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I. BACKGROUND

On August 25, 1989, the Inter-American Commission on Human Rights (hereinafter "the Commission") received a complaint against the Republic of El Salvador (hereinafter "the State," or "El Salvador") concerning the detention of farm workers Lucio Parada Cea, Héctor Joaquín Miranda Marroquín, Fausto García Funes, Andrés Hernández Carpio, José Catarino Meléndez, and Carlos Antonio Martínez by units of the Salvadoran Army. According to the complaint, these farmers were tortured, and two of them died as a result of the torture they suffered.

2. The arrests occurred during a military operation initiated on July 1, 1989 by the Sixth Company of the Atlacatl Battalion and a section of the First Infantry Brigade in a rural area located between Nejapa and Apopa, in the Department of San Salvador. More specifically, the operation focused on the Las Marías district of Nejapa and on Tres Ceibas, a village in the Apopa area. The objective was to capture alleged members of the opposition group known as Fuerzas Armadas de Liberación (Armed Liberation Forces, hereinafter "FAL").[FN1]

[FN1] Data taken from the written reply of the Salvadoran Government of November 8, 1989 and from the statements made by César Vielman Martínez to the Academy of Human Rights in Mexico on August 28, 1989. El Salvador, p.4.

The Tres Ceibas district is approximately 10 miles north of the capital. It was allegedly used by members of dissident groups as a corridor for entering and fleeing from the city of San Salvador. "Salvador Colonel Admits Troops killed 2 in Detention," the Washington Post, 26 July 1989, p. A20.

The opposition group Fuerzas Armadas de Liberación (FAL), to which the detained supposedly belonged, was one of the groups making up the Frente Farabundo Martí para la Liberación Nacional (FLMN). The FAL was formed in 1979, when the various fractions of the El Salvador communist party joined up. Those fractions had originated as a reaction to a massacre in Plaza Libertad in 1977, during which at least four dozen demonstrators died after the National Police opened fire on them. See: Montgomery, Tommie Sue, *Revolution in El Salvador: Origins and Evolution*, Westview Press, Boulder Colorado, 1982, pp. 94-95, 122

3. During the period in which these incidents occurred, El Salvador was in the throes of a domestic armed conflict which lasted from 1980 to 1991, which plunged the country into a 12-year period of violence that left thousands dead.[FN2] This confrontation ended on January 16, 1992, with the signing of a peace agreement at the Castillo de Chapultepec, in Mexico. The peace negotiations were carried out under the auspices of the United Nations and lasted more than three years (1989-1992). During that time, a series of peace agreements were signed[FN3] between the Government of El Salvador and the Farabundo Martí Front for National Liberation (FMLN), the main armed dissident group.[FN4]

[FN2] It is estimated that approximately 75,000 lives were lost in the Salvadoran civil war.

[FN3] *El Salvador Agreements: On the Road to Peace* (United Nations Department of Public Information) Doc. DPI/1208-92615 (1992). The El Salvador Peace Agreements contained in this document are, among others: (1) the Mexico Agreements of April 27, 1991, pp. 13-33; and (2) the Peace Agreement of January 16, 1992, pp. 48-149 (hereinafter the Chapultepec Agreement). The Chapultepec Agreement, which was the culmination of the peace negotiations, incorporated, for reference purposes, a series of previous agreements reached between the parties.

[FN4] The FMLN was formed toward the end of 1980 and was made up of five armed opposition groups: the Popular Liberation Forces (FPL), the People's Revolutionary Army (ERP), Armed Liberation Forces (FAL), National Resistance Armed Forces (FARN), and the Revolutionary Party of Central American Workers (PRTC).

4. In accordance with these agreements, a Truth Commission was formed[FN5], whose mandate was[FN6] to investigate the "serious acts of violence that have occurred since 1980 and whose impact on society urgently demands that the public should know the truth" (Article 2 of the Chapultepec Agreement). According to the mandate, "acts of this nature, regardless of the sector to which their perpetrators belong, must be the object of exemplary action by the law courts so that the punishment prescribed by law is meted out to those found responsible" (Article 5 of the Chapultepec Agreement.) The Truth Commission had, inter alia, the specific function of "clarifying and putting an end to any indication of impunity on the part of officers of the armed forces.".[FN7]

[FN5] The Mexico Agreements (see note 3, above) established that the Commission would be made up of "three persons appointed by the Secretary-General of the United Nations, after the opinions of the parties had been heard." The Secretary-General appointed the following

individuals to make up the Commission: Belisario Betancur, former President of Colombia; Reinaldo Figueredo Planchart, former Minister of Foreign Relations of Venezuela; and Thomas Buergenthal, former President of the Inter-American Court of Human Rights. The commissioners chose the first of those mentioned to head the Commission.

[FN6] The Mexico Agreements, footnote 3 *supra*, broadened by a provision of the Chapultepec Agreement (footnote 3 *supra* chap. 1, par. 5, p. 55), establish the Commission's mandate and sphere of action. In carrying out its mandate, the Commission had to "take into account two important considerations: first, the overriding importance attributable to 'the incidents to be investigated, their characteristics and repercussions, as well as the social upheaval they brought about'; and second, the need to 'create confidence in the positive changes' which the peace process would generate and to 'foster the transition toward national reconciliation' (Mexico Agreements, *supra* footnote 3, p. 31). The mandate made it clear, by these last words, that the primary objective of the Commission's task was to promote national reconciliation.

[FN7] Informe de la Comisión de la Verdad para El Salvador: De la locura a la esperanza [Report of the Truth Commission for El Salvador: from madness to hope]. Spanish version. UN doc S/25500, Annexes (1993). Hereinafter: "the report of the Truth Commission" or "the Report". This report was disseminated on March 15, 1993 followed by the official version, which was distributed on April 1, 1993.

5. The Commission's Report was made public on March 15, 1993.[FN8] It made a series of recommendations regarding the grave violations of human rights under investigation, including structural reforms directly related to them and institutional changes designed to prevent a recurrence of events of that kind in El Salvador. Three days after the publication of the Commission's report, on March 18, 1993, the President of El Salvador, Alfredo Cristiani, addressed the nation and announced a general amnesty, "without giving either time or space for an exhaustive debate on the issue at the national level".[FN9] In this context, President Cristiani emphasized the importance of "erasing, eliminating and forgetting the past in its entirety" and reiterated "the call to all of the country's forces to support a general and absolute amnesty, in order to turn that painful page of our history and seek a better future for our country." [FN10]

[FN8] Thomas Buergenthal, *The Truth Commission for El Salvador*, IIDH Estudios Especializados de Derechos Humanos, 1st edition, San José, Costa Rica 1996, p. 54.

[FN9] Excerpts from the "Message delivered to the Nation by the President of the Republic, Alfredo Cristiani, March 18, 1993". Report on the Human Rights Situation in El Salvador (1994), OEA/Ser. L/V/II.85, Doc. 28 rev., Feb. 11, 1994, Original: Spanish, p. 75.

[FN10] The Salvadoran Legislative Assembly was controlled by President Cristiani's party, which hurried the process for approving the amnesty.

6. The so-called "General Amnesty Law for the Consolidation of Peace" (Decree 486), was hastily approved by the National Congress[FN11] on March 20, 1993. This law nullified the recommendations of the Truth Commission with regard to the crimes investigated, eliminating the possibility of legal sanction against the persons implicated in perpetrating the acts of violence described in its report, and eliminated their corresponding civil liability. In short, it left

unpunished all crimes committed by agents of the State between 1980 and 1992, including those being examined in the present report, and ignored the legitimate rights to compensation for victims and their relatives.

[FN11] Some of the provisions of the "General Amnesty Law for the Consolidation of Peace" (hereinafter "General Amnesty Law") are summarized or transcribed infra, in paragraph 111 and footnote 76.

7. For these reasons, the petitioners ask the Commission: 1) to declare the State responsible for the deaths of Lucio Parada Cea and Héctor Miranda Marroquín, and for the torture of Fausto García Funes, Andrés Hernández Carpio, José Catarino Meléndez, and Carlos Antonio Martínez, since they are in violation of Articles 4 and 5 of the Convention, respectively, and 2) to declare that, by implementing the Amnesty Law, the State denied the victims and/or their relatives their right to a fair trial and judicial protection, in violation of Articles 8 and 25, respectively, of the Convention; in conjunction with Article 1(1) of that same Convention.

