Article 25 of the Convention provides that every person has the right to simple and prompt recourse or any other effective recourse to a competent court or tribunal for protection against acts that violate his fundamental rights.

67. In the case in question, it has been shown that the state public ministry has not been willing to file the respective criminal proceedings against former Governor Ruben Figueroa Alcocer, the former secretary general of government, Ruben Robles Catalan, the former attorney general of justice of the state, Antonio Alcocer Salazar, and the former director of the judicial police of the state, Gustavo Olea Godoy. It has also been shown that the federal public ministry has not been willing to exercise its authority to take up the case in the jurisdiction since, as it has been shown, not only were local crimes committed in this case, but federal regulations were broken as well. All of this goes into the body of signals that indicate that these former officials of the government of the state of Guerrero have some presumed responsibility for the events that occurred at the Vado de Aguas Blancas on June 28, 1995. In this case, the Commission believes that because of the exclusive and sole monopoly that the public ministry has in Mexico's juridical system for the exercise of criminal proceedings, the rights of individual persons should be assured adequately and effectively so that this competence is not exercised arbitrarily, but in a serious and professional manner to guarantee the right to judicial protection established in Article 25 of the Convention. In this connection, the Commission has already pointed out that "the monopoly on the exercise of criminal proceedings that is conferred to the public ministry in

Mexico requires the establishment of an independent and autonomous, professional, efficient and impartial institution."[FN11]

[FN11] Letter released by the IACHR on July 25, 1996, at the end of its on-site visit to Mexico.

68. The Commission believes that such an important competence as investigating and opening the pertinent criminal proceedings may not be assigned to just one organ unless there are other adequate and effective remedies to control its decisions. The Commission has already repeated on many occasions the need to regulate law to challenge the resolutions of the public ministry on the failure to open or to halt a criminal proceeding, which is embodied in Article 21 of the Mexican Constitution.

69. Likewise, the Commission believes that in this case the necessary political will has been absent to punish the responsible persons. In this sense, it can be said that despite the existing evidence, the resolution by the Supreme Court of Justice of the Nation and the sentiments of concern in both the government and Mexican society at large for the unfolding of these investigations,[FN12] both the federal and state legislative bodies have failed to meet the demand for impeachment proceedings presented by the Democratic Revolution Party against former Governor Figueroa Alcocer.

[FN12] Petition filed on March 4, 1996, by the federal executive to the Supreme Court of Justice for it to use its constitutional powers as ombudsman.

70. In consideration of all that has been said above, this Commission concludes that in this case the rights to a fair trial and judicial protection stipulated in articles 8 and 25 of the Convention have been violated, and that the obligation to adopt measures of domestic law, pursuant to Article 2 of the Convention, has not been complied with.

B. The Right to Life

71. Article 4 of the Convention establishes that no one shall be arbitrarily deprived of his life.

72. The examination of the events given above has brought out that members of the motorized police force of the state of Guerrero massacred compulsively and excessively on June 28, 1995, at the Vado de Aguas Blancas, Messrs. Tomas Porfirio Rondin, Amado Sanchez Gil, Fabian Gallardo Garcia, Francisco Gervacio Rogel, Heliodoro Lopez Vargas, Plaz Hernandez Gonzalez, Daniel Lopez Castaneda, Victorio Flores Balanzar, Climaco Martinez Reza, Mario Pineda Infante, Anacleto Ahueteco Coyote, Jose Rebolledo Gallardo, Gregorio Analco Tabares, Efrain Vargas, Florente Rafael Ventura, Simplicio Martinez Reza and Francisco Blanco Munoz.

73. Consequently, the Commission concludes that the Mexican state has violated the right to life of the 17 persons mentioned above. This right is embodied in the aforementioned Article 4 of the American Convention.

C. The Right to Humane Treatment

74. Article 5 of the American Convention establishes that every person has the right to have his physical, mental and moral integrity respected.

75. In this connection, it has already been examined and shown that members of the motorized police force of the state of Guerrero wounded, for no reason whatsoever, Messrs. Carmelo Bernal Flores, Antonio Garcia, Juan Pastrana, Santos Galeana, Felipe Sanchez, Marcos Carranza, Anibal Pastrana, Venicio Godinez, Andres Bernal, Luciano Salmeron, Pedro Jimenez, Heliodoro Refugio, Andres Sanchez, Apolonio Romero, Apolinar Ojendis, Bernardo Carbajal, Eustasia Mayo, Rodolfo Carranza and Antonio Abarca. This action, considering the provisions of the American Convention, is a clear violation of the right to humane treatment of these persons.

76. In connection with possible violations of the mental and moral integrity of the wounded persons and their family members, the Commission believes that the fact that these persons were present at the murder of 17 persons and experienced, for minutes, the possibility that they might die as these events unfolded, produces serious mental and moral damages to their persons, since none of those present at the Vado de Aguas Blancas on June 28, 1995, will ever forget those moments. With respect to the family members of the dead, the Commission considers that the murder of a loved one is always cause for serious moral damage, but this is even more the case when the survivors find out how the events occurred through a videotape.

