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First Vice Chairman: Robert K. Goldman;
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I. EVENTS DENOUNCED

According to the claim presented to the Inter-American Commission on Human Rights (hereinafter the Commission), on January 7, 1994, agents of the Mexican Army forcefully entered the Indian community of Morelia in the Municipality of Altamirano, in Chiapas State, Mexico (hereinafter the "Mexican State" or "Government"). They burst into the houses, hit the men there, dragged them outside and assembled them in the church and at the Ejido basketball court, where the men were compelled to lie face down against the cement surface. While the prisoners were being held there, the soldiers looted the houses and shops in the village and destroyed the health care station. Three of the inhabitants--Severiano and Hermelindo Santiz Gomez and Sebastian Santiz Lopez, whose names were on a list which the Army captain had brought--were pulled out of the group and taken to the sacristy in the church. There they were tortured and then taken away in an army vehicle. On February 11, 1994, the remains of these three Indians were found along the road from Altamirano to Morelia.

II. PROCEEDINGS BEFORE THE COMMISSION

1. On November 23, 1994, the Commission received a petition accusing the Mexican State of responsibility for the presumed violation of Articles 4, 5, 7, 8, 25 and 1.1 of the American Convention on Human Rights (hereinafter "the Convention").

2. The Commission transmitted the pertinent portions of the claim to the Mexican State on December 12, 1994. At the same time, it asked for information about the events described in the accusation and in regard to any other relevant factors that would enable the Commission to determine whether the remedies under domestic jurisdiction had been exhausted. The Commission granted the Government a period of 90 days in which to present its reply.

3. On February 2, 1995, a hearing with both parties was held at the Commission's headquarters.
4. On February 3, 1995, the Commission received additional information from the petitioners, which it transmitted to the Mexican State on February 8 of that year.
5. On March 9, 1995, the Government asked for a 30-day extension to assemble the documentation needed to provide a suitable response. The request was granted by the Commission on March 13, 1995.
6. On April 10, 1995, the Government asked for a second 30-day extension to assemble the documents and provide a satisfactory response. The Commission acceded to the request on April 17 of that year.
7. On May 15, 1995, the Government requested a further extension of 30 days to gather the documentation needed for its reply, and this was granted on May 17 of that year.
8. In a note received on June 19, 1995, the Government presented its reply in regard to the case being processed.
9. The petitioners presented their observations concerning the Government response on September 13, 1995, and the Mexican State presented its final observations on November 22, 1995.
10. On February 21, 1996, a hearing with both parties was held at the Commission's headquarters.
11. On April 23, 1996, the Government presented additional information as to the right to resort to fall back on resolutions or omissions of the Attorney General's Office, based on Article 21 of the Federal Constitution.
12. On April 29, 1996, the Commission approved the admissibility of the case by means of Report No. 25/96.
13. On June 25, 1996, the Mexican State requested that the report on admissibility be reconsidered.
14. On August 6, 1996, the Commission placed itself at the disposal of the parties concerned with the view to reach a friendly settlement.
15. On October 9, 1996, a hearing was held with both parties at the Commission's headquarters, issues on the merits of the case were discussed. During this hearing, the petitioners expressed their unwillingness to initiate a friendly settlement process.

III. POSITION OF THE PARTIES

A. Position of the Petitioners

16. The petitioners have argued that there was a total lack of volition in the investigation of the events on the part of the persons responsible for its conduct, and that no substantial progress had been made since the time when those acts took place. That when the bodies were found, the Attorney General's Office of the State of Chiapas had instituted Pretrial Investigation No. AL/014/994, which continues to be open in the absence of any progress in the case. That in September of 1994, the State's Assistant Attorney General had declared that work could not continue in the investigation inasmuch as it was impossible to visit the site of the events, since the Army had barred entry to this area on the grounds that it was a war zone. That, coinciding with the pretrial investigation by the Attorney General's Office of the State of Chiapas, work had started on Pretrial Investigation No. 332M/04/94--conducted by the Military Attorney General's Office--but that no information was available about the contents of that file.

17. The claimants also noted that the Government's position had been to deny any sort of responsibility for the events denounced. That the National Defense Secretariat (SEDENA) Bulletin No. 30, issued on February 14, 1994, contained the following reference to this case:

The requests for information received from political and human rights organizations interested in the case were granted by the military authorities, who provided adequate information to the effect that the three individuals--who to this day have not been found--had never been taken into custody by members of the armed forces, inasmuch as no military presence existed in the ejido on January 7.

18. The claimants also indicate that there had been negligence in examining the remains, when four experts from the armed forces had conducted their study thereof by scattering them on the floor of the mayor's office in Altamirano; and that, when they finished their study, they had left behind a human rib and pieces of scalp which were found in the patio. That according to experts from the "Physicians for Human Rights" (PHR) group, the military experts had been very unprofessional in their handling of the evidence. Moreover, their investigation had been illegal, since this was the purview of the civil courts, not the military; accordingly, the experts from the army had not been authorized to conduct an investigation. When this circumstance was questioned by members of human rights defense groups, it triggered a series of contradictions between the civil and the military authorities as to who had authorized the conduct of these examinations.

19. In their comments dated September 13, 1995, the claimants again pointed to the delay in investigating the case and to a series of grave anomalies in the proceeding. Also to statements from the Government contradicting the facts, which help to establish the lack of government will to explain those facts. SEDENA itself, they claim, had acknowledged the presence of the army in Ejido Morelia that day as is evident in its Press Bulletin No. 9, dated January 7, 1994, which states textually: "A similar situation was found in the village of Morelia, near the one mentioned previously (Altamirano), which was penetrated by the Army today..." They went on to say that the testimony from various members of the Morelia community concur in reporting the presence of the military and the soldiers' responsibility in the events denounced.

20. The petitioners also pointed out that if it were true that persons other than the military had been responsible for the incidents, the Mexican State would also be responsible for the mistake that had occurred in the investigation thereof, which has made it impossible to pinpoint responsibility in the case.

B. The Government's Position

21. The Government has stated that it has not yet been possible to determine the existence of events such as those described by the petitioners and, as a result, the presumed responsibility for those events. Accordingly, it was not possible to speak of events which constitute a violation of the human rights defined in the Convention.

22. It goes on to say that the fact that the investigation has not yet been completed is by no means due to a lack of will on the part of the persons conducting the search. That on the contrary, the delay was caused by the very serious nature of the events denounced, to the complexity of the situation and to the thoroughness with which the competent Mexican authorities are examining the claim and trying to establish the facts in the case.

23. The Government also states that in response to the accusation presented by Martin Hak, the Military Attorney General's Office had on February 12, 1994 ordered the start of Pretrial Investigation No. 33ZM/04/94-E. The search ended with the finding that there was no military responsibility, and as a result was sent to the files. However, since documents relevant to the case had recently been sent to the Armed Forces Institute, the Office of reference had deemed it advisable, pursuant to its constitutional and legal powers, to reopen the investigation in question.