II. THE PETITION

8. The communication, which the Commission received on August 25, 1989, claims that six people were arrested between July 1 and July 3, 1989, by members of the Atlacatl Battalion and the First Infantry Brigade. These arrests occurred in the following way:

a. Fausto García Funes and Andrés Carpio

9. At 4 o'clock on the afternoon of July 1, 1989, Fausto García Funes, a 23-year old day laborer from the Canton of Tres Ceibas, and day laborer Andrés Hernández Carpio, also 23 years old, from Nejapa, were arrested when soldiers of the Atlacatl Battalion burst into Carpio's house and took them away without informing members of their families of where they were being taken.

b. José Catalino Meléndez and Carlos Antonio Martínez

10. The following day, July 2, 1989, soldiers went to the Mapilapa Hacienda in Canton Camotepeque (in the Nejapa district of the Department of El Salvador), where they forced their way into the homes of José Catalino Meléndez, a 19-year-old day laborer, and Carlos Antonio Martínez Romero, an 18-year-old laborer, without informing their families of the reason for the arrests or of where they were being taken.

c. Héctor Joaquín Miranda Marroquín

11. On the same day, July 2, 1989, also at the Mapilapa Hacienda in Cantón Camotepeque, soldiers entered the home of Héctor Joaquín Miranda Marroquín, arresting him forcibly and taking him away. In this case, too, the family was not informed why he had been arrested or where he was being taken.

d. Lucio Parada Cea

12. On July 3, 1989, troops of the Atlacatl Battalion arrested Lucio Parada Cea, a 20-year-old laborer, near his home at the Mapilapa Hacienda in Cantón Camotepeque (district of Nejapa). After interrogating and torturing him, the soldiers entered his home and proceeded to search for arms. Then they took him away without telling his family why he had been arrested, or where he was being taken

13. According to the petition, all the persons arrested were taken to a place known as "El Jute" Hill, where the Atlacatl Battalion had set up a temporary camp in order to carry out the operation. There, the soldiers of the Atlacatl Battalion, under instructions given by César Vielman Joya Martínez, a specialist of the D-2 intelligence department of the First Infantry Brigade, proceeded to interrogate the prisoners. To this end, they hung them from a tree, bound them hand and foot, and began beating them with clubs on the back, abdominal area, and other vital regions. They also subjected them to other methods of torture, in order to obtain information on the activities of the Armed Liberation Forces (FAL).

14. The petition states that the injuries suffered during the interrogation caused the death, in the same location, of Lucio Parada Cea. In order to cover up the death, the soldiers of the Salvadoran Army proceeded to bury the corpse, without informing or notifying either the competent authorities or the relatives of the victim.[FN12]

[FN12] The relatives of Lucio Parada found his body several days later, on July 7, 1989, after an exhaustive search to establish his whereabouts. Upon exhuming the body, it was established that it was completely disfigured due to the torture that had been inflicted. The victim could only be identified by his clothes and by certain distinguishing marks.

15. The other prisoners are said to have been taken, on July 3, 1989, to the military command post of Apopa. From there, they were taken surreptitiously to the First Infantry Brigade headquarters, where they remained imprisoned secretly for 17 days, and were subjected to further torture. After various negotiations, delegates of the International Committee of the Red Cross (ICRC) were allowed to visit the prisoners on July 11, 1989.

16. According to the petition, another of the prisoners, Héctor Joaquín Miranda Marroquín, also suffered serious injuries as a result of the torture inflicted. Miranda Marroquín remained unable to walk, and was carried on the shoulders of the other torture victims to the Apopa command post, to be turned over, on the night of July 3, 1989, to the First Infantry Brigade headquarters. He remained there without medical care, despite his delicate state of health, until July 11 of the same year, when a physician sent by the ICRC declared that it was urgent that he be taken to a hospital for surgery. In other words, the victim remained severely ill for 8 days without being given any type of medical care, since the officials holding him in custody denied him that assistance. Thanks to steps taken by the ICRC, he was moved, on July 13, 1989, to the

Rosales hospital in critical condition, but he died the same day, shortly after being admitted, without having had the chance to be operated on.

17. On July 20, 1989, after steps taken by the ICRC, the surviving prisoners were freed, and, on July 22, 1989, Mr. Carlos Antonio Martínez was arrested again, remaining at the First Infantry Brigade headquarters for three days. Later, he was taken to the National Guard headquarters, where he remained two additional days and was interrogated about the death of Lucio Parada. Days later he was set free.

e. Specific petitions

18. In his petition, the petitioner requests that the State of El Salvador be declared responsible for the acts of torture and the alleged extrajudicial executions, and that it be recommended to the State that it remove the State officials or agents responsible for these violations of the victims' human rights. Furthermore, the petitioner asks that the State be ordered to pay the respective costs, and that it be ordered to pay compensatory reparation to the victims or, as the case may be, to their relatives.

III. THE POSITIONS OF THE PARTIES

A. Position of the petitioner

19. In addition to the original claim, the petitioner has sent to the Commission a written statement of final remarks, and various documents containing additional information.

20. The petitioner alleges[FN13] that, contrary to what the State claims, the abuses were committed by members of the First Infantry Brigade of the Atlacatl Battalion, and not only by the soldier Joya and corporal Gómez. According to the petitioner, the operation was carried out "with the participation of members of death squads and of a physician charged with determining the physical state of the persons who were going to be captured and tortured". He states that the incident and its sequence of events show evidence of a plan that must have been authorized by the "Senior Officers in charge of that Brigade."

[FN13] Written observations of April 6, 1990, received on May 10, 1990.

21. The petitioner indicates that "the First Infantry Brigade, the Atlacatl Battalion[FN14] and the death squads have a pernicious record". The murder of 36 people and 40 disappearances in the area of San Antonio Abad, in El Salvador, on January 19, 1982, is attributed to them, as well as the Mozote massacre in 1981 [FN15], and the murder of six Jesuit priests[FN16].

[FN14] The Atlacatl Battalion is a "Rapid Response Battalion" (or "BIRI") specially trained for "anti-insurgent" combat. Report of the Truth Commission for El Salvador, UN S/25500, April 1, 1993, p. 119.

[FN15] On December 11, 1981, units of the Atlacatl Battalion, deliberately and systematically killed a group of more than two hundred men, women, and children in the hamlet of El Mozote. See: Report of the Truth Commission for El Salvador, Conclusions related to the Mozote Massacre, footnote 7 supra, UN S/25500, April 1, 1993, p. 124.

[FN16] On November 16, 1989, six Jesuit priests, a cook, and the cook's 16-year old daughter were shot to death at the Centro Pastoral of the Universidad Centroamericana "José Simeón Cañas" (UCA). These incidents were investigated by the Salvadoran Truth Commission, which in its report presented proof that on November 15, 1989, Colonel René Emilio Ponce, in the presence of and in collaboration with General Juan Rafael Bustillo and three colonels, gave Colonel Guillermo Alfredo Benavides the order to kill the priest Ignacio Ellacuría and to leave no witnesses. For this, he ordered a unit of the Atlacatl Battalion to be used, which executed the operation on November 16, 1989. Report of the Truth Commission for El Salvador, *idem*, pp. 44, 50.

22. The petitioner alleges that the official investigations have been carried out inadequately, in order to cover up the responsibility of the Salvadoran Army officials who participated in the operation. Proof of this is that the State of El Salvador[FN17] indicates that there is no forensic identification of the corpse of Lucio Parada, which is incorrect, since on July 7, 1989, his remains were exhumed. Neither is the assertion that there is no evidence of medical records for the death of Héctor Joaquín Miranda Marroquín, since his death occurred at the National Hospital of El Salvador, the largest in the city.

[FN17] In its written reply.

23. Among the evidence brought by the petitioner is a statement given by the soldier César Vielman Joya Martínez before the Mexican Academy of Human Rights,[FN18] in which he reveals special operations organized by Major Díaz Hernández, head of Department D-2 of the First Infantry Brigade. These operations--according to Joya Martínez--involved investigating persons and suspects and, afterwards, providing a report to Major Díaz Hernández, "who determined whether the person in question needed to be executed by the Special Forces group of the Department of Forts Management". The operations consisted of "carrying out clandestine captures or executing captured persons". One of the clandestine operations organized by Major Díaz Hernández was the so-called Atlacatl II, which was carried out in the region of Tres Ceibas and in El Angel Camotepeque, with the object of capturing persons identified as members of the FAL.