77. As a consequence of the foregoing explanation, the Commission concludes that the state of Mexico has violated the right to physical, mental and moral integrity of the aforementioned persons, as protected in Article 5 of the American Convention.

D. Obligation to Respect Rights

78. The conducts described in points A, B and C of this chapter constitute a failure to comply by the Mexican state with the commitment undertaken in Article 1.1 of the Convention to respect the rights and freedoms recognized in the Convention and to ensure to all persons subject to its jurisdiction the free and full exercise of those rights and freedoms.

E. Compensation for Damages and Losses

79. Although the State has stated that both the family members of the victims as well as the wounded persons have already been compensated, it has also stated that with respect to moral damages, the Civil Code for the Federal District in common matters, and for the republic in federal matters, in Article 1916, establishes that the form of reparation is "the publication of an extract of the judgment adequately reflecting the nature and the scope of the judgment in the communications media that are considered advisable." In this sense, the State concludes that

because of the wide publicity given to the points and the conclusions of the report issued on February 27, 1996, by the then special prosecutor for this case, it is clear that in this case there has been a reparation of a moral type.

80. In this sense, the Commission expresses that from the explanation and the review of this case, it has been possible to refute clearly the report presented on February 27, 1996, by the then special prosecutor for the case of Aguas Blancas, attorney Alejandro Oscar Varela Vidales. In this sense, the Supreme Court of Justice of the Nation, in its report issued on April 23 of the same year, decided against considering worthy of blame the activities of the police members, as attorney Varela included in his report. The attorney leaned toward the existence of criminal action in the operation conducted by the motorized police force of the state of Guerrero on June 28, 1996, at the Vado de Aguas Blancas. The court also concluded in its report that, among others, "the resulting responsible parties are Ruben Figueroa Alcocer, governor on indefinite leave of absence; Jose Ruben Robles Catalan, the former secretary general of government; Antonio Alcocer Salazar, the former attorney general of justice;...Gustavo Olea Godoy, the former director of the judicial police force..." who are the persons that the special prosecutor exonerated in his report from all responsibility.

81. It can be concluded from the foregoing that the publication of that report cannot serve in any way as a reparation of a moral type for the family members of the victims and the persons wounded during the events at Aguas Blancas. The report does not contain a clear examination of the events that occurred nor any indication of the persons responsible for them. It must also be noted that the article in question refers to an "extract from the sentence," which is the result of a definitive and firm decision handed down by the Judicial Branch, not just a simple report that could have been written by one of the inspectors from the Attorney General's office, which is part of the State's Executive Branch. Furthermore, Article 1916 of the Civil Code for the federal district expresses:

When some unlawful event or omission produces a moral damage, the person responsible for it shall have the obligation to give reparation for it by indemnity in money, no matter whether any material damage has been caused, both under contractual responsibility as well as extra-contractual responsibility. A similar obligation to make reparation for moral damage will be run by any person who incurs objective responsibility, according to Article 1913, as well as the state and its officials in accordance with Article 1928, both provisions of this code.

The amount of the indemnity shall be determined by the judge, taking into account the rights violated, the degree of responsibility, the economic situation of the person responsible, the economic situation of the victim, as well as all other circumstances in the case.

When the moral damage has affected the victim in terms of his decorum, honor, reputation or consideration, the judge shall order, at the request of the victim and chargeable to the responsible person, the publication of an extract of the judgment that adequately reflects the nature and the scope of the judgment through the communications media that are considered advisable. In cases where the damage derives from an act that has been publicized in the communications media, the judge shall order the communications media to publicize the extract of the judgment in a

comparable manner to that which was given to the original publication. (underlined by the Commission)

82. Judging by the words of the aforementioned article it is deduced that Mexican legislators have established that the publication of an extract of the judgment for specific cases, as an additional requirement to indemnity in money, and as a result at no time would this suffice, as the Mexican government says, as the only form of indemnity for moral damage.

83. Likewise, the Commission expresses its profound concern over the several denunciations received from family members and the wounded during its visit to the area. According to these, several of the persons wounded in the events occurred in the Vado de Aguas Blancas have not received proper medical attention from time to time to deal with the physical problems that have resulted from their wounds. Moreover, according to the testimonies received, the amount of the pensions received by the relatives of the victims is ludicrous, according to minimum accepted national and international standards.

84. For the aforementioned considerations, the Commission concludes that the State must adequately compensate the relatives of the victims and the wounded for damages, as a consequence of the violation of their human rights and to give appropriate medical attention to surviving victims that require it as a result of the wounds received in the events in Aguas Blancas.

VI. REFLECTIONS ON THE STATE'S OBSERVATIONS

85. On March 11, 1997, pursuant to Article 50 of the Convention, the Commission sent the State of Mexico preliminary report No. 8/97 on the present case and granting it a period of two months to apprise the Commission of its compliance with the recommendations contained in that report. After requesting a 30-day extension for presenting the data requested, the State presented its observations concerning the Commission's report on June 23, 1997, which included the comments summarized below.

86. The State has indicated that it does not agree that a prior declaration of admissibility is unnecessary, first, because in a number of cases currently before the Commission, the Commission has proposed steps toward amicable resolution without first resolving the issue of admissibility, and second, because basing the prior decision on admissibility on the expectation that the claimant will accept the amicable resolution procedure also fails to contribute to giving legal form and standing to the system for the protection of human rights, nor does it strengthen the perception of the Commission as acting with full independence from other entities.