24. The Government also reported that five experts had taken part in examining the remains held in the military's keeping. They were: Captains Hugo Reyes Rodriguez and Jorge Gutierrez Munoz, physicians with master's degrees in Legal and Forensic Medicine; Oscar Castillo Vasquez, a dentist with a graduate degree in forensic dentistry; Lieutenant Jose de Jesus Zepeda Balderas, a specialist in ballistics and criminal behavior; and second lieutenant Cesar Perez Medina, a specialist in criminal behavior and judicial photography. The five issued an expert opinion on forensic odontology and pathology, legal medicine and criminal behavior in the field, having been appointed for this purpose by the Military Attorney General's Office to carry out Pretrial Investigation Number 33ZM/04/94-E. The Government roundly rejects the petitioners' claim that the expert inquiry had been carried out unlawfully by members of the military since--according to the claim accusing members of the Mexican Army and charging the Army with the commission of offenses contrary to the principles of military discipline, a claim which had been received by the Military Attorney General's Office and in accordance with the Code of Military Justice--that Office had ordered the start of a pretrial investigation, thereby exercising its exclusive competence as a military tribunal.

25. In its closing observations dated November 22, 1995, the Government noted that, as a result of the action taken by the military, it had been established that on January 6, 1994, as a result of the armed conflict taking place in the Chiapas highlands and forest area, the Mexican Air Force and Army had carried out a number of patrol missions covering different communities

in the region--including Morelia, in the Altamirano municipality of Chiapas State. That when the local authorities there became aware of the presence of members of the Army, they had reported that some members of the Zapatista Army of National Liberation (EZLN) had infiltrated the community. The persons pointed out by the local authorities were then taken into custody. That in all, 32 detainees had been--on that day, and after a medical examination--turned over to the agent of the Federal Attorney General's Office. However, the Government asserts, neither Hermelindo and Severiano Santiz Gomez nor Sebastian Santiz Lopez were included in that group.

26. During the hearing held on October 9, 1996, the Government stated that there were serious contradictions among the statements and denunciations made by the relatives of the presumed victims, since the names of the persons presumed to have disappeared were changed among the statements, there was mention of having seen a Red Cross ambulance that never existed, and the facts related to the disappearance of Hermelindo Santiz Gómez were denounced a month after they occurred.

27. It also stated that the individuals presumed to have been injured might be alive if they had existed, since the office of the Civil Registry of the State of Chiapas does not have records of the birth and death of the complainants.

28. That among the information provided by nongovernmental agencies as well as the population of the Morelia ejido is conspicuously contradictory with regard to the date on which the events took place.

29. It also presented a summary of the testimonies given by various individuals during the investigation of the case, which states that the Mexican Army was present in the community of Morelia on January 6, 1994, in an operation in which 33 persons were arrested, among which the disappeared persons were not found. It also states that on the 7th of the same month and year there was no military presence in the Morelia ejido, and that the morning of January 7, 1994, they arrived at the town of Las Margaritas, Chiapas.

30. It also put on record the expert field opinion in pathology and forensic odontology and legal and criminal medicine issued on February 21, 1994, by military experts, which reaches the conclusion that "taking into account the bones studied initially, according to the results of forensic odontology, there having been observed three mandibles and a bony portion of an upper maxilla that is not part of the cranial facial masses and the cranial vault numbered 2, due to its weight, makeup and state of hydration and conservation, figured to have been post mortem less time than the other bones, we can conclude that the bony remains we looked at most probably belonged to four deceased individuals whose time of death ranged from no less than six months for the most recent and more than 36 months for the most remote."

31. That by virtue of the fact that the National Commission on Human Rights (CNDH) provided two opinions, one on the criminal matters and the other on the DNA study, it was necessary to allow intervention by the Surgeon Major, Dr. in Basic Biomedical Investigations, Jaime Berumen Campos, who reached the conclusion that the mitochondrial DNA test conducted by Dr. King for identification of remains #1 and #2 is invalid because no genetic study has been

made of the population of the region from which the relatives of the victims come. They also pointed out that the report of the National Academy of Medicine contains too many inaccuracies, for which reason it should not be taken into account.

32. It also put on record a report on the payment of compensation received by Mrs. Carmelina López Santiz, Paulina Domínguez Gómez, and Petrona López Santiz, wives of the presumed victims, from the trust created by the Government of the State of Chiapas for such purpose.

IV. CONSIDERATIONS REGARDING THE MERITS OF THE CASE

33. The first order of business in the present case is to determine whether agents of the Mexican Army had been present in the Indian community of Morelia, Altamirano municipality, State of Chiapas on January 7, 1994; and--even assuming that they had been there--whether the events cited in the claim took place. To that end, the petitioners have presented a video containing the statements of witnesses who say that they had been present when the events described in the claim occurred. Also attached thereto was a copy of Press Bulletin No. 9, issued by the Mexican National Defense Secretariat (SEDENA), announcing that on January 7, 1994, the Army had entered the village of Morelia and had taken 31 aggressors into custody there. In addition, during its on-site visit to Mexico in July 1996, the Inter-American Commission on Human Rights had met with widows of the victims, whose personal account of the events tallied with the version in the claim. For its part, the Government has stated that in the investigations conducted, it has not yet been possible to verify the existence of events such as described by the petitioners. That the only thing that could be established was that on January 6, 1994--and because of the armed conflict taking place in this area--the Army and the Mexican Air Force had conducted a number of patrol actions in various communities of the region, one of them being Morelia. That at that place, and acting on the accusation presented by the local authorities, they proceeded to arrest some presumed members of the EZLN; but that Severiano Santiz Gomez, Sebastian Santiz Lopez and Hermelindo Santiz Gomez were not included in that group. They also presented statements made by various individuals during the procedure saying that on January 7 there was no military presence at the Morelia ejido, since on that day they were in the town of Las Margaritas, also in the State of Chiapas. Moreover, the Mexican State itself has implicitly accepted the fact that the events took place on January 6 by accepting and processing the request for compensation of the widows of the victims based on the fact that the events took place on that date. The Mexican State itself set forth evidence of this in the file, which contains, among other things, the following: the statement that the events took place on January 6, 1996; that the victims subjects of the complaint died during those events; and that for this reason the Government agrees to compensate the relatives. This statement is backed by the commissioner of the Morelia ejido and approved for their compensation by both the commissioner in reference and the authorities of the Support Fund for the Payment of Compensation to Those Injured in the Armed Conflict on account of the Federal Government (FAPIAC), through the Government of the State of Chiapas.