[FN18] The statement given by César Vielman Joya Martínez before the Mexican Academy of Human Rights on August 28, 1989, was brought by the petitioner with his petition of July 28, 1992.

24. According to Joya Martínez' statement, the Atlacatl II operation was carried out in combination with the Atlacatl Battalion, which Joya infiltrated under instructions from Major Díaz Hernández[FN19], since "everything had to be confidential and it was necessary for me to blend in with the soldiers of the Battalion." [FN20] After their clandestine arrest, the captured persons had to be interrogated on the location of arms caches, their logistical organization, and the names of their collaborators and sympathizers. The goal of the operation was to establish a permanent camp in the location known as Tres Ceibas, which was under the command of the official responsible for the operation, whose alias was "Rocky". Once they were established at Tres Ceibas, the capture and interrogation of seven members of the FAL organization were carried out. One of those captured, Héctor Miranda Marroquín, known as Joya Martínez was told—"Pecho de Pollo", or "chicken breast", threw himself from the Las Hamacas bridge in Tres Ceibas, which is some 70 meters high, but was immediately picked up by members of the Battalion, who took him to the central base.

[FN19] According to his statement, Joya Martínez was called to the office of Major Díaz Hernández, who told him he needed a case officer and confidential source to carry out work in the Tres Ceibas region and in El Angel, in conjunction with the Atlacatl Battalion, and gave him "instructions to infiltrate that Battalion". In addition, he brought him confidential information consisting of the coordinates for enemy locations and targets, as well as for arms caches and camps.

[FN20] Idem.

25. Joya Martínez states that the "interrogation of 'Pecho de Pollo', who had been seriously injured, was necessary since it was known that he possessed classified information, which we were able to extract from him, consisting of the fact that on the outskirts of Tres Ceibas there were four arms caches". "Members of the Atlacatl Battalion and I set out for the place Pecho de Pollo had indicated..., accompanied by two... more, and upon arriving at the location, classified material was found. Immediately, the commander of the Battalion, 'Rocky', was informed that military equipment had been found and that there were specific orders to murder the two main commanders who had been captured"[FN21].

[FN21] Idem.

26. Referring to Lucio Parada, Joya Martínez stated that the commander of the FAL squad , known as "Edwin N"—a young man of 21 years of age, white, slim, with light-colored hair—was killed or died as a result of the torture and was buried in a make-shift grave in Tres Ceibas, his body having been covered with dirt and stones. Afterwards, interrogation of the survivors continued, in particular, of the commander, who was still alive (Héctor Marroquín, alias "Pecho de Pollo"). According to Joya Martínez, after these incidents the Atlacatl Battalion received orders to withdraw, "since there was a danger that humanitarian sources would discover that a member of the special forces of the First Infantry Brigade had infiltrated the Atlacatl Battalion...".

27. Joya Martínez reported that they moved from Tres Ceibas to the local Apopa command headquarters, "with the Department's minivan carrying the people who had been arrested and members of the Department". "Upon arriving, we were shown to the offices, and those under arrest were taken to the Department prisons of the First Brigade". There were five or six prisoners, including "Pecho de Pollo" (Héctor Marroquín). A little later, Joya Martínez stated that Major Díaz Hernández called him to his private office to inform him that "the operation had gone badly, since people and relatives of the prisoners were certain that the deceased terrorist had been captured by the Atlacatl Battalion", and that they had to be hidden by the Department of Personal Security. Joya Martínez stated that, after several days, he was suspended, along with the "Tecomate source." [FN22]

[FN22] Idem.

28. In the same statement given before the Mexican Academy of Human Rights, Joya Martínez relates the vicissitudes and dangers experienced after being suspended and upon arriving in Belize, where he received help from the office of Human Rights to travel to Mexico. Joya Martínez relates that he arrived in Mexico City on Tuesday, August 22, 1989, and the next day was provided a letter from the General Directorate of Human Rights of the Secretariat of the Interior, granting him refugee status. [FN23] On August 28, 1989, he voluntarily made the statement referred to, before members of the Mexican Academy of Human Rights and before the representative of the Human Rights Commission of El Salvador. One of the Joya Martínez's final contentions was the following: "I reaffirm that Department 2 of the First Infantry Brigade is the primary mechanism for promoting the death squads in El Salvador." [FN24]

[FN23] Idem.

[FN24] Idem. The statement referred to bears the signatures of Joya Martínez, as well as of Maricler Acosta Urquidi, Secretary General of the Mexican Academy of Human Rights, A.C., and of Consuelo Ornelas Barbosa, Coordinator of the Academy's Administration of Justice Program. It also bears the signature of Miguel Montenegro, a member of the Executive Committee of the Nongovernmental Salvadoran Human Rights Commission.

29. In a brief of November 23, 1991, the petitioner reported that Joya Martínez was compelled to seek political asylum in the United States, where he was charged with illegal entry into the country and was sentenced to six months in prison. Immediately after leaving prison, he was recaptured by federal agents, who claimed that the Salvadoran government had requested his extradition. [FN25] In the same statement of additional information, the petitioner expresses his concern that "in El Salvador there is no guarantee of due process or guarantee of physical and psychological safety and security."

[FN25] Statement of additional information of November 23, 1991. According to news published in the Salvadoran newspaper El Mundo in October 1992, the U.S. State Department authorized the deportation of Joya Martínez to El Salvador (El Mundo, San Salvador, Friday, October 23, 1992, p. 5). This information was then confirmed by the copy of a letter sent by the U.S. State Department to Joya Martínez's attorney on October 21, 1992.

30. In the same statement, the petitioner indicates that, in an interview given on October 10, 1989, to the Diario La Jornada newspaper in Mexico, Joya Martínez said: "Yes, the death squads do exist... I say, and I maintain, that during the last two years I belonged to one of them, pursuing, kidnapping, taking from their homes, and later executing many whom I barely knew, or whose names I did not even know". "It is the Salvadoran Army and the American advisors who organize and subsidize these special corps, as they are called, to camouflage their clandestine activities...".[FN26] In that interview, Joya Martínez stated that high military leaders were responsible for giving the orders to execute the clandestine operations of the death squads. According to the petitioner, these military officers were: Colonel Francisco Elena Fuentes, head of the First Infantry Brigade; Colonel Orlando Zepeda, its former head; the Minister of Defense, and Colonel Carranza, Commander of the Belloso Battalion, and other military officers of lesser rank, such as Major Díaz Hernández, Chief of Department Two of the First Infantry Brigade.[FN27]

[FN26] Statement of additional information of the petitioner, November 23.
[FN27] Idem.

31. In another brief dated July 28, 1992[FN28], the petitioner indicates that the trial for the homicide of Lucio Parada and Héctor Marroquín was aimed "at prosecuting only César Joya Martínez," and at absolving the other soldiers and officials who participated in the operation. The petitioner further states that "at no time have the higher levels of command, who, according to statements of César Vielman Joya Martínez were the ones who ordered the operation, been investigated." At the same time, the soldiers originally accused along with Joya Martínez, were quickly acquitted, on the grounds "that the necessary proof had not been gathered by any legal means".[FN29]

[FN28] July 28 statement, received at the Commission on August 11, 1992.
[FN29] Idem.

32. The petitioner indicates, furthermore, that the temporary stay of proceedings in regard to the soldiers of the Atlacatl Battalion is totally lacking in legal logic, since the soldiers who accompanied César Vielman Joya Martínez were direct perpetrators of the arbitrary arrests, injuries, and homicides. He goes on to say that it is highly improbable "that a single individual could have captured seven men and tortured them, to the extent of murdering two of them." In addition, the military personnel who participated directly in the incidents can at no time claim to

be blameless because they acted in response to orders from their superiors, because for that Article 40 of the Criminal Code requires certain conditions, which were not given in this case: "a) that the order be given by a competent authority and comply with legal formalities; b) that the agent be hierarchically subordinate to the person issuing the order; and c) that the order not be manifestly punishable."[FN30]

[FN30] Idem.