87. In this matter, the Commission must reiterate what it has previously and plainly stated in connection with its new practice of initially pronouncing itself on the admissibility of cases that come before it, namely, that there can be no absolutes here, since the special circumstances of each case, as well as the particular advantages flowing from a decision on admissibility, must be considered. In the present case, the parties had already argued in depth questions both of procedure and merit before the Commission, both in writing and in the hearing held at the Commission's headquarters in Washington, D.C. on February 21, 1996. Also, the Commission

was able to add to its information on the case during the on-site visit to Mexico in July of 1996. Further, due to the features of this case, there were no considerable practical advantages to doing a report exclusively on the admissibility issue - first, because an amicable resolution of the case was not achievable since the express consent of the parties is necessary for this and the petitioners had rejected that possibility on January 15, 1997; second, because doing a report dealing only with admissibility requires dealing exclusively with the issue of fulfillment of admissibility requirements, without getting into the merits of the case, a procedure which the Commission considered not practicable in this case, since its nature is such that in pronouncing itself on admissibility the Commission could find itself expressing opinions on the merits, which would have a negative impact on the clarity and assurance of legality which this new practice seeks to enhance.

88. The fact that there are cases before the Commission in which the Commission has put itself at the disposal of the parties for the purpose of initiating procedures aimed at amicable resolution without having resolved the admissibility issues, is a reaffirmation of the notion that before writing a report of this sort the particular circumstances of each case must be considered, since, as already indicated, there are cases where prior issues of admissibility and issues of the merits overlap, making it impossible to issue a report dealing only with admissibility. This is why, following the practice which the Commission has adopted of putting itself at the disposal of the parties for the amicable resolution of cases, it sometimes achieves this goal before defining all the admissibility aspects of the case. Examples of this, among others, are reports 38/96, 11/96, and 32/96, published by the Commission in its 1996 annual report. Without prejudice to what has been said, Article 45 of the Commission's Regulations gives it the authority to put itself at the disposal of the parties at any stage of the investigation of a petition for the purpose of achieving an amicable resolution of the matter at hand.

89. Thus, following from what has been said, the Commission has in no case based its prior decision on admissibility on the expectation that the claimant will accept the resolution procedure. On the contrary, it has in the last year developed a consistent practice regarding admissibility reports and amicable resolutions which gives the parties a greater guarantee of the legality of the process.

90. In respect to the first recommendation which the Commission made to the State in its preliminary report - namely, that a serious, impartial, and effective investigation of the facts described in the report be carried out - the State expressed that measures representing compliance with this have been taken, as all the relevant bodies have acted, resolving the matter pursuant to law. It added that both federal and local authorities made their determinations in strict accord with the law, so that to reopen the now completed investigation, as recommended by the Commission, would do violence to the rule of law.

91. On this matter, the Commission must say that the complaint in this case was brought before the Commission precisely in connection with those very investigations carried out by the State, and it is on the basis of the elements of those investigations that the Commission concluded that the investigations carried out by the State for the purpose of trying and punishing those responsible for the so-called "Aguas Blancas massacre" were not done with the seriousness necessary to comply with the terms of the requirements laid out by the Inter-American Court of

Human Rights. In fact, the Supreme Court of Justice of Mexico handed down a ruling in which it said that “There was grave violation of the individual rights of the governed in the events of June 28, 1995 in the Vado de Aguas Blancas, Town of Coyuca, State of Guerrero, and in the later related events,” and that “Licenciados Rubén Figueroa Alcocer, Governor on indefinite leave, José Rubén Robles Catalán, ex-Secretary General of the Interior [de Gobierno], Antonio Alcocer Salazar, ex-Attorney General of Justice, Rodolfo Sotomayor Espino, ex-First Under-Attorney General of Justice, Gustavo Olea Godoy, ex-Director of the Judicial Police, Rosendo Armijo de los Santos, ex-Undersecretary of Protection and Traffic [Protección y Tránsito], Adrian Vega Cornejo, ex-Special Prosecutor, and Esteban Mendoza Ramos, ex-General Director of the Interior [Gobernación], all from the state of Guerrero, were responsible. Consequently, in view of the fact that the State has taken no measures to complete the investigation, the Commission considers that it has not complied with the first recommendation.

92. With respect to the second recommendation - to take appropriate action in the criminal courts to determine the individual responsibility of these senior officials of the Guerrero state government, who are named in the Supreme Court decision - the State indicated that it cannot accept the recommendation, given that it was precisely in implementation of the first recommendation that they proceeded to bring to justice in the criminal courts the former senior officials of the state of Guerrero who had been determined to be legally responsible. By reopening investigations already brought to a close in order to take criminal action pursuant to the second recommendation, Mexico would be in violation of legal structures established in its Constitution.

93. On this issue the Commission considers that the second recommendation derives from a failure to comply with the first, since an investigation based on the Supreme Court ruling would have had to be carried out in order to comply with the first. The second recommendation (criminal proceedings) must be seen as a second phase, which the government must undertake as a follow-up to and result of implementing the first recommendation (namely, completing the investigation).