34. With regard to these events in dispute, the Commission believes that, although there might seem to be certain errors concerning the precise date on which the events took place, which could be due to the confusion caused by the events in Chiapas early in the month of

January 1994, which caused mobilization of the Mexican Army in that state, in that same regard, the activities of the Mexican Army in the town of Morelia (Chiapas State) in January 1994, due to their immediate and unexpected nature, might have caused inaccurate statements on both sides. What the parties do accept as a fact is that on January 6 or 7, 1994, the Mexican Army entered the Indigenous community of Morelia. With regard to the claim made by the Mexican State that during the operation 33 persons were detained and that the presumed victims were not included among them, the Commission must point out that this claim does not in contradict the statement of the facts. Since Severiano Santiz Gómez, Sebastián Santiz López and Hermelindo Santiz Gómez were separated from the rest of the group and taken in a (military or Red Cross) ambulance and then summarily executed, it is logical to conclude that they could not be on the list of persons detained by the Mexican Army. Likewise, the Commission considers that the Mexican Government's statement to the effect that thus far it has not been possible to determine the existence of events like those described by the complainants is not fully satisfactory, because there are clear, precise and consistent testimonies, and documents by the Government itself, that show that on January 6 or 7, 1994, during a military operation conducted in the area by the Mexican Army, three of the residents, Severiano and Hermelindo Santiz Gómez and Sebastián López, were taken out of the group of the community's residents, and after their screams from the presumed tortures of which they were victims were heard, were taken in a military or Red Cross vehicle, where they were seen alive for the last time.

35. With regard to the Government's assertion that the persons presumed injured could be alive if they have existed, since the Office of the Civil Registry of the State of Chiapas has no record of the birth and death of the complainants, the Commission must state that the argument is not fully sustainable. This is because, although these records constitute the documental evidence par excellence of the birth or death of an individual, the nonexistence thereof cannot have the unique value of full evidence to disavow their existence or their having ceased to exist, because it would be necessary to analyze the facts in each specific case to reach a valid conclusion. In fact, when the socioeconomic context of the area in which the events took place is analyzed, it is understood why in many instances the recording of births and deaths is an illusory situation whose accomplishment is hardly feasible. According to a report on Chiapas made by the expert, Marco A. Orozco Zuarth, Chiapas is the federative entity with the highest index and degree of deprivation. Of the 111 municipalities, 34.23% are cataloged as having a "very high" degree of deprivation; 50.45% are in the "high" range, 10.81% are in the medium range, only 4.5% are in the low range, and none have a very low degree of deprivation. Some 30.12% of the people 15 years of age are illiterate. Some 66.56% live in small communities with less than five thousand inhabitants, and 80.08% receive incomes of less than two monthly minimum wages.[FN1] This situation doubtless has also been understood by the Mexican State through the Government of the State of Chiapas to the extent that on March 25, 1994, Ms. Blanca L. Escoto González (Operational Coordinator) authorized the payment of 22,000 New Pesos to the wives of Sebastián Santiz López and Severiano Santiz Gómez, and 33,000 New Pesos to the common-law wife of Hermelindo Santiz Gómez, through the Support Fund for the Payment of Compensation to Those Injured in the Armed Conflict on account of the Federal Government (FAPIAC), which would hardly have happened if the State Government had doubts as to the existence of the victims. This is evidence of the situation described above and of the acceptance of the victims' preexistence by the authorities of the Mexican State itself.

[FN1] Marco A. Orozco Zuarth, *Síntesis de Chiapas*, Third Edition, Page 117, Mexico.

36. As to the study of the remains which had been found, the Mexican National Commission on Human Rights (CNDH) has reported that the findings reached by its experts--which coincide with those of the PHR--indicate that three adult males, approximately the same age as the persons who disappeared, are involved. That an examination of the craniums indicates that death was caused by a blow or blows to the head, and that the time of death might vary from one to three months, given the conditions of the site and the manner in which the remains were found. That the dental characteristics and clothing help to support the hypothesis that these are the persons being sought; and, finally, that the results of the DNA mitochondrion analysis of the bodies which might be those of Severiano Santiz Gomez and Hermelindo Santiz Gomez coincide with samples taken from persons who state that they are members of the same family. The DNA mitochondrion analysis of the body which may be that of Sebastian Santiz Lopez has yet to be completed.[FN2]

[FN2] National Commission on Human Rights: May 1994-May 1995 Annual Report, page 643. Mexico, 1995.

37. The CNDH goes on to say that on the other hand, the conclusion reached by the SEDENA experts differs from that of other sources, since it indicates that the remains are those of four adults, rather than three. It also finds that the probable time of death was between 8 and 36 months earlier, instead of one to three; and that the garments found at the site had not be worn by any recent body in a state of putrefaction.[FN3]

[FN3] National Commission of Human Rights, May 1994-May 1995 Annual Report, page 644. Mexico City, 1995.

38. The petitioners have indicated that there had been negligence and unlawful conduct in the examination of the remains by SEDENA experts, and they provided photographs and testimony from PHR experts to back up that claim. The Government reported that the remains had been examined by five experts who had been duly trained to perform these functions, and pursuant to the pretrial investigation launched by the Military Attorney General's Office.

39. The Mexican State also indicated that the Surgeon Major, Dr. in Basic Biomedical Investigations, Jaime Berumen Campos, reached the conclusion that the mitochondrial DNA tests conducted by Dr. King for identification of remains #1 and #2 are invalid because a genetic study of the population of the region from which the relatives of the victims came has not been made. He also said that the report of the National Academy of Medicine contains too many inaccuracies, for which reason it should not be taken into account.

40. With respect to the question raised, the Commission considers that the fact that these persons continue to be missing; that the aforementioned remains have not been claimed by the families of other persons who might also have disappeared; that two of the three conclusions reached by the experts coincide; that there is a report by the National Academy of Medicine recognizing the suitability of the methodology used by Dr. King in the mitochondrial DNA test made on two of the presumed victims, and that there have been indications of negligence on the part of the SEDENA experts, which is based on the photographs and testimony made available to this Commission. All of these premises lead the Commission to conclude that the remains found on February 11, 1994 on the road from Altamirano to Morelia are those of Severiano Santiz Gomez, Sebastian Santiz Lopez and Hermelindo Santiz Gomez.

41. The Commission wished also to state that the irrevocable provisions of Article 3 common to the Geneva Conventions[FN4] govern behavior with regard to hostilities, binding on government as well as dissident armed groups, in all internal armed conflicts.[FN5]

[FN4] Article 3 common to the Geneva Conventions establishes that:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.,

To this end, the following acts are and shall remain prohibited at any time and any place whatsoever with respect to the above-mentioned persons:

a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

[FN5] Mexico ratified the four Geneva Conventions of 1949 on October 29, 1952. Article 29 of the American Convention establishes that no provision of the Convention shall be interpreted as "excluding or limiting the effect" of other international acts of the same nature, such as the standards of international common law and general standards of international law. Therefore the Commission is competent to apply directly rules of international humanitarian law, that is, the law of armed conflict, or to inform its interpretations of the provisions of the American Convention by reference to those rules.