33. The "Report on the Legal Status of the Case of Lucio Parada and Héctor Joaquín Miranda Marroquín", produced by the Human Rights Commission of El Salvador (CDHES), states that the crimes of arbitrary arrest and bodily injury, in which Joya Martínez and the rest of the Battalion participated, were never tried. The penal process followed in regard to the incidents described in the claim, furthermore, only involves two of the victims (the two people who died), out of a total of seven persons arrested, despite the fact that José Catarino Meléndez testified as an injured party on July 31, 1989; Fausto García Funes testified on August 1, 1989; and Andrés Hernández Carpio did so on August 1, 1989. Neither has the penal responsibility obviously accruing to the senior officers who ordered these actions been investigated.

34. In the statement of May 11, 1993, the petitioner states, inter alia, that "César Vielman Joya Martínez was released by virtue of the General Amnesty Law for the Consolidation of Peace, on April 2 (of 1993)". According to the petitioner, that law constituted a violation of the Convention, and in particular, of Article 1(1) regarding the obligation of the Salvadoran State to guarantee the rights of its citizens. Elmer Ernesto Morán Martínez, Salvador Alcides Gómez, Eugenio Roberto Méndez Dueñas, and others who were part of the military unit that committed the acts, are immediate co-authors according to the penal laws since, without their participation, César Vielman Joya Martínez would not have been able to do so. "There are sufficient elements in the proceedings," he says, "to warrant an investigation of the persons cited above as parties to the crime; but they were treated as witnesses... which is contrary to the rules of due process. The same may be said of the high-ranking officers who ordered the operation: their attitude clearly attests to their acceptance of the human rights violations committed by their subordinates."[FN31]

[FN31] Additional written information, May 11, 1993.

B. Position of the Salvadoran State

35. The State sent two formal communications to the Commission[FN32], in which it stated, inter alia, that:

On July 11, 1986 (sic[FN33]), the sixth company of the Atlacatl Battalion carried out a military operation in a rural area located between Nejapa and Apopa, which was supported by a section of the First Infantry Brigade, in which the soldier César Vielman Joya Martínez participated, beginning at 2 p.m. on July 2, 1989. The "terrorists" José Catalino Meléndez, Andrés Hernández,

Faustino García, Emilio Martínez Guevara, Ernesto Marroquín, Héctor Joaquín Miranda Marroquín (who died on July 13, 1989), and Lucio Parada Cea (who died on Monday, July 3, 1989 in the location where the incidents took place) were captured in the canton of Las Marías, in the jurisdiction of Nejapa and in the hamlet Tres Ceibas (jurisdiction of Apopa).[FN34]

[FN32] The reply, dated November 8, 1989, and the Final Comments of February 25, 1993.

[FN33] The incident occurred on July 1, 1989, not in 1986.

[FN34] Government's reply, November 8, 1989.

36. In view of the fact that some of the prisoners showed signs of having been abused, the Armed Forces of El Salvador launched an investigation into the incidents, and arrested those involved in the interrogation. By these means it was determined that "the abuses and the homicides were committed by Corporal Salvador Alcides Gómez and Private César Vielman Joya Martínez," who were placed at the disposition of the judge, but Vielman Joya managed to escape.[FN35]

[FN35] Idem.

37. The Court of First Instance at Quetzaltepeque began a judicial inquiry (file No. 148/89) of the part played by Private César Vielman Joya and of Corporal Salvador Alcides Gómez in the homicides of Lucio Parada Cea and Héctor Joaquín Miranda. According to the State, they had committed the acts behind the backs of their superior officers."[FN36]

[FN36] Idem.

38. The State also reported[FN37] that Private César Vielman Joya Martínez had been a fugitive since July 23, 1989; that the other person accused, Corporal Gómez, had been taken into custody and kept under arrest during the investigation; that Joya Martínez had been extradited to El Salvador in October of 1992, and that the legal proceedings instituted against him were being duly carried out in accordance with domestic law. Finally, the State asked the Commission to close the files on the present case.

[FN37] Final written comments, February 25, 1993.

IV. PROCESSING OF THE COMPLAINT

39. The complaint was received on August 25, 1989, and the State of El Salvador was notified thereof on October 30, 1989.

40. The Government of El Salvador responded to the complaint in a note of November 8, 1989, received at the Commission on the 10th of the same month and year. Pertinent portions of that note were transmitted to the petitioner on March 6, 1990.

41. The petitioner's observations were received on May 10, 1990. This document was transmitted to the State of El Salvador on November 9, 1990, at which time the State was granted 60 days to present its final comments. When that deadline expired on January 17, 1991 and the State had still not submitted its final comments, the request was repeated. In a document dated February 25, 1993 and received on March 2 of that same year, the State of El Salvador presented its final comments and asked that the file on this case be closed. The petitioner was notified of pertinent portions of that document on March 22, 1993.

42. Following the close of the regulatory proceedings, a document dated May 11, 1993 was received on May 17 of that year. It contained additional information from the petitioners and the State of El Salvador was notified thereof on June 21 of that year.

43. On January 23, 1995, the Commission offered its services to each of the parties with a view to arriving at a friendly settlement, and on June 8 of that year the State was again asked to provide such information as it deemed expedient regarding the case.

44. On July 9, 1997 the Commission asked both parties to send any recent information available about the case so that it could complete the information on file.

V. COMPETENCE OF THE COMMISSION

45. The Commission is competent to take cognizance of and pronounce on the present complaint, based on the provision of Article 44 of the American Convention on Human Rights: it addresses the area of violations of the rights guaranteed by the Convention in its Article 3--the Right to Juridical Personality; Article 4--the Right to Life; Article 5--the Right to Personal Security; Article 7--the Right to Personal Liberty; Articles 8 and 25--the Right to a Fair Trial and the Right to Judicial Protection; and Article 1(1), which cites the duty of the States Parties to respect and guarantee the rights and freedoms recognized in the Convention itself.

VI. ADMISSIBILITY OF THE PETITION

46. The formal requirements for admissibility are set forth in Article 46(1) of the American Convention on Human Rights, which establishes that admission of a petition or communication lodged in accordance with Articles 44[FN38] or 45 shall be subject to the following requirements:

- a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;
- b. that the petition or communication be lodged within a period of six months from the date on which the party alleging violation of his rights is notified of the final judgment;

- c. that the subject of the petition or communication not be pending in another international proceeding for settlement, and
- d. that in the case of Article 44, the petition contain the name, nationality, profession, domicile and signature of the person or persons or the legal representative of the entity lodging the petition.

[FN38] Article 44 of the Convention provides:

Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.

47. The present petition meets the formal requirement for admissibility set forth in paragraph 1, section (c) of Article 46 of the Convention, since the subject of the petition is not pending in any other international proceeding for settlement. It also complies with the requirement contemplated in section (d) of that paragraph, since it contains the name and signature of the legal representative of the agency submitting the petition--a nongovernmental organization that is legally recognized in one or more of the Organization's member states. In addition, the petition is written on the letterhead stationery of that agency, which states its name and address. As a result, the Commission deems that the admissibility requirement has been met.

48. We must now consider whether the petition complies with the formal requirements for admissibility set forth in Article 46, paragraph 1, sections (a) and (b); and, should that not be the case, whether any of the exceptions contemplated in paragraph 2 of that provision might apply. It establishes the following precepts:

The provisions of paragraphs 1(a) and 1(b) of the present article shall not be applicable when:

- a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

49. The State of El Salvador did not present an exception at the proper time--i.e, one raised in the early stages of the proceeding--pointing out the failure to exhaust the remedies available under domestic law[FN39] nor has it specifically indicated the remedies that are still available to the petitioner. Neither has it demonstrated the efficacy of these remedies[FN40]. Furthermore, it has not disproved allegations citing the ineffectiveness of the remedies deployed, and has yet to present any documentary evidence thereof. It was not until February 25, 1993--more than three years after the start of the proceeding before the Commission--that the State asked for the file on the present complaint to be closed, on the premise that the criminal proceeding against César Vielman Joya Martínez "is being duly processed in accordance with the internal laws of our country."

[FN39] See, Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987, para. 88.

[FN40] See, Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987, para. 88. See also Velásquez Rodríguez, Judgment of July 29, 1988, para. 59; Fairén Garbi and Solís Corrales, Preliminary Objections, Judgment of June 26, 1987, para. 87; Godínez Cruz, Preliminary Objections, Judgment of June 26, 1987, para. 90; Gangaram Panday, Preliminary Objections, Judgment of December 4, 1991, para. 38; Neira Alegría et al., Preliminary Objections, Judgment of December 11, 1991, para. 30, and Castillo Páez, Preliminary Objections, Judgment of January 30, 1996, para. 40.