94. The Commission must also add that the State has an international obligation to comply in good faith with recommendations issued by the Commission, with no exemption possible by virtue of the provisions of national law, --aside from the fact that they were not even put forth or properly established-- which, in any case, were not laid out.

95. The State also indicated that after the constitutional reform which added Article 21 to permit challenging the office of the prosecutor [Ministerio Público] for failing to take, or refraining from taking, action in the criminal courts, it is incomprehensible that the Commission should assert that in this case there has been a violation of the duty to adopt internal legislation relating to Articles 8 and 25 of the Convention as provided for in Article 2. It adds that the mere fact that some courts have upheld contradictory arguments does not exempt the claimants from pursuing the case to the Supreme Court for these contradictions to be clarified pursuant to the Ley de Amparo.

96. The Commission has repeatedly demonstrated its satisfaction with the addition of Article 21 to the constitution. Nonetheless, though this has been a big step forward, the article's

application in practice has not been possible, due to lack of regulation, which is why, as the State says, some courts have upheld contradictory arguments in particular cases, which has prevented the creation of jurisprudence assuring the certainty of effective judicial recourse, and has meant that real guaranteeing of the rule of law has not been advanced. In this connection the Commission has already said that "The argument by the Mexican State in favor of applying Article 21 of the Federal Constitution of Mexico also fails, insofar as the available means of recourse must be simple, swift and effective in accordance with Article 25 of the American Convention, since, even though an interpretation has been allowed in some cases permitting the exercise of indirect jurisdiction, this interpretation has not met with widespread acquiescence in the Mexican courts: Indeed, as the State of Mexico has indicated, there is another opposite interpretation on this matter, under which the means of recourse referred to in Article 21 of the Constitution is to be the object of legal regulation".[FN13] Consequently, the fact that said article has not been regulated constitutes a clear violation of Article 2 of the Convention, given that the measures - legislative or other - necessary to make the rights guaranteed in Articles 8 and 25 of the Convention a reality have not been taken.

[FN13] Annual Report of the Commission for 1996, paragraph 38.

97. As to the third recommendation - providing appropriate indemnification to the members of the families of the persons killed and to the surviving victims of the Aguas Blancas occurrences, and providing due medical attention to those victims in need of it - the government averred that the Congress of the state of Guerrero, through decree number 319 of November 12, 1996, provided lifetime economic support to widows and economic dependents as well as scholarships to children of the deceased, in a way consistent with the economic conditions under which the Congress labors. It added that the State would like to know what specific criterion the Commission has regarding compensation to those affected by the events, and that it is ready to provide due medical care to those victims in need of it as a consequence of injuries sustained in the Aguas Blancas events, on account of which, if there be any person requiring such care who has not obtained it, the State would appreciate the Commission's providing information on such persons.

98. The main object of standards on international responsibility in the human rights area as well as of criteria for reparations is to repair the violated legal condition of the human victim or his family members. In this context the state's responsibility is independent of the rank, greater or lesser, of the agents of the state who commit the unrestituted illicit act. Hence the perpetrator of the injurious illicit act or negligence has the obligation to reestablish the status quo ante, and where that is not possible, to provide reparation for the harm done in some other way which, in good faith and in accordance with reasonable criteria, substitutes for monetary restitution.[FN14]

[FN14] Schwarzenberger, Georg, *International Law as Applied by International Courts and Tribunals*, Vol. 1, Third Edition, London, 1957, p. 655.

99. The jurisprudence established by the Inter-American System for the Protection and Promotion of Human Rights and, in particular, by the Court, in the Velásquez Rodríguez case, establishes that:

Reparation of harm brought about by the violation of an international obligation consists in full restitution (*restitutio in integrum*), which includes the restoration of the prior situation, the reparation of the consequences of the violation, and indemnification for patrimonial and non-patrimonial damages, including emotional harm.

100. Taking into account the criteria mentioned, based on both doctrine and jurisprudence, the State should, in the case under investigation, proceed with monetary indemnification, which must be divided into, on the one hand, material, and on the other, mental and moral damages.

101. Material damages include appropriate indemnifications in the categories of subsequent harm and monetary loss. In connection with subsequent harm, expenses incurred by the families of victims and by survivors as a direct consequence of the events should be considered. They should include costs of transportation, legal assistance, telephone calls, etc. With respect to monetary loss, there should be a consideration of the income which families of victims as well as surviving victims would have received during the lifetime of the dead family member or, to the extent to which the victim loses income as a result of these occurrences, during the lifetime of the victim.

102. The mental and moral damages are based on the suffering which the death of the victims provokes, starting at the time of death. In the case of survivors, this moral damage must provide indemnification for the psychological damage resulting from the events as well as the anguish suffered by their families. In this connection, the State has cited Article 1916 of the Criminal Code of the Distrito Federal, which expressly indicates that “when an illicit act or negligence produces mental/moral harm, the person responsible for it shall have the obligation to provide reparation through monetary indemnification . . .”