42. The Commission recognizes that the Mexican State has the duty and the authority to protect itself against violent actions and to take military actions against dissident armed groups. Nevertheless, it should be stressed that neither the Government nor the dissidents have unlimited discretion to choose how to conduct the hostilities. Their military operations must always be conducted in accordance with the restraints and prohibitions imposed by applicable rules of International Humanitarian Law. Moreover, the Commission wishes to note that, in situations of armed conflict, Article 27 of the American Convention expressly prohibits suspension of the guarantees established in Articles 4 and 5, which refer to the right to life and to personal

integrity. Therefore these irrevocable guarantees of the Convention apply simultaneously with the aforementioned common Article 3.

43. In this regard, common Article 3 explicitly prohibits mistreatment and, particularly, summary executions of any person captured or having surrendered, regardless of whether he had taken part in the hostilities. Torture and summary execution of any person by state agents not only violates common Article 3, but also articles 4 and 5 of the American Convention.

44. The petitioners have asked the Commission to find that the Mexican State has violated in the case of Severiano Santiz Gomez, Sebastian Santiz Lopez, and Hermelindo Santiz Gomez, the human rights set forth in Articles 4, 5, 7, 8, 25 and 1.1 of the Convention. To that end, the Commission must pronounce on the violation of those rights:

A. Right to a Fair Trial

45. Article 8.1 of the Convention establishes the right of every person to be heard, with due guarantees and within a reasonable time, by a judge or a competent, independent and impartial tribunal.

46. Insofar as the reasonable time concept is concerned, many of the numerous references in the jurisprudence of international organs have been used--depending on the particular circumstances of each case--to consider the following criteria: the complexity of the case; the conduct of the plaintiffs and judicial authorities; and the way the instruction phase of the proceeding has been handled.[FN6]

[FN6] See, for example: IACHR Resolution No. 17/89, Case Report No. 10.037 (Mario Eduardo Firmenich) in the 1988-1989 Annual Report of the Inter-American Commission on Human Rights, page 38; the European Court of Human Rights: "Konig" Case, Judgment of June 28, 1978, Series A No. 27, pages 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; Buchholz Case, Judgment of May 6, 1981, Series A No. 42, page 16, paragraph 51, pages 20-22, paragraphs 61 and 63; and the Kemmache Case, Judgment of November 27, 1991, Series A no. 218, page 27, paragraph 60.

47. As to the complexity of the litigation, the Mexican State has indicated that the reasons why the investigation has not been completed are due to the extremely serious nature of the events denounced; the complexity of the situation; and the seriousness with which the competent Mexican authorities have undertaken to examine and clear up those charges. To that end, the Commission considers that the fact that more than two years have elapsed since the events took place--and that to date there has been no exercise of the pertinent penal action, nor any indication that this may be in the offing--clearly shows that the investigations have not been conducted responsibly. To the contrary, the conclusions reached by the Mexican authorities convey a denial that the Mexican State is in any way responsible for these acts. Regardless of how complex the

litigation may be, or how serious the acts involved, the period of more than two years should have been ample for the conduct of a serious investigation, since as the Court notes:

The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.[FN7]

[FN7] Inter-American Court of Human Rights, Velasquez Rodriguez Case, Judgment of July 29, 1988, page 156, paragraph 177.

48. As to the other points, this Commission finds that since the case was never argued in a legal proceeding, those points cannot be taken as a basis for this analysis. Consequently, the mere fact that the period cited has elapsed without a trial of the persons responsible for those acts leads the Commission to conclude that the Mexican State has failed to observe the reasonable period cited by the Convention in its Article 8.

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

50. In the case under review here, the inability or lack of will on the part of the Mexican Attorney General's Office to carry out the investigations designed to find the persons responsible for the death of the three victims has been demonstrated. Accordingly, the proper and effective remedy for dealing with the violations denounced would be the one established in Article 21 of the Mexican Constitution, which states that:

The resolutions of the Attorney General's Office as to whether the failure to exercise--or the decision to refrain from--penal action may be impugned through jurisdictional channels pursuant to the terms established by law.

51. The fact is, however, that the provisions of that article have not yet been regulated, and this has created a climate of juridical uncertainty that has lead the courts to produce different interpretations of this subject--which only adds to the confusion and impedes attainment of the genuine legal security which is the goal. In this connection, the Commission's report on admissibility in this case noted that Article 21 does not enjoy the distinction of being simple, prompt and effective in the terms of Article 25 of the American Convention.

52. The Commission has also noted in this respect that:

In the cases in which the Attorney General's Office has abstained from taking penal action, the IACHR has been able to verify a state of juridical uncertainty as to the utilization of Article 21 of

the Constitution to exercise a jurisdictional remedy that would make it possible to control such inaction. In order to establish effective responsibility, it is essential to have a clear understanding of the scope of Article 21 of the Constitution and the possibility of its effective application in practice.[FN8]

[FN8] Bulletin issued by the IACHR on July 24, 1996, at the end of the on-site visit to Mexico.

53. In conclusion, the Commission considers that in this case there has been a violation of the rights to the guarantees and to the judicial protection provided for in Articles 8 and 25 of the Convention, and of the duty to adopt provisions under domestic law established in Article 2 of the Convention.

B. The Right to Life

54. Article 4 of the Convention establishes that "No one shall be arbitrarily deprived of his life."

55. The examination of this case shows that on August 6 or 7, 1994, members of the Mexican Army entered the Indian community of Morelia, in the Municipality of Altamirano, State of Chiapas. That the victims--Severiano Santiz Gomez, Sebastian Santiz Lopez and Hermelindo Santiz Gomez--were last seen in a vehicle belonging to the Army, and that all of the characteristics of the remains found on February 11, 1994 lead to the conclusion that these were the bodies of the victims.

56. Having considered the evidence, this Commission believes that members of the Mexican Army, who had custody of the victims, are responsible for the death of these persons. It therefore concludes that the Mexican State has violated the right to life enshrined in Article 4 of the Convention to the detriment of Severiano Santiz Gomez, Sebastian Santiz Lopez and Hermelindo Santiz Gomez.

C. The Right to Personal Integrity

57. Article 5 of the Convention establishes that:

1. Every person has the right to have his physical, mental and moral integrity respected.
2. No one should be subjected to torture or to cruel, inhuman or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

58. In addressing the case in which a person was deprived of his right to life and violation of personal integrity is being alleged at the same time, the Court has said that:

Although it might be understood that when a person is deprived of his life, his personal integrity is wounded as well, this is not the sense of the precept quoted from the Convention: it means, in

essence, that no one should be subjected to torture nor to cruel, inhuman or degrading treatment; and that every person deprived of his liberty should be treated with the respect due to the inherent dignity of the human being.

59. In the case of reference, however, despite the existence of an assumption similar to the one examined by the Court, there are concomitant facts that must be scrutinized independently of the aforementioned violation of the right to life. The fact that agents of the Mexican Army have removed people living in the Indian community of Morelia--among them, Severiano Santiz Gomez, Sebastian Santiz Lopez and Hermelindo Santiz Gomez--from their homes, beating them and hitting them with rifle butts and forcing them to lie face down on the cement, shows that the aggressors were acting in an intimidating manner, creating panic in the community and, as a result, inflicting mental damage on its residents.