50. The petitioning party, for its part, has alleged the inefficacy of internal jurisdictional laws inasmuch as the only person on trial, Mr. Joya Martínez, was released on April 2, 1993, by virtue of the Law of General Amnesty for the Consolidation of Peace that was issued by the State of El Salvador. In addition, none of the other soldiers who were members of the military unit responsible for the offenses, which are the subject of the present complaint, were put on trial. According to the petitioner, those soldiers are "the immediate co-authors in accordance with Salvadoran law, since César Vielman Joya Martínez would not have been able to carry out the deed in question without their participation." [FN41]

[FN41] Submission of May 11, 1993.

51. As noted by the Inter-American Court of Human Rights:

The rule calling for prior exhaustion of internal remedies allows the State to resolve the problem in accordance with its domestic law before finding itself confronted with an international proceeding. This is especially true in the international jurisdiction of human rights, since that jurisdiction supports or complements the internal law. (Preamble to the American Convention) [FN42]

[FN42] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Judgment of July 29, 1988 para. 61.

52. According to the Court, this rule has implications that are contemplated in the Convention. One of them is the obligation assumed by the States Parties to provide the victims of human rights violations with effective recourse in the domestic jurisdiction (Article 25 of the Convention); another is that such remedies should be substantiated in accordance with the rules of due process of law (Article 8(1) of the Convention). All of these considerations arise within the sphere of application of the Convention's Article 1(1), which establishes the State's obligation

to ensure that all persons under its jurisdiction enjoy full and free exercise of the rights recognized in the American Convention on Human Rights.[FN43]

[FN43] *Idem*, para. 62.

53. In this respect it is worth pointing out that when the domestic jurisdictional remedy is not available either in fact or by law, the requirement that these measures be exhausted is waived.[FN44] Article 46(2) of the Convention specifies that this exception applies: when the domestic legislation of the State concerned does not afford due legal process of law for the protection of the right or rights allegedly violated; when the party alleging violation of his rights has been denied access to the remedies under domestic law; or when there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

[FN44] See Advisory Opinion OC-11/90, of August 10, 1990, Exceptions to the Exhaustion of Domestic Remedies (Art. 46.1, 46.2.a, 46.2.b of the American Convention on Human Rights), Ser. A N° 11, par. 17.

54. The Commission deems that in the present case, the fact that an amnesty law was decreed whose implementation resulted in the case against César Vielman Joya Martínez being dismissed, had the effect of closing the only legal proceeding being carried out[FN45] in relation to the incidents which were the subject of the claim, and in ending all judicial investigation on the matter, leaving no judicial route open for submitting new legal actions nor for continuing the ones already initiated. In this respect, it should be pointed out that on May 20, 1993, the Constitutional Division of the Supreme Court of Justice of El Salvador declared inadmissible the remedy of unconstitutionality, in which the court had been asked to declare unconstitutional Articles 1, 2, and 4 e) of the Amnesty Law.[FN46]

[FN45] In the case of other agents of the State allegedly involved in the incidents which are the subject of the present claim, Colonel Salvador Alcides Gómez, Sergeant (sub-sargento) Elmer Morán Martínez and soldier Eugenio Roberto Méndez Dueñas, only the first of these was detained until November 28, 1989, when the temporary dismissal of the process was issued for lack of evidence. No legal action was ever taken against the other two. The case originally initiated against Alcides Gómez was suspended ab initio for lack of evidence, while Sargent Elmar Morán Martínez Dueñas, another of those allegedly involved, was never prosecuted. Nor was legal action ever taken against the alleged originators of the plan, i.e., against the army officials who gave the order to torture and/or summarily execute the victims.

[FN46] This action was brought on May 11, 1993 by citizens Ana Mercedes Valladares and José Benjamín Cuellar, Director of "Monseñor Oscar Romero" Legal Assistance and of the Institute of Human Rights at the Universidad Centroamericana, respectively.

55. Finally, the Commission believes that the present petition presents facts, which constitute a violation of the rights established in the Convention, thus satisfying the requirement for admissibility established in Article 47(b) of the Convention.

56. By virtue of the considerations presented, the Commission concludes that the present petition satisfies the requirements for admissibility established in the American Convention and in the Commission's Rules of Procedure.

VII. FRIENDLY SETTLEMENT

57. On January 23, 1995, the Commission proposed to the parties the friendly settlement procedure provided for in Article 48, clause 1, sub-paragraph f) of the Convention and in Article 45 of the Commission's Rules of Procedure, but no understanding was achieved.

VIII. PROVEN FACTS

58. It has been amply established in the file corresponding to the case, as expressly acknowledged by the State in its Answer of November 8, 1989, that "on July 11, 1989, the Sixth Company of the Atlacatl Battalion carried out a military operation in a rural area located between Nejapa and Apopa, with support from a section of the First Infantry Brigade."

59. Based on the testimony of four participants in what was allegedly known as "Operation Atlacatl 2" (Lieutenant Herbert Antonio Soriano Romero and the three members of the Atlacatl Battalion under his command, Deputy Sergeant Elmer Ernesto Morán Martínez; Colonel Salvador Alcides Gómez, and Private Eugenio Roberto Méndez Dueñas)[FN47] on July 11, 1989, a group of soldiers carried out a military operation in the area of Nejapa and Apopa. Participants in the operation included 73 members of the Sixth Company of the Atlacatl Battalion, two male nurses, Specialist Private César Vielman Joya Martínez, a member of Section 2 of the First Infantry Brigade, and a deserter from the FAL, who was known as "the source" (José Humberto Rodríguez) took part. The role of José Humberto Rodríguez ("the source") and of César Vielman Joya Martínez was to identify the various "terrorists" (persons belonging to the FAL). The people taken into custody were later interrogated and tortured, with a view to obtaining information on clandestine arms caches of the FAL.

[FN47] According to the report on the legal status of the Case of Lucio Parada and Héctor Miranda Marroquín, this testimony appears in record of this case. This information has not been contested by the State. The aforementioned report was submitted as an appendix to the petitioner's brief of July 28, 1992.

60. The participation of Joya Martínez and of "the source" in the operation seems to be confirmed by the former's statements before the Mexican Academy of Human Rights,[FN48] which we referred to above.

[FN48] Testimony given before the Mexican Academy of Human Rights on August 28, 1989, signed by César Vielman Joya Martínez and by witnesses Maricclair Acosta Urquidi and Consuelo Ornelas Barbosa and Miguel Montenegro.

61. From the testimony of the victims and witnesses before the Human Rights Commission of El Salvador (CDHES)[FN49], that the State has not contested, it is deduced that the victims were detained when they were either at home or on their way back from work. Thus witness María Inés Mendoza declared that Lucio Parada Cea "was captured...when he was at home by soldiers of the First Infantry Brigade." Fausto García Funes stated that he was detained on July 11, 1989, at 2:00 p.m., when he was at home. The soldiers who came to fetch him told him at first that he was being recruited for military service; later they informed him that he had been accused of being a guerrilla and had been detained because of that.

[FN49] Testimony of Fausto García Funes on November 3, 1989; of José Catalino Meléndez on August 11, 1989; and of María Inés Mendoza on July 8, 1989.

62. At the same time, from the testimony of Sebastián Parada, father of Lucio Parada Cea, which has not been contested by the government, it emerges that the arrest of his son was made in his house and that the competent authorities never notified him of the arrest, nor informed him where his son would be taken. On the contrary, the army soldiers tried to cover up the death of his son by secretly burying his body, and never revealed where he had been buried.

63. In its response of November 8, 1989, the State of El Salvador acknowledged the fact that José Catalino Meléndez, Andrés Hernández, Faustino García, Emilio Martínez Guevara, Ernesto Marroquín, Hector Joaquín Miranda Marroquín and Lucio Parada Cea had been captured in the Nejapa area between July 1 and July 3, 1989. The State neither referred to nor contested the information regarding Carlos Antonio Martínez Rome. The State also admitted that Parada Cea had died on July 3 of that year at the scene of the incidents and that Hector Joaquín Miranda Marroquín had died on July 13, 1989. It also acknowledged that the Sixth Company of the Atlacatl Battalion had participated in the operation, along with a section of the First Infantry Brigade, of which Private César Vielman Joya Martínez was a member. The Government acknowledged that some of those arrested "showed signs of having been abused," and reported that a court proceeding was under way for the homicides of Héctor Joaquín Miranda Marroquín and Lucio Parada Cea.