103. Along the same line, as a point of reference, it is worth citing what the court said in the Lusitania case, ruling of November 1, 1923, about determining damages in cases of death:

To estimate the amounts (a) which the deceased, had he not been killed, would have contributed to the claimant; thereto must be added (b) the pecuniary value which the personal services of the deceased represented for that claimant in terms of the care, education or supervision he provided for her; and we should also add (c) reasonable compensation for the mental trauma plus the suffering, if any, caused by the violent severance of family ties which the plaintiff may have experienced due to that death. The sum of those estimated amounts, reduced to the present cash value thereof, will generally represent the loss suffered by the plaintiff.[FN15]

[FN15] November 11, 1923 ruling on the Lusitania cases, page 363. The court set out a number of additional factors which should be taken into account in determining indemnification in case of death:

- (a) age, sex, health, the condition and state of the life, the occupation, work habits and sobriety, mental and physical capacity, frugality, the deceased's earning capacity, the deceased's usual income, and the way the income was used;
- (b) the probable duration of the life of the deceased had the fatal injury not occurred, for the establishing of which standard life expectancy tables and all other pertinent evidence that is offered shall be taken into account;
- (c) the reasonable probability that the deceased's earning capacity, if living, would have grown or diminished;
- (d) the age, sex, health, the condition and state of the life, and probable life expectancy of each of the claimants;
- (e) the extent to which the deceased, if living, would have used his earnings to the benefit of the claimants, or, on the contrary, would have made personal expenditures from which the claimants would have obtained no benefit . . .

The Commission also stated that to find the present value of the total, current interest tables and values should be used; the pain and suffering of the deceased were not to be taken into account; life insurance collected by the claimants was not to be taken into account in calculating the damages; furthermore, punitive damages would not be assessed. Pp. 363-4. The court stated that most of the factors mentioned are "firmemente establecidos por las autoridades legales civiles y del fuero común, por lo cual es totalmente innecesario detallarlos en forma más precisa." P. 364.

104. At this point in the case, the Commission should point out that Mexico has never made a detailed study of the particular conditions of the victims in accord with the above-mentioned standards. Hence the State should do a study complying with those standards in order to be able to provide due indemnification to the victims or their families and, pursuant to the results of the study, proceed to indemnify the victims who have been individually identified, or their families. Also, the Commission has pointed out that the publication of the February 27, 1996 report by the then Special Prosecutor in the case, is not a substitute for mental/moral damages due to them, so that the State should include this issue in its study of the indemnification question.

105. Also, in connection with the request for information on victims who have not received proper medical care, the Commission points out that this constitutes one of the State's inherent juridical duties. As its contribution to reparation of the damages suffered by the victims in this case, however, the Commission itself ascertained during its on-site visit to Mexico that Messrs. Aníbal Pastrana Gallardo and Andrés Sánchez Rodríguez have not been properly cared for through their final rehabilitation, with the result that they have not been able to recover from their injuries and are unable to work.

106. Finally, the State asked the Commission to revise the language of the report to avoid terms like "massacre" and "extrajudicial executions" in the Aguas Blancas case, since, as paragraph 52 of the Commission's own report reflects, it is clear that the facts are not in dispute and that all the witnesses agree that the police acted in a "compulsive, cold-blooded, abusive, and irate manner."

107. On this matter the Commission's view is that the nature of the facts remains unchanged, given that the events have not been disputed by the State, and all the more so since it is being

stated that the police, who are government employees, acted in a compulsive, cold-blooded, abusive, and irate manner. In this case the Commission has used the term “massacre” because, first, it is the term invariably used by the petitioners as well as in the larger arena of national and international public opinion, and second, because the Spanish-language dictionary defines this term as “killing of persons, generally unarmed, by armed attack or similar cause.” The State, as it indicates, has not denied the facts, which fit perfectly well within this definition.

108. As to the term “extrajudicial executions,” this is a legal concept referring expressly to any person deprived of life without that decision being the result of a final judgment handed down by an authorized judge in a country where the legal system provides for capital punishment. Consequently, since this is the nature of the case we are dealing with, the Commission deems this use of the term perfectly appropriate.

109. Finally, the Commission points out that the National Human Rights Commission (CNDH) reported in July of 1997 that the Government of the State of Guerrero had not complied with all of the recommendations resulting from its report No. 104/95 on the Aguas Blancas incidents. According to the CNDH report, only three of the 14 recommendations contained in that report had been carried out in their entirety. That account coincides with the concern evinced by the Commission in this report concerning the end result of the inquiries, and concurs with the sentiments of the Federal Executive who, in the name of the Mexican people and pursuant to Article 95 of the Constitution, exercised the special remedy consisting of an appeal to the Nation's Supreme Court of Justice.

VII. CONCLUSIONS

110. Based on the considerations of fact and law contained in this report, the Commission concludes that by virtue of the events in the Vado de Aguas Blancas, town of Coyuca, state of Guerrero, on June 28, 1995, the State is responsible for the violation of the obligation to adopt domestic legal provisions pursuant to Article 2 of the Convention, as well as human rights provisions providing judicial guarantees, judicial protection, life, and personal safety pursuant to Articles 4, 5, 8, and 25 of the Convention.