60. With regard to the accusation of torture, it must be pointed out that the witnesses present have stated that they saw the three victims being taken from the group and moved to the sacristy of the church. They also describe having heard the shouting and cries from the dwelling and having seen the persons being beaten and forced into a military vehicle. The Mexican State has never presented arguments to contradict that account, since it has always insisted that there had been no military presence in that place on the day the events were supposed to have occurred, and that the presumed victims were not among those who were detained on January 6, 1996.

61. The conclusions reached by experts of the CNDH--which coincided with those of the PHR in regard to the remains that had been found--state that "from the examination of the skull, it may be deduced that death was caused by blows to the head."

62. Article 2 of the Inter-American Convention to Prevent and Punish Torture (hereinafter "Convention against Torture"), to which Mexico is a State Party since June 22, 1987, establishes that:

For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

63. The inhumane treatment to which Severiano Santiz Gomez, Sebastian Santiz Lopez and Hermelindo Santiz Gomez were subjected in the hands of Mexican Army agents corresponds to this definition of torture. The torture inflicted on the victims is similar to that used "as personal punishment" or "as a penalty," and in this specific instance, the motive would appear to be their presumed affiliation with the group known as the EZLN. The events which took place and the evidence presented points to the deliberate intent implicit in the acts of the Army agents. The background details are also convincing: the sequence of events began with the Army's entry into the community; continued with identification of the presumed members of the EZLN, Severiano Santiz Gomez, Sebastian Santiz Lopez and Hermelindo Santiz Gomez; was followed by the

torture of these three persons to obtain their confessions; and it ended with the murder of the supposed rebels.

64. Also Article 1 of the Convention against Torture establishes that:

The states parties undertake to prevent and punish torture under the terms of this Convention.

65. It is obvious that in this case the Mexican State has not complied with the provisions of this article, since more than two years after the events took place, the previous inquiries that were opened for the purpose of investigating and punishing the parties presumed guilty are filed away.

66. Having examined the case, this Commission considers that Severiano Santiz Gomez, Sebastian Santiz Lopez and Hermelindo Santiz Gomez were victims of failure to respect their physical and mental integrity by agents of the Mexican Army, and tortures. As a result, the Commission concludes that the Mexican State has violated the human right to personal integrity set forth in Article 5 of the Convention, and the right to prevent and punish torture as established in Article 1 of the Convention against Torture.

D. The Right to Personal Liberty

67. Article 7.2 of the Convention establishes that no one shall be deprived of his personal liberty except for the reasons and under the conditions established beforehand by the Constitution of the State Party concerned or by a law established pursuant thereto.

68. Article 16 of the Political Constitution of Mexico establishes that:

No order of apprehension shall be issued except by the judicial authority and in the absence of a denouncement, accusation or dispute of a given act which the law has established to be an offense punishable, as a minimum, by a penalty depriving the accused of his liberty and based on the existence of data substantiating the penal type and probable responsibility of the accused... In the case of a recent crime or one in the process of being committed, any person may detain the presumed culprit, turning him over immediately to the proper authorities, who will in turn and with the same immediacy, deliver the accused to the hands of the Attorney General's Office...

69. In this scenario, it has been demonstrated that Severiano Santiz Gomez, Sebastian Santiz Lopez and Hermelindo Santiz Gomez have been arbitrarily deprived of their liberty, since no court order had been issued, nor had they been caught red-handed in the commission of a crime. In the case in question, it is deduced that there were only some indications that these persons were members of the EZLN; and such suspicion, by the terms of the norm in the Mexican Constitution, is not sufficient grounds for arresting people.

70. Having examined the case, the Commission finds that Severiano Santiz Gomez, Sebastian Santiz Lopez and Hermelindo Santiz Gomez were victims of a lack of respect for their personal freedom. The Commission therefore concludes that the Mexican State violated the right of these persons to personal freedom that is set forth in Article 7 of the Convention.

E. The Obligation to Respect Rights

71. The violations described in the present case show that the Mexican State failed to meet the commitment set forth in Article 1.1 of the Convention to respect the rights and freedoms recognized therein, and to ensure the free and full exercise of those rights by any person subject to its jurisdiction.

72. In the article of reference, the Court has stated that:

The first obligation assumed by the States Parties under Article 1(1) is "to respect the rights and freedoms" recognized by the Convention. The exercise of public authority has certain limits which derive from the fact that human rights are inherent attributes of human dignity and are, therefore, superior to the power of the State.[FN9]

The second obligation... is to "ensure" the free and full exercise of the rights recognized by the Convention to every person subject to its jurisdiction. This obligation implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.[FN10]

[FN9] Inter-American Court of Human Rights, Velasquez Rodriguez Case. Judgment of July 29, 1988, page 151, paragraph 165.

[FN10] Ibid., paragraph 166.

73. Based on the foregoing analysis, it is concluded that the Mexican State failed to comply with its obligation to prevent, investigate and punish the persons responsible for the acts which took place on January 6 or 7, 1994 in the village of Morelia, Municipality of Altamirano, Chiapas. The investigations are at a standstill and the authorities appear to have little desire to resume them; there has been a failure to see to the progress of judicial procedures so that the persons guilty assume the responsibility for the acts; and no compensation has been offered to the members of the victims' families. With regard to the latter point, the Commission observes that the compensation paid by the Mexican State through the FAPIAC to the relatives of the victims is not adequate or compensatory, in the light of the doctrine of the Commission and of the Inter-American Court of Human Rights.

V. ACTIONS OF THE STATE AFTER REPORT No. 42/96

74. On October 15, 1996, during its 93rd Regular Period of Sessions, the Commission approved report No. 42/96, on the basis of Article 50 of the Convention; therefore, transmitted it confidentially to the State, according to the provisions of said article in its second paragraph.

75. On January 16, 1997, the Mexican State asked for an extension of 30 days so as to be able to give the pertinent reply to the report of the Commission on the case. On the 17th of the same month and year, the Commission gave the Mexican State the time requested.

76. On January 14, 1997, the Government requested a meeting with the full Commission. In a note with the same date, the Commission granted said meeting with the full Commission for February 25, 1997. Moreover, it agreed to extend the time to respond until March 3, 1997.

77. In a note dated March, 3, 1997, the Mexican State committed itself to implement the necessary measures to comply with the recommendations made by the Commission in report No. 42/96; with that aim, and given the complexities of the case, requested an extension so as to be able to comply.

78. The Commission through a note on March 11, 1997, conveyed to the Mexican State its decision to grant additional time until September 30, 1997, so that it might comply with the recommendations contained in Report No. 42/96, approved by the Commission. Moreover, the Commission stated that "during the course of said extension, your Illustrious Government will periodically inform the Commission on the progress achieved. In that sense, we request that the first letter on the progress achieved be submitted before April 17th of this year, so that the Commission can study it on its 96th Special Period of Sessions, which will be held April 21 through 25 of the same year. At said time -or at any later date- in case (i) the State deems that there have not been conditions necessary to make significant progress in compliance with the recommendations of the Commission; or if (ii) the Commission decides, that it is impossible for the State to carry out the necessary progress; the Commission will be able, on the basis of the provisions contained in its Regulations, to reconsider the extension granted."