IX. CONSIDERATIONS OF THE MERITS

A. Violation of the right to personal integrity

64. Article 5 of the American Convention, subparagraph 1 states that "every person has the right to have his physical, mental and moral integrity respected" and in subparagraph 2, "No one shall 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."

65. In the present case, the incidents reported occurred in the midst of the internal armed conflict in El Salvador between 1980 and 1992. Human rights instruments contain norms of a higher level (Article 27 of the American Convention), that, under circumstances such as those we are dealing with of armed conflict, need to be supplemented with interpretation in the light of the standards of International Humanitarian Law. In the instant case, there is no indication in the file that at the time the alleged events occurred the Salvadoran State had declared a state of emergency or suspension of guarantees, to which in any case all the rights established under the American Convention for peacetime apply.[FN50] Now, given that it was a known fact, both nationally and internationally, that at the time of the events in question (1989) El Salvador was engaged in an internal armed conflict, in addition to the rules of the American Convention, the rules of international humanitarian law for non-international armed conflicts are also applicable to the situation in El Salvador at the time, in addition to the rules of the American Convention, particularly Article 3, common[FN51] to the four Geneva Conventions of 1949 and its Additional Protocol II of 1977, to which El Salvador is a party.[FN52]

[FN50] In this regard, the European Commission on Human Rights pointed out that Article 15 (of the European Convention) requires an act with a certain degree of formality and publicity, as with a declaration of martial law or a state of emergency, for instance, and when such an act was not proclaimed by a High Contracting Party, even when not forewarned of the need to do so, Article 15 may not be applied. *Cyprus v. Turkey*, Report of 10 July 1976, para. 526.

[FN51] Article 3, common to the four Geneva Conventions of 1949 [sic] (hereinafter "common Article 3") indicates 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, at 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, colour, 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 in 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; b) taking of hostages; c) outrages upon personal dignity, in particular humiliating and degrading treatment; d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross may offer its services to the Parties to the conflict.

The parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Common Article 3 currently has the status of *jus cogens*, i.e., of a peremptory rule of international law which is binding on all entities that accept the existence of international law. See Jacques Moreillon, Director of General Affairs and member of the Directorate, ICRC, in a speech delivered at the Inter-American Seminar on State Security, Human Rights, and Humanitarian Law, San José, Costa Rica (September 1982). See also *Military and Paramilitary Activities in and against Nicaragua (Nicaragua vs. United States)* 1986 ICJ 14, 114, par. 220 (Background decision of June 27) in which it is suggested that Article 3 reflects general rules of international humanitarian law or of customary law.

[FN52] El Salvador ratified the Geneva Conventions on June 17, 1953, and its Additional Protocol II on November 23, 1978.

66. In this respect, it is worth emphasizing that the Commission, in other decisions, has declared itself competent in situations of domestic armed conflicts, to directly enforce rules of international humanitarian law or interpret provisions of the American Convention, using those rules as reference.[FN53]

[FN53] See Annual Report of the Inter-American Commission on Human Rights (1997), OEA/Ser.L/II.98 Doc.6 rev.1 of April 3, 1998, Report 55/97, Case 11.137 (Abella), Argentina, par. 164-166. See also IACHR, Report 26/97, Case 11.142 ("La Leche"), Colombia, par. 132.

67. Within this context, the Commission has observed in other reports,[FN54] that the right to humane treatment, embodied in Article 5 of the American Convention, cannot be suspended under any circumstance in accordance with Article 27 of the Convention.[FN55] In situations of domestic armed conflict, both common Article 3 of the Geneva Conventions and Article 4[FN56] of Protocol II require that, under all circumstances, all persons, whether or not they have ceased to participate directly in the hostilities, be treated humanely, including combatants who have been captured or have surrendered or been put out of combat because of sickness or injury. In particular, such persons may not be subjected to torture, cruel treatment, or other acts of violence against their life or person. More specifically, when the victims in question remained under the control of agents of the Salvadoran State, the State was bound not only to treat them humanely but also to assure their safety and well being. Intentional mistreatment and, even more so, summary execution of those persons would constitute a particularly grave violation of the non-suspendable guarantees established in the previously mentioned instruments.

[FN54] *Idem*.

[FN55] Article 27, subparagraph 2, of the American Convention, establishes that the right to humane treatment (Article 5 of the Convention) may not be suspended, even in the cases envisaged in subparagraph 1 of the same provision, i.e., even in time of war, public danger, or other emergency that threatens the independence or security of the State party.

[FN56] Article 4(2), (a) to (c) and (h), of Additional Protocol II reiterates the fundamental rules of Article 75 of Additional Protocol I. According to paragraph 1 of the same provision, this

protection is granted to all persons who are not participating directly in the hostilities or who have ceased to participate in them, whether or not they are deprived of liberty.

68. Contravening the American Convention itself, as well as humanitarian law, the agents of the State responsible for the custody of Lucio Parada, Héctor Joaquín Miranda Marroquín, Fausto García Funes, Andrés Hernández Carpio, José Catarino Meléndez, and Carlos Antonio Martínez, tortured them and treated them inhumanely. As a result of the torture inflicted, Lucio Parada died at the location of the incidents, and Héctor Joaquín Miranda Marroquín, died in Rosales hospital, in San Salvador, where he had been taken for surgery, thanks to the efforts by the ICRC, after spending eight days in detention in the First Infantry Brigade barracks without receiving medical attention. Miranda Marroquín died on the very day he was admitted to the hospital (July 13, 1989), before any surgery was performed.

69. The torture and inhumane treatment of which these persons were victims at the hands of agents of the State of El Salvador were acknowledged by the State itself in its reply of November 8, 1989. In this respect, the State expressed, inter alia, that "some of the prisoners showed signs of having been subject to abuse" and that "those abuses and homicides were committed by Corporal Salvador Alcides Gómez and Private César Vielman Joya Martínez." The State of El Salvador adds: "The case records include the statements of witnesses telling how the accused persons, in an abuse of their authority, beat all the arrested persons...".

70. The acts of torture cited by the victims include beatings with rifles and kicks in various parts of the body, especially in the stomach, and the placement of a hood containing rat poison and lime, which causes suffocation and severe damage to the respiratory system.

71. In relation to the State's allegation of the State that the tortures were "acts which took place behind the backs of superior officers," this appears to be contradicted by the statements of various witnesses, among them that of Specialist Private César Vielman Joya Martínez.

72. Joya Martínez specifically told the Mexican Academy of Human Rights, that his work as a member of the First Infantry Brigade consisted in investigating persons suspected of belonging to guerrilla groups, and then delivering a report thereon to his superior officers. In some cases, based on the information obtained, the superior officers ordered him to sneak up on and capture those persons, for interrogation or execution.[FN57]

[FN57] During the time of the incidents, Salvadoran military law required that all orders given by superior officers be carried out; apparently, it did not recognize the right to refuse to obey illegal orders. Buergethal, the Truth Commission for El Salvador (footnote 8 supra), p. 54, footnote 29.

73. According to Joya Martínez, on one occasion Major Díaz Hernández, chief of the First Infantry Brigade's Department Two, of which Joya Martínez was a member, called him to his office and told him that he needed a "case officer and a confidential source to carry out work in

the area of Tres Ceibas and El Angel district, in combination with the Atlacatl Battalion". Major Díaz Hernández gave him confidential information concerning enemy locations and targets, as well as the location of munitions deposits and camps. He was received in the Atlacatl Battalion by a lieutenant known as "Rocky", to whom he turned over the classified information provided by Díaz Hernández. While there, he was told that he would have to wear the same uniform as the soldiers of the Atlacatl Battalion in order to mislead the population.

74. According to Joya Martínez, the objective of the operation was to set up a permanent camp in the location known as Tres Ceibas. He said that, once they were established at Tres Ceibas, seven presumed members of the FAL organization were captured, interrogated, and then moved to a munitions dump. There, the officer Rocky "ordered more intensive interrogation by means of heavier psychological and physical pressure on the above-mentioned terrorists".