111. Wherefore the Commission concludes that the State has not fulfilled the obligations to respect human rights and guarantees imposed by Article 1.1 of the Convention.

VIII. RECOMMENDATIONS

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES TO THE STATE OF MEXICO THE FOLLOWING RECOMMENDATIONS:

A. To carry out a complete, serious, impartial, and effective investigation of the events described in this report, which occurred in the Vado de Aguas Blancas on June 28, 1995, based on the ruling of the nation's Supreme Court of Justice dated April 23, 1996.

B. To carry out the criminal justice procedures necessary to establish the individual responsibility of the senior state of Guerrero officials identified in the Supreme Court ruling and carry out the corresponding penal sanctions following therefrom.

C. To grant proper indemnification to the members of the families of those killed as well as to the surviving victims of the Aguas Blancas occurrences, and provide proper medical care to those victims who are in need of it as a consequence of injuries sustained in the Aguas Blancas incidents.

D. To take whatever measures are necessary to promptly write regulatory legislation for Article 21 of the Mexican Constitution, so that the judicial guarantees and judicial protection written into Articles 8 and 25 of the Convention can be made effective.

IX. PUBLICATION

112. On October 24, 1997, the Commission sent the Mexican State Report No. 49/97 which had been adopted in the present case, granting it a two-month period for taking the necessary steps to comply with the recommendations cited above and thus remedy the situation addressed.

113. The deadline cited above expired without a response from the State of Mexico. On January 9, 1998, the Commission received its note asking for a 30-day extension to comply with the requirement indicated in the previous paragraph. Since that request was received 16 days after the period for presenting the requisite data had expired, the IACHR declined to respond.

114. On January 21, 1998 the Commission received a note from the State citing the measures it had adopted to comply with the recommendations contained in Chapter VIII above. The Commission sent a copy to the petitioners on January 29, 1998 asking that their comments be sent as quickly as possible, given the short term imposed by the procedural stage which the case had reached by that time. Their response was received on February 3, 1998.

115. Since the Mexican State failed to comply with the request for information within the period set, the IACHR proceeds to examine the State's reply and the petitioners' observations to determine whether measures had been adopted to comply with the recommendations indicated in the preceding section of this report.

A. INVESTIGATION

116. As to the recommendation contained in Section A concerning the investigation of the Aguas Blancas incidents, the State compiled an extensive account of the formalities carried out prior to October 24, 1997 by the National Commission on Human Rights, the State Attorney General's Office and the Federal Attorney General's Office. The State nevertheless concluded in its report that

Based on the activities cited and on the resolution issued by the Nation's Supreme Court of Justice, the pertinent authorities carried out the activities within the purview of each to complete-

-diligently, impartially and pursuant to strict technical and juridical practice--their investigation of the incidents which took place in the "Vado de Aguas Blancas" area on June 28, 1995.

117. In this context, the petitioners noted that the Mexican State had confined its input to "pointing out" the various juridical bodies which had intervened in the inquiry into the Aguas Blancas massacre; and to the comment that an analysis of the performance of each such body "was not appropriate" at the present stage. The petitioners disagree with that assessment, emphasizing the importance of asking the State to specify the action undertaken by each of its agencies--and, in particular, to explain why the results achieved by those agencies have been inefficient and unproductive--in order to clarify the penal responsibility indicated by Mexico's Supreme Court in this case.

118. The petitioners further note that the State fails to provide any new information concerning its investigation of the facts, but simply mentions the "fruitless activities carried out prior to the Commission's latest report, dated October 24, 1997."

B. PENAL ACTIONS

119. As to the recommendation contained in Section B, calling for the corresponding penal action to be instituted, the State continues to maintain the position that was described in its communication of June 23, 1997:

...penal action was taken against those persons in whose cases it was possible to establish the existence of elements of a penal nature and the probability of their responsibility, while no such action was taken against individuals regarding whom such extremes were not established.

In the case of Attorney Ruben Figueroa Alcocer, no criminal responsibility was found for the commission of unlawful acts in connection with the violent events that took place on June 28, 1995 in the Vado de Aguas Blancas,

At that time, the three possible modalities for participation in a criminal offense are contemplated in the State of Guerrero Penal Code--direct, indirect or inductive--were explored. As to the role played by that State's former Governor to conceal the crimes he had committed, the State of Guerrero's Public Prosecutor was unable to establish grounds for presuming his criminal responsibility, particularly in connection with any evidence of undue abuse of public office.

Without prejudice to that circumstance, it should be noted that owing to the nature of their public duties, both the Chamber of Deputies of the Federal Congress and that of the State of Guerrero examined and aired the presumed responsibility incurred for purposes of the putative impeachment proceedings...

In fact, and pursuant to a resolution of Mexico's Supreme Court, parallel procedures took place in those bodies to establish the requisite responsibility. We should point out that in matters involving the federal area, our Constitution establishes that the Governor of a federative entity may be held responsible for serious violations of the political Constitution itself. Such

responsibility may be exacted pursuant to the terms of the Federal Law on the Responsibilities of Public Servants, Article 7 of which establishes the grounds on which such cases may be based. Thanks to the work of the Prior Examination Subcommittee and, thereafter, that of the Chamber of Deputies' Joint Committees of the Interior, Constitutional Points and Justice, it was established that former Governor Ruben Figueroa Alcocer had indeed committed serious violations of the individual guarantees set forth in the Basic Law of the Republic since, in the terms cited by Mexico's Supreme Court, there had been violations of Article 6 on the Constitution, concerning the right to information; and Article 1 thereof concerning restricted enjoyment of the guarantee established by that same Article 6 of our Magna Carta on that subject.