79. On April 17, 1997, the Mexican State submitted the first required progress report, in which it reported that the Attorney General (Procuraduría General de Justicia) of the State of Chiapas renewed the investigation and proceedings corresponding to the prior inquiry AL/014/94. It also informed that the Attorney General (Procurador General de Justicia) of the State of Chiapas, named Lic. Demetrio González Silva as a Special Prosecutor (Fiscal Especial) for the case.

80. It also stated, that the Special Prosecutor for the case agreed to go to the place where the events allegedly occurred; to carry out new technical tests on the bones, using the most advanced technology so as to be able to determine their origin and identity, as well as complete DNA tests; obtain statements from the alleged widows, as well as from witnesses and authorities; and to carry out as many measures as are necessary to have a fruitful investigation.

81. On May 22, 1997, the Mexican State submitted the second required progress report, which stated that the Ministry of Foreign Affairs (Secretaría de Relaciones Exteriores) at the request of the Attorney General of the State of Chiapas, requested to the Chairman of the National Commission of Human Rights her good offices to help to set up a meeting with the different NGOs that have participated in the case to get their full support in the investigation. It also stated that the Special Prosecutor went to the place where the events allegedly transpired to obtain a statement from the alleged widows, and the necessary measures for performing new

tests are being implemented. The Mexican State also pointed out, that the Second Regular Period of Legislative Sessions ended, and, therefore, the initiative of the regulatory law (ley reglamentaria) of constitutional Article 21 will be submitted to the next regular session which begins on September 1, 1997.

82. On June 23, 1997, Mexico submitted the third required progress report, stating that Lic. Demetrio González, Coordinator of Special Prosecutors of the Attorney General's Office of the State of Chiapas, met with Dr. Gerardo González, of CONPAZ, and requested his help to create the necessary conditions in the village of "Ejido Morelia."

83. On June 27, 1997, the Mexican State submitted additional information on the case and reported that Lic. Luis Jiménez Bueno, General Coordinator in Los Altos y Selva in Chiapas of the CNDH, participated in a meeting also attended by Lic. Gustavo Moscoso, First General Prosecutor of Justice (Primer Procurador General de Justicia) of the State of Chiapas, Dr. Gerardo González Figueroa, General Coordinator of CONPAZ and Ms. Flor María Pérez, responsible for the Human Rights Area, as well as Mr. Carlos Enrique López, of the Legal Area. The report stated, that Dr. González said that the week before members of CONPAZ went to the said village and convinced the people to facilitate the work of the Attorney General of the State of Chiapas so as to clarify the violent acts of early 1994. It added, that notwithstanding the aforementioned, they stipulated as a condition that during the procedures carried out by the Attorney General there be CONPAZ personnel and that the actions as well as the results obtained are handled in strict confidentiality.

84. Between July 23 and 26, 1997, the Commission traveled to Mexico City led by Dr. Carlos Ayala (Commissioner and Rapporteur for Mexican Affairs), Ambassador Jorge E. Taiana (Executive Secretary of the Commission), and Lic. Ibrahim García (lawyer and specialist in charge of Mexican Affairs). During said visit, a meeting was held with authorities in charge of the investigation of the case, including the Special Prosecutor (Lic. Demetrio González) named by the Attorney General of the State of Chiapas. During that interview, the Commission obtained valuable information on the progress of the investigation and the possibilities for a successful conclusion.

85. On July 28, 1997, Mexico submitted the fourth required progress report on the case, pointing out that Lic. Demetrio González and Dr. Gerardo González will meet in upcoming days, with the aim of dealing with the topic of the procedures that will be implemented in conjunction with CONPAZ in Ejido Morelia.

86. On August 27, 1997, the Mexican State sent the fifth required progress report on the case, stating that on August 25, Lic. Demetrio González, Special Prosecutor of the Attorney General's office in the State of Chiapas for the case "Ejido Morelia," with Lic. David Gomez Hernández, Deputy Prosecutor of Indian Justice (Subprocurador de Justicia Indígena), and secretarial personnel and interpreters went to Ejido Morelia to continue with the inquiry. They were accompanied by Licda. Gabriela Díaz de Anda, representative of CNDH, and Licda. Flor María Pérez, representative CONPAZ. Lic. Juvenal Caballero Cruz, legal representative of the victims, counseled the widows Petrona Lopez Santíz, Carmelina López Santíz and Paulina Domínguez Gomez, so they might make their statements and give their version of the events being

investigated. This was done in the Tzental dialect, so that translators of the Attorney General's office and CONPAZ could later agree on the Spanish version of the translation. It stated that everyone who went agreed that the next visit to Ejido Morelia to continue the investigation should be on September 7, at 10:00 a.m.

87. On September 30, 1997, Mexico remitted the sixth report requested of it concerning the case, pointing out: that the scheduled visit to the Morelia Ejido had not been possible due to its cancellation by CONPAZ; and that no word had yet been received from that organization as to the new date when the visit would take place. It also noted that the official gazettes of the Federation containing the agrarian voting registers of the Ejido Morelia peasants (October 9, 1946 and August 19, 1993) had been obtained; but that an examination and review thereof showed that the names of the individuals who are the object of the present case do not appear there. It went on to say that on September 25 of the present year, the Special Inspector had set up office in the Agrarian Reform Secretariat; and that the official gazettes on hand had been checked, thereby confirming that the original documents constituting the official gazettes in question can be found in the files of that office. Also that this official had gone to the General Directorate of the State's Civil Registry, but had been unable to obtain any information there concerning Sebastian Santiz Lopez, Severiano Santiz Gomez and Hermelindo Santiz Gomez.

88. On October 6, 1997 the Commission, represented by the Rapporteur on Mexico and the lawyer-specialist in charge of Mexican affairs, met at the Commission's headquarters with Demetrio Gonzalez (the Special Inspector for the case) and other Mexican Government officials. At that meeting, the Commission received information about the latest activities performed by the Special Inspector (which are described in the sixth report which the State sent the Commission) and those scheduled for a future date to continue its investigation of this case.

VI. CONSIDERATIONS ON THE ACTIONS OF THE STATE

89. The Inter-American Commission on Human Rights, based on the analysis carried out in this report and bearing in mind the actions taken by Mexico, after the approval by the Commission of Report No. 42/96, has reached the following conclusions:

90. In accordance with Article 50 of the Convention, and also in conformity with 51, the interested States, after the Commission has submitted the report, have three months, after the date the report has been forwarded, to adopt the necessary measures to solve the matter at hand and reestablish the legal measures that were violated; otherwise, if the case is submitted by the Commission or the interested State to the jurisdiction of the Court, the Commission can assert, with an absolute majority vote by its members, its opinion and conclusions on the matter submitted to its consideration.