75. Based on those interrogations, according to Joya, information was obtained on four arms deposits located on the outskirts of Tres Ceibas. The deposits were inspected forthwith and a report was submitted to Lieutenant "Rocky", the Battalion commander that war material had been found and that specific orders had been issued to kill the two principal commanders who had been tortured (Lucio Parada Cea, alias Edwin, and Héctor Miranda Marroquín, alias "Chicken Breast"). "The squadron commander of the FAL organization (Lucio Parada Cea) was murdered or died as a result of the torture, and was buried in Tres Ceibas, his body having been covered with dirt and stones. Afterwards, they returned with the seized munitions to the base at Tres Ceibas, and proceeded to interrogate the prisoners more forcefully, primarily the squadron commander who was still alive" (Héctor Miranda Marroquín). "Later, higher orders were received to evacuate the region, because of the risk of discovery by humanitarian sources." Joya Martínez goes on to say that after the prisoners had been moved to the First Infantry Brigade, Major Díaz Hernández called him to his office and informed him that the operation had gone badly, as the prisoners' families were certain that the dead terrorist "had been captured by the Atlacatl Battalion." Díaz Hernández ordered him to remain in hiding for several days to avoid being identified.

76. For their part, witnesses Fausto García Funes and José Catalino Meléndez indicated, in their testimony to the Human Rights Commission of El Salvador, that during the interrogations, the soldiers had pressured them to turn over the weapons and reveal the places where arms deposits could be found, along with the location of the guerrillas.

77. Fausto García Funes also told the same Commission that, after spending an entire day interrogating and torturing both him and his companions to discover the location of the weapons and other guerrilla forces, the soldiers had told them "Look here, you bastards, you'd better tell us where they are, because if you don't tell us, we're going to kill you." Whereupon, the interrogation and torture were resumed.

78. José Catalino Meléndez said that the soldiers laughed at them during the torture sessions, insulted them and threatened to kill them if they did not reveal the location of the munitions deposits and the names of guerrilla collaborators.

79. María Inés Mendoza told the Human Rights Commission of El Salvador that after the soldiers had tortured Lucio Parada Cea, they returned to his house to search it for weapons and war materiel. This version was confirmed by Sebastián Parada, who testified in the criminal proceedings which followed the death of his son,[FN58] that the soldiers had asked his son to tell them where the weapons were hidden and that, failing to get an answer, they had proceeded to beat him and torture him.

[FN58] Report of the Human Rights Commission of El Salvador on the legal status of the case of Lucio Parada and Héctor Martínez Marroquín.

80. The Commission finds it certainly unlikely that the officers in charge of the "Atlatl 2" operation had not tolerated or, let alone, much less had not known of, the tortures. The witnesses clearly indicate that the victims were tortured for hours on end, at places near their homes and on "El Jute" Hill, where they had established a base for the operation. The interrogations and tortures continued inside the First Infantry Brigade barracks, where the soldiers inevitably would have been under the supervision of superior officers.

81. In the opinion of the Commission, contrary to what is claimed by the State, it may be deduced from the aforementioned testimony that the operation was part of a plan developed by military intelligence to locate members of the subversive group "Armed Liberation Forces" (FAL) and obtain strategic information from them, information such as the location of weapons and munitions deposits, as well as the names of the group's collaborators and sympathizers.[FN59] In any case, the Commission considers that sufficient evidence has been presented to show that the soldiers of the Army of El Salvador—with at least the acquiescence, tolerance, or knowledge of their superior officers—tortured Lucio Parada, Héctor Joaquín Miranda Marroquín, Fausto García Funes, Andrés Hernández Carpio, José Catarino Meléndez, and Carlos Antonio Martínez.

[FN59] In El Salvador, "the counterinsurgency, in its most extreme form, broadly pursued a 'deprive the fish of water' strategy. The inhabitants of regions where there was an active presence were either likened to guerrillas on the basis of suspicion, or else belonged to or collaborated with them, and therefore were at risk of being eliminated. [The massacre of] Mozote is sad proof of this approach which lasted for several years." Report of the Truth Commission, footnote 7. *supra*, p. 42.

82. Based on the foregoing, the Commission concludes that the agents of the State violated the right to personal integrity of the victims which is guaranteed in Article 5 of the American Convention, in connection with Article 1(1), which establishes the obligation of the State to guarantee that this right is observed. At the same time, they violated common Article 3 of the four Geneva conventions, as well as Article 4 of Protocol II.

B. Violation of the right to life

83. In accordance with Article 4, paragraph 1 of the American Convention, "every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life". A similar prohibition is found in common Article 3 and in Article 4(2) of Protocol II. It should be emphasized that this fundamental guarantee may not be suspended under any circumstances, in accordance with both the American Convention and these instruments of international humanitarian law.

84. The State has not contested that Lucio Parada and Héctor Miranda Marroquín were first tortured and later died. They died as a result of the torture inflicted on them by agents of the State while under their custody. Parada Cea died at the place where the incidents occurred. Miranda Marroquín, after remaining imprisoned for eight days in the barracks of the First Infantry Brigade of El Salvador, was transferred, due to the intervention of the ICRC, to Rosales hospital, where he died on July 13, 1989.

85. The State has alleged that "the abuses and homicides were committed by Corporal Salvador Alcides Gómez and private César Vielman Joya Martínez," thereby acknowledging both the abuses and the deaths of two of the prisoners. These facts and the circumstances surrounding them also emerge from the testimony of the victims who survived the torture, as well as other testimony and evidence provided by the petitioners.

86. According to the case records, Lucio Parada's father told the Human Rights Commission of El Salvador that he had seen a soldier grab his son by the shoulder and drag him to a canal some forty meters from the house. There, the soldiers proceeded to beat their prisoner whose cries he heard. The victim's father saw Private Joya Martínez striking the victim with the butt of his rifle. Afterwards, he noticed that they had taken his son to the river, where they continued to beat him.

87. Another of the victims, Fausto García Funes, who was arrested on July 1, 1989, told the same Commission that on July 2, the soldiers took Lucio Parada and other companions to El Jute Hill. From what he could observe, Lucio Parada had bruises over his entire body. García Funes stated that they were all beaten during the night and the next day a soldier asked another prisoner, Carlos Romero, to go and fetch him a large spade. The soldiers ordered them not to look back. The prisoners later asked what had happened to Lucio Parada, and one of the soldiers responded, "Lucio has already been set free, we sent him back home".

88. Also, in testimony before the Human Rights Commission of El Salvador, José Catalino Meléndez stated that on the same July 2, 1989, some soldiers took him to the San Antonio river along with other prisoners, one of whom was Lucio Parada. There, they were held under water with their hands tied behind their backs until they had almost drowned, while being asked about the whereabouts of the other guerrillas and the caches of weapons. Afterwards, they took them to El Jute hill, where they were kicked in the stomach and other parts of the body and beaten with rifle butts. Several times, according to this witness, hoods[FN60] were placed on their heads and their mouths and nostrils were pinched "so that they could not breathe". José Catalino Meléndez said that on July 3, 1989, they were hung from a tree, bound by the waist, arms, and neck, and beaten with a club. When they were untied from the tree to be taken to the Apopa command post,

Lucio Parada asked for water to drink because he was choking. The soldiers responded, "why should we give you water if you're about to die". It was just then that Lucio Parada died. The soldiers called the doctor who was with them to see whether the prisoner still had a pulse, and the doctor told them, "No, this one is already dead. Go get a spade and bury him".

[FN60] Known as "La Capucha".

89. Carlos Martínez Romero, another of the prisoners, was forced to dig a hole with the spade, and the soldiers buried Lucio Parada there. They then covered the place with dirt and large stones to keep the dogs from finding the body and digging it up.

90. The other person who died, Héctor Joaquín Miranda Marroquín, was also arrested for supposedly belonging to the FAL. According to what can be deduced from the statements given to the Human Rights Commission of El Salvador by Fausto García Funes and José Catalino Meléndez, Miranda Marroquín had been subjected to torture similar to that inflicted on Lucio Parada.

91. Fausto García Funes, for example, indicated that when he was about to be moved to the Apopa command post, he had asked to have the handcuffs loosened so that he could carry Héctor Marroquín, who had been seriously injured as a result of the torture and could not walk. According to García Funes, they were later taken from the Apopa command post to the First Infantry Brigade barracks. There, on the night of July 4, 1989, when he rejoined other friends in the cell, he could see that Héctor Miranda Marroquín was vomiting blood and could not swallow any food. He then asked that the wounded man be given medical assistance, but the soldiers replied, "it's none of our business, let him die there."