However, for impeachment proceedings to be launched, such violations must be not only serious but systematic (the latter term being understood to describe the reiteration of violating events and the repetition thereof within a given time and space) and the belief that in the Aguas Blancas case, the violations occurred without the systematic perpetration required in the pertinent ordinance, the Chamber of Deputies decreed the inadmissibility of entering into the corresponding impeachment proceedings. (Emphasis added.)

120. The petitioners point out in this respect that

As may be seen, the State has failed to comply with the Commission's recommendations, inasmuch as the only action thus far has been the opening of judicial proceedings against Rosendo Armijo de Los Santos, Adrian Vega Cornejo, Esteban Mendoza Ramos and Rodolfo Sotomayor Espino. To date, no sentences of guilt have been handed down in the case before us.

C. INDEMNIFICATION

121. The recommendation contained in Section C on reparation for the consequences of the violation is the object of a detailed explanation from the State concerning the sums paid and the basis used for the calculation thereof. In its report, the State mentions the following items:

- i. The families of the persons who died have received indemnification in the amount of 50,000 for moral prejudice;
- ii. The State Government has covered all of the expenses incurred for burying the victims;
- iii. As of May 1997, the lifetime monthly pension paid to the families to compensate them for the loss of the victims' earnings was increased to 1,700 pesos. That amount, equivalent to 2.715 times the minimum wage in the district, is subject to revision whenever the latter figure rises;
- iv. Scholarships of 100, 200 and 250 pesos a month--for preschool, primary and secondary education, respectively--were established for a total of 41 persons. Those amounts are subject to revision by the same figure as cited above;
- v. The 17 widows of the victims received housing valued at 70,200 pesos and household appliances costing 16,346 pesos. In addition, 14 of them received "a stud-bull and seven heifers," while others were given credit from supply stores in the amount of 50,000 pesos each, and each of the remaining women was awarded "a tortilla-making machine worth 65,000 pesos." All of

them were given a two-month course in dress-making, with a scholarships amounting to 450 pesos a month;

vi. The wounded--five persons in all--receive monthly support in the amount of 1,000 pesos, equivalent to 1.28 times the minimum wage in the area; and

vii. In July and December of 1997, a total of 218,500 pesos was distributed to the widows and parents of the victims as welfare assistance.

122. The petitioners' observations reflect their attitude concerning the indemnities paid in this case:

... The amounts have not been fair, in the terms of inter-American jurisprudence, especially since not all of the victims received compensation or medical care. The Commission itself, during its on-site visit to Mexico in 1996, interviewed the victims, whose testimony expressly indicated the flaws in the indemnities granted.

123. They continue to point out that the State has not yet carried out the study of the victims' individual conditions which was expressly stipulated by the IACHR in paragraph 104 *supra* as a necessary step toward adequate indemnification of those victims' families. The State contends that its calculations were predicated on the assumption that the victims were engaged in farm work, and on the anticipation of future development in the district, so that the hypothetical emergence of jobs for peons in the construction industry was the premise accepted. The petitioners emphasize the skewed results of using such a criterion, which renders the indemnity figures unfair and disproportionate. This, they claim, is clearly shown by the State's own data, which makes no attempt to explain why livestock had been awarded to some of the widows; financing for supply shops to others; and the money for tortilla-making equipment to yet another group.

D. REGULATORY MEASURES FOR ARTICLE 21 OF THE CONSTITUTION

124. The State makes the following comments concerning the recommendation contained in Section D:

...independently of the work currently being performed in the executive branch to draft a law that would set up a precise judicial procedure for impugning the failure to exercise--or any waiver of--penal action, on November 11, 1997, the Federal Supreme Court of Justice established jurisprudential thesis CLXVI/97. It determines the propriety of using a writ of amparo against resolutions addressing the failure to exercise, or any waivers of, penal action when the resulting judgments might violate individual guarantees.

125. The State also notes that the use of an amparo offers the combined advantages of a simple and prompt, or any other effective, recourse, as set forth in Article 25 of the American Convention. Accordingly, the State considers that the right thus guaranteed is immediately protected; and that compliance with the Commission's respective recommendation should not "be subject to the requirement that a specific provision be introduced to regulate the instrument for impugning decisions of the Attorney General's Office by means of the ordinary jurisdictional procedure."

126. On this point, the petitioners contend that the jurisprudence in question is not applicable to the present case. To that end, they quote a decision handed down on June 15, 1992 by the First Circuit's First Collegial Court of Penal Matters relevant to direct amparo 1594/91, which holds that procedural reforms cannot be applied retroactively. The petitioners close by noting that the IACHR recommendation in this regard clearly referred to legislative--not judicial--measures.