91. In the case under analysis, the Commission in its Report No. 42/96 initially gave a deadline of two months to the Mexican State for the adoption of the pertinent measures, and also, urged the Mexican State, in case it did not accept the recommendations formulated by the Commission, to accept the obligatory jurisdiction of the Court for this specific case. Since this has not occurred, and since the Mexican State has manifested its will to comply with the recommendations of the Commission, for which, given the complexities of the case and the

measures required to comply, the Mexican State requested an extension of the time originally granted. In this regard, the Commission, with the aim of creating appropriate conditions for compliance with its recommendations and thus obtain the reparations, punishments and compensation required in favor of the relatives of the victims, granted an extension until September 30, 1997 to Mexico. During this time, the Commission was vigilant and had a direct and periodic follow-up on the progress, receiving regular reports and travelling to the Mexican Capital in July of this year, to meet with the authorities of the State of Chiapas in charge of the investigations (see supra 8), and met with the same authorities at the Commission's headquarters during its 97th Regular Period of Sessions.

92. The Commission notes the status of the progress made in the investigations in the case, where a Special Prosecutor was named for the same, and an agreement has been reached with CONPAZ to help in the investigation. Nevertheless, a year after the approval of Commission Report No. 42/96, and having given the Mexican State every facility to comply with the recommendations of the report, including an extension of the time originally granted, the case has yet to be solved. The Mexican State has still not fully complied with the recommendations contained in Commission Report No. 42/96. In fact, to date, a rapid, impartial and effective investigation of the events has not been conducted; appropriate criminal actions have not been carried out; there have been no reparations of the violations of the aforementioned rights; and the regulatory legislation of constitutional Article 21 has not been enacted. Furthermore, the fact that the State's most recent communications apprised the Commission of the activities that would be carried out in the course of the investigations (as well as the work schedules for the completion thereof) clearly shows that those inquiries have still not been completed, despite the time which has elapsed. In this context, the Inter-American Court has already announced that "the obligation to investigate, like the duty to prevent and punish, should be assumed by the State as a juridical task, not just a simple formality." [FN11]

[FN11] Inter-American Court of Human Rights, Vogt Case, Judgment of June 27, 1996, page 5.

93. Nevertheless, the Commission is confident that the Mexican State, through its competent authorities, will continue to make every effort, once the present report is adopted, to comply with the recommendations contained in Report No. 42/96, whose content must be reiterated. The cooperation obtained by the petitioners and especially CONPAZ has permitted the Mexican State through authorities in the Attorney General's office in the State of Chiapas and especially the recently named Special Prosecutor, to progress in the investigations. That, as well as safeguarding due process, the bilateralism of procedures and, in short, the right to a defense, lead the Commission, on the basis of the provisions of Article 50 of the Convention, to adopt the report, with the aim of informing the petitioners, and thus continue to progress in the compliance of the required recommendations until achieving their full compliance by the competent Mexican authorities.

VII. CONCLUSIONS

94. Based on all the de facto and de jure elements law contained in the present report, the Commission reiterates that the Mexican State is responsible for the violation of the right to judicial guarantees; to life; to personal integrity; and to personal liberty, pursuant to Articles 4, 5, 7, 8 and 25 of the Convention as a result of the events which took place on January 6 or 7, 1994, in the Indian community of the Morelia ejido, State of Chiapas, Mexico, in which the Mexican Army detained Severiano Santiz Gómez, Sebastián Santiz López and Hermelindo Santiz Gómez, having tortured them and taken them away in a vehicle under their custody, and later summarily executing them, without having been conducted thus far the corresponding investigations, identified and punished the persons responsible, and adequately compensated the families of the victims.

95. Moreover, the Commission reiterates that the Mexican State has failed to comply with the obligations to respect the human rights and guarantees imposed by Article 1.1 of the Convention.

VIII. RECOMMENDATIONS

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS AGREES TO REITERATE THE FOLLOWING RECOMMENDATIONS TO THE MEXICAN STATE:

A. Conduct a swift, impartial and effective investigation of the events denounced, using the services of an inspector appointed specifically for this purpose.

B. Carry out the pertinent penal action to subject the presumed perpetrators of these offenses to the corresponding penal action, pursuant to the findings of such investigation.

C. Make reparation for the consequences of the rights thus violated, including suitable indemnification to the families of Severiano Santiz Gomez, Sebastian Santiz Lopez and Hermelindo Santiz Gomez.

D. Take the necessary measures to ensure that the legislation to regulate Article 21 of the Mexican Constitution is enacted as soon as possible in order to enforce the judicial and judicial protection guarantees set forth in Articles 8 and 25 of the American Convention.

IX. PUBLICATION

96. On October 24, 1997 the Commission sent the Mexican State a copy of Report No. 48/97 (which had been adopted in the present case), setting a deadline of three months for the State to take the necessary steps to comply with the recommendations cited above and thus remedy the situation described.

97. On January 21, 1998 the Commission received a communication in which the State gave an account of the action performed for the purpose indicated in the previous paragraph. That missive was transmitted to the petitioners on January 29, 1998 with a request that their comments thereon be sent as quickly as possible, given the brevity imposed by the procedural phase which the case had then reached. The response was received on February 3, 1998.

98. At that time, the IACHR proceeded to examine the State's compliance with the recommendations presented in Report No. 48/97, which had been transmitted on October 24, 1997.

A. INVESTIGATION

99. The State's response summarized the action performed by the Special Investigator and noted that "it was continuing to make progress in the investigation." It also cited "the need to open up new lines of inquiry" which the Inspector believed would give rise to a series of tasks to be performed. The official in question avers, among other things, that the petitioners have evinced their "lack of juridical interest in clarifying the facts"; and that the expert assessments had not yet been conducted because of "the current consideration being given to the possibility that a civil organization which enjoys credibility in the Community of Morelia might collaborate with the Attorney General's Office" in performing that task.

100. The petitioners' comments on that statement include the following:

... The Government indicates that the "new" lines of inquiry to be followed in the investigation were: "a) To be carried out in the place where the events presumably took place; b) To conduct new expert inquires; and c) To obtain a statement from the presumed widows." As may be seen, the Government took no action between May 22, 1997 and the present, since its most recent report once again posits the same activities as scheduled in its report dated 22.5.97 (May 5, 1997).

...A contradiction is evident in the State's arguments, since on the one hand... it acknowledges the prior existence of the victims; but at the same time it announces in paragraph "b" on page 2 that the "new lines of investigation" will include the scheduling of a new round of expert research which the State itself plans to conduct on the skeletal remains. This attests to the State's neglect of its planned continued investigation of the victims' existence and, on the other hand, the slow pace of the investigation and the Government's disinclination to establish a clear record of the facts. All that, despite the pieces of valid evidence--such as the medical opinions issued by the "Physicians for Human Rights" organization and the National Academy of Medicine that have been submitted by the petitioners.