E. ANALYSIS AND FINAL CONCLUSIONS

127. The IACHR must decide whether the Mexican State has taken adequate measures to carry out the recommendations noted in report No. 49/97. Its most recent communication--summarized above--as well as the petitioners' corresponding observations, clearly indicate that the State did not fully comply with the recommendations shown in Sections A, B and C between October 24, 1997 and December 24 of that year, when the deadline for presenting the requisite information expired; nor had it done so by January 21, 1998, the date when the pertinent information was received at the IACHR. Quite the contrary: the information that was furnished by Mexico during this procedural stage precisely confirms the findings already noted by the Commission in Chapter VI *supra* (paragraphs 91 through 94, and 97 through 105).

128. In fact, to this day the State has still not completed a serious or impartial investigation of the events giving rise to the present report. This is all the more serious in view of the time that has elapsed since April 23, 1996--the date of the Supreme Court's decision. The lack of efficacy displayed by the investigations currently under way is all too than evident, given the lack of concrete results and the consequent impunity enjoyed by the material and intellectual perpetrators of the acts.

129. As to the exercise of penal action, on the one hand the State replies that in the case of the former Governor of Guerrero "it was determined that no penal responsibility had been incurred in connection with the Aguas Blancas incidents." On the other hand, the State reports in that same communication that the Supreme Court of Justice itself found that there had been a grave violation of individual guarantees" in the events examined here; and that the persons responsible for such violation are Ruben Figueroa Alcocer, "a Governor, on indefinite leave," and another seven public officials belonging to the same regime.

130. But immediately thereafter, the report notes the inapplicability of instituting impeachment proceedings against Figueroa Alcocer in the Chamber of Deputies, owing to the provision which requires that any violation--regardless of how flagrant the offense--must be of a "systematic" nature. The report goes on to state that neither was the Chamber of Deputies able to pursue the initiative aimed at depriving Figueroa Alcocer of the protection granted him by the Constitution, for the sole reason that the "hypothetical offense" he had committed lacked federal scope.

131. The Nation's Congress, for its part, had also scrutinized the possibility of launching impeachment proceedings against the aforesaid former Governor, along with Jose Ruben Robles Catalan and Antonio Alcocer Salazar. As noted by the Mexican State in its response, however, the Congress decided that such proceedings were also out of order because the State of Guerrero

Law on Civil Servants' Responsibilities requires that "the violation shall have been effected in a systematic manner." The State goes on to explain that there were no grounds for linking Figueroa Alcocer with grave offenses of a common nature.

132. The proceedings thus examined appear to be confused and contradictory. The end result, however, is only too clear: the impunity enjoyed by high-ranking public officials, whose responsibility in these somber events was determined by Mexico's loftiest jurisdictional body. The Commission therefore concludes that the State has not complied with its recommendation, cited in section B above, to the effect that penal action be taken. Moreover, the IACHR observes that the group of provisions examined here tends to thwart unimpeded exercise of the right to a recourse or effective remedy to judge and punish officials who violate human rights, shielded by the powers and impunity conferred by their posts. The result is a clear-cut violation of the State's obligation to respect and guarantee their rights--as well as the right to judicial protection--which are set forth in Articles 1.1 and 25 of the American Convention.

133. Turning now to the question of indemnification, the Commission observes that the State has still not carried out a study including the detailed analysis of the individual conditions of the victims. In the absence of that component, specifically indicated in paragraph 104 *supra*, the Commission concludes that the indemnity amounts were not adequate.

134. As to the recommendation contained in Section D above, the Commission takes note of the recent jurisprudential thesis upheld by Mexico's Supreme Court of Justice which determines the applicability of an amparo to combat the abstentions or delays of the Public Prosecutor's Office, as discussed in the present report. That step by the Judiciary constitutes welcome progress toward full efficacy of the rights enshrined in Articles 8 and 25 of the American Convention, and may very well constitute an alternative means of compliance with the Commission's recommendation. However, the Commission notes that the above mentioned jurisprudence has not been applied to the instant case, and therefore decides to confirm its recommendation, until such remedy is proven to be "adequate and effective" in the terms of Article 25 of the Convention. To that end, the Commission notes that Article 197-A of the Ley de Amparo in effect in that country establishes:

The decision handed down shall not affect the juridical situations resulting from those trials in which the sentences have been issued.

135. Based on the reasons stated and developed in the present report, and in order to achieve a firm juridical foundation, as required by the right in question, as well as the verification and proof from the State, of a remedy that is adequate and effective, the IACHR reaffirms its recommendation contained in the aforementioned Section D, to the effect that Article 21 of the Mexican Constitution be regulated by law. However, the Commission shall be informed by the parties on the application of the amparo to the instant case, so that it may be duly noted and made public, if that were the case.

136. Based on the foregoing considerations and the provisions of Article 51.3 of the American Convention and Article 48 of the Commission's Regulations, the IACHR decides to reiterate the conclusions and recommendations set forth in Chapters VII and VIII *supra*; to publish the present

report; and to include it in the IACHR Annual Report. Pursuant to the rules that govern its mandate, the IACHR shall continue to evaluate the measures adopted by the Mexican State with respect to the recommendations issued in this report, until such time as full compliance by that State has been achieved.