B. PENAL ACTION

101. As to the recommendation that penal action be taken to establish individual responsibilities for the events examined in this case, the State reports that:

...The Special Inspector's Office does not yet have sufficient evidence to level a direct charge of penal responsibility: it therefore considers that only when the prior investigation to establish the facts is conducted and completed, and not until the necessary pieces of proof are in place to warrant penal action and assign probable responsibility are in place will it be in a position to institute the corresponding judicial proceeding.

102. In their evaluation of this phase, the petitioners indicate that the State has failed to perform its duty of identifying and punishing the members of the military responsible for the alleged events, inasmuch as it has been established that the Mexican Army entered the native community of Morelia. They point out, in particular, that:

As may be seen in the Government's reply, the Special Inspector has concentrated his efforts on verifying the existence or nonexistence of Messrs. Severiano Santiz Gomez, Sebastian Santiz Lopez and Hermelindo Santiz Gomez without conducting an inquiry or taking penal action against the persons responsible. The annex itself shows that most of the inspector's activities have been aimed at determining the prior existence of the victims in this case, of which there was already no question.

C. INDEMNIFICATION

103. The State alludes to the recommended reparation of the consequences of the violation, limiting its comments to citing the ex gratia compensation awarded to members of the victims' families, but "taking into account the fact that the IACHR has not expressed its satisfaction with such compensation, the Government of Mexico states its complete amenability to reviewing the possibility of increasing the amount thereof."

104. In the face of that position, the petitioners maintained that:

While it is true that the State has contributed assistance, it is the opinion of the Commission and of the petitioners that the amount thereof is inadequate as reparation for the damage suffered by members of the victims' families.

D. LEGISLATIVE REGULATION OF ARTICLE 21 OF THE CONSTITUTION

105. The State makes the following comment regarding the recommendation contained in Section D:

...independently of the fact that work currently in progress within the country's executive branch seeks to present a draft bill espousing a specific judicial procedure for impugning any failure to exercise or to waive the pursuit of penal action, on November 11, 1997 Mexico's Supreme Court established jurisprudential thesis CLXV/97. It determines the applicability of an amparo against resolutions addressing the failure to exercise--or a waiver of--penal action in cases involving judgments which might violate individual guarantees.

106. The State goes on to say that the remedy of amparo meets the requirements cited in Article 25 of the American Convention for providing a simple and prompt, adequate and effective recourse. It therefore considers that protection of the right guaranteed thereby is immediate, and that compliance with the respective recommendation of the Commission should not be "subject to the condition requiring the issuance of a specific provision regulating the instrument for impugning the determination of the Attorney General's office through common jurisdictional means."

107. In their response to the IACHR request, the petitioners emphasize the positive features of the jurisprudential thesis cited by the State; but they do not consider that it offers sufficient grounds for acknowledging that the respective recommendation in Report No. 48/97 has been fulfilled.

E. ANALYSIS AND FINAL CONCLUSIONS

108. The Commission observes, first of all, that the present stage of the proceeding is limited to evaluating the State's compliance with the recommendations in the report approved pursuant to Article 51 of the American Convention. In that context, it is evident from the communications received from the parties that the Mexican State has not yet--since October 24, 1997--fully complied with the recommendations contained in Chapter VIII supra (Sections A and B). To the contrary: the information furnished by Mexico at this procedural stage thoroughly confirms the Commission's findings (as noted in paragraphs 92 and 93 of this report).

109. In its analysis of the recommendation contained in Section C the IACHR observes--just as it has in previous cases judged by the Commission--that the present case must be examined and evaluated in light of the criteria established in the "Principles Relative to Effective Prevention and Investigation of Extra-Legal, Arbitrary or Summary Executions" adopted by the United Nations Economic and Social Council's Resolution 1989/65, to determine whether the State has complied with its obligation to investigate, immediately, exhaustively and impartially, any summary executions of persons under its exclusive control.[FN12] According to those principles, the object of the investigation in cases of this sort should be to determine the cause, the manner and the time of death; the person responsible; and the proceeding or practice which may have triggered it. Moreover, an adequate autopsy should be performed; all of the material and documentary evidence compiled and examined; and statements taken from the witnesses. The investigation should draw a distinction between death due to natural causes, accidental death, suicide and homicide.

[FN12] Report No. 10/95, Case 10,580, Ecuador, in the 1995 Annual Report of the IACHR, EYE/Ser.L/V/II.91 Doc. 7, rev.3, April 3, 1996, paragraphs 32-34; and Report No. 55/97, Case 11,137, Argentina, November 18, 1997, EYE/Ser.L/V/II.97 Doc. 38, paragraphs 413 through 424.

110. The principles cited above have been complemented by adoption of the "Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary or Summary Executions,"[FN13] which tells us that the principal object of an investigation is "to discover the truth about events that have caused the suspicious death of a victim." To that end, the Manual recommends that the persons conducting an inquiry seek, at a minimum:

- a) To identify the victim;
- b) To recover and preserve evidentiary material related to the death, which might assist in any potential prosecution of those responsible;
- c) To identify possible witnesses and obtain statements from them concerning the death;

- d) To determine the cause, manner, location and time of death, as well as any pattern or practice that might have occasioned the fatality;
- e) To distinguish between natural death, accidental death, suicide and homicide;
- f) To identify and apprehend the person(s) involved in the death; and
- g) To bring the suspected perpetrator(s) before a competent court established by law.

[FN13] United Nations Document ST/CSDHA/12

111. To ensure that the investigation of an extra-legal, arbitrary and summary execution is thorough and impartial, the Manual says that "one of the most important aspects. . . is the collection and analysis of evidence." Accordingly, the persons conducting an investigation of a presumed extra-legal execution must be given access to the site where the body was discovered and to the scene where the death may have occurred. According to the standards contemplated in the Manual, the procedure for gathering evidence should therefore be subject to certain criteria, some of which are cited below:

- a) The area around the body should be closed off. Only investigators and their staff should be allowed entry into the area;
- b) Color photographs of the victim should be taken since color--as compared with black-and-white photographs--may reveal in greater detail the nature and circumstances of the victim's death;
- c) Photographs should be taken of the scene (interior and exterior) and of any other physical evidence;
- d) A record should be made of the body position and condition of the clothing;
- e) A note should be made of the following factors which help to determine the time of death:
 - (i) The body temperature (warm, cool or cold);
 - (ii) The location and degree of fixation of lividity;
 - (iii) Rigidity of the body; and
 - (iv) The extent of body decomposition.
 - (...)
- j) Any evidence of weapons--such as guns, projectiles, bullets and cartridge cases--should be taken and preserved. When applicable, tests for gunshot residue and trace metal detection should be performed;

112. Taking into account the array of principles governing a serious and impartial investigation in cases of summary or arbitrary execution, the IACHR concludes that in the case under review here, the State has indeed failed to adopt the necessary measures to comply fully with the recommendation contained in Section C above.

113. 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.

114. 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.

115. 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.