92. The witness heard Héctor Miranda Marroquín groaning throughout the night. In that state, the soldiers took him out of the cell to interrogate him further. Miranda Marroquín remained under arrest for eight days in that condition, without receiving medical care.

93. For his part, José Catarino Meléndez, in addition to confirming the accounts of torture to which his companions had been subjected, stated before the same Commission of El Salvador that Héctor Miranda Marroquín, while under arrest at the First Infantry Brigade and gravely ill, had been taken from his cell by the soldiers for further interrogation. He indicated, furthermore, that on July 10, 1989, a representative from the ICRC had arrived, and that he had told her that Hector was in very serious condition and needed to be taken to a hospital to receive medical attention. The representative said that she would call a physician to examine the prisoner. On July 12, 1989, a Red Cross physician arrived to examine Héctor Miranda Marroquín, and verified that he was very sick. On the following day, July 13, two soldiers took the prisoner, who could no longer speak, out of the cell. Finally, on July 17, 1989, the ICRC representative informed him that Miranda Marroquín had died the same day, July 13, at Rosales hospital.

94. It may be deduced from the evidence appearing in the case file that the death of Lucio Parada was caused by the direct action (torture) of agents of the State. In the case of Héctor

Miranda Marroquín, he was first tortured and then denied timely and adequate medical attention, which caused his death. In other words, in the case of Lucio Parada, death was due to the direct action of agents of the State responsible for his exclusive custody, and in the case of Miranda Marroquín, it was due, first, to the direct action of said agents (torture), and second, to the State's failure to provide him the medical care he needed to treat the serious injuries resulting from the torture. Given these circumstances, these actions and omissions on the part of agents of the State, resulting in the deaths of Lucio Parada Cea and Héctor Miranda Marroquín, constitute arbitrary deprivation of the right to life by the State and carry with them liability for the acts, in accordance with the American Convention.

95. Moreover, the Commission has recognized the special position of the State as the guarantor of the life and physical integrity of persons who are arrested and under its custody and exclusive control.[FN61] In this sense, the Commission has established that by virtue of this relationship, in situations where it is alleged that agents of the State are responsible for acts which violate the human rights of these persons, it is the State which bears the burden of demonstrating that the allegations are untrue. Furthermore, it is the State which has control over the information or evidence related to the fate of the prisoner.[FN62]

[FN61] See, Report No. 55/97 (Abella), footnote 53 supra, paragraph 195, 196.

[FN62] See Inter-American Court of Human Rights, Case of Neira Alegría and others, Judgment of January 19, 1995, Series C, N° 20, par. 65.

96. In this respect, the State has acknowledged the existence of incriminating evidence against agents of the State in saying: "In the files, there are statements by witnesses that the accused, in an act of abuse of authority, beat all of the prisoners..." and in indicating that: "in the criminal proceeding initiated against the soldier César Vielman Martínez and Corporal Salvador Alcides Gómez, witnesses have directly inculpated the accused, César Vielman Joya de Marroquín (in absentia), as the direct perpetrator of the homicides of Lucio Parada and Héctor Joaquín Miranda Marroquín, with the complicity of Corporal Salvador Alcides Gómez". The State has not, however, presented the testimonial evidence it alludes to. Neither has the State refuted the allegations of the petitioners as to the participation of other soldiers or officers in violations of the human rights of the prisoners.[FN63]

[FN63] It should be pointed out that Article 42 of the Commission's Regulations establish that the facts reported in a petition transmitted to the State shall be presumed to be true if the State "has not provided the pertinent information, as long as other evidence does not lead to a different conclusion."

97. In the Commission's opinion, this would be sufficient to accept as true all of the facts alleged and not refuted by the State, based on the previously cited jurisprudence of the Court and the Commission.

98. As a result of the foregoing, the Commission concludes that the State of El Salvador has violated the right to life of Lucio Parada Cea and Héctor Miranda Marroquín, and therefore, Article 4 of the American Convention on Human Rights, as set forth in paragraph 1(1), which establishes the obligation of the State to guarantee compliance with the rights recognized in said Convention. This right, along with the right to personal integrity, may not be suspended, even "in time of war, public danger, or other emergency that threatens the independence or security of a State Party" (Article 27 of the American Convention).

99. Furthermore, since the incidents occurred during domestic armed conflict, the previously described acts also violate the inviolable provisions of Article 4 of Protocol II, which expressly prohibits violence, and particularly, homicide.

C. Violation of the right to liberty and to personal security

100. Article 7, paragraph 5 of the American Convention provides that: Every person has the right to personal liberty and security (par.1); no one shall be deprived of his physical 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 (par. 2); no one shall be subject to arbitrary arrest or imprisonment (par. 3); anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him (par. 4); any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings... (par. 5); anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. . .(par. 6).

101. According to the doctrine repeatedly espoused by the Commission, a detention is considered arbitrary when the following apply: 1) when the detention takes place for reasons other than those validly stipulated by law (extra-legal detention); 2) when it has been executed without observing legal norms; and 3) when the power to detain has been misused, in other words, when it has been used for reasons other than those envisaged and required by the law (detention for improper purposes).[FN64]

[FN64] Inter-American Commission on Human Rights, Annual Report 1980-81, p. 118; Report on the Situation of Human Rights in Chile (1985), p. 138, para. 100; Diez Años de Actividades (1971-1981), p. 318; Argentina Report (1980), p. 291, section A(a)(b) and Report 1/96, Case 10.559 (Peru), published in the Annual Report of the IACHR (1995), p. 161.

102. The Commission has indicated that detention for improper purposes is, in itself, a punishment or penalty that affects the democratic nature of the State and is an infringement of the principle of the separation of powers, in that it involves the exercise by the administrative branch of powers which properly belong to the judiciary.[FN65]

[FN65] Inter-American Commission on Human Rights, Annual Report 1980-81, p. 118; Report on the Situation of Human Rights in Chile (1985), p. 138, par. 100; Ten years of Activities (1971-1981), p. 318; Argentina Report (1980), p. 291, section A (a) (b) and 1/96 Report Case 10.559 (Peru), published in the Annual Report of the IACHR (1995), p. 161.

103. In the present case, the Salvadoran Army carried out the arrests without a prior court order, and with the clear intention of holding the persons thus arrested in secret confinement. The detention or retention of the victims by agents of the State constitutes a clear abuse of power, since it was not effected for the purpose of bringing those persons, without delay, before a judge or another official authorized by law to perform judicial functions. This means that such action was not designed to ensure the preparation of a criminal proceeding, but to carry out—by means of torture—an interrogation of the detainees. Moreover, such acts on the part of State agents prevented the persons deprived of their liberty from having recourse to a competent judge or court so that it could decide without delay on the legality of their arrest or detention, and order their release if the arrest or detention did not take place in accordance with the law.

104. Based on these facts, the Commission concludes that the State is responsible for having violated the right to liberty and personal security (Article 7 of the American Convention) of Messrs. Lucio Parada Cea, Héctor Joaquín Marroquín, Fausto García Funes, Andrés Hernández Carpio, José Catarino Meléndez, and Carlos Antonio Martínez. This responsibility of the State arises from having detained these persons without a judicial order, from having failed to bring them before a competent judge, and for having, consequently, interfered with their right to appear before a judge or competent court to have it decided whether their arrest was legal. This entails the international responsibility of the State of El Salvador, which made a commitment to respect and guarantee the exercise of this right in accordance with Article 1(1) of the Convention.

D. General Amnesty Law for the consolidation of peace

1. General Considerations

105. Before examining the allegations of the petitioners that the legal consequences of the General Amnesty Law for the Consolidation of Peace (Decree N° 486), of March 20, 1993, transgressed their rights to judicial guarantees and to judicial protection, the Commission would like to make some general comments on the subject of amnesties and impunity.

106. It should be emphasized that the Commission is competent, in accordance with Articles 41 and 42 of the Convention, to deem any amnesty law or other domestic law of a State Party to be in violation of the obligations assumed by the State on ratifying said Convention.[FN66]

[FN66] In this sense, the Commission must verify, in a specific case, whether "that which is provided for in the law contradicts the Convention and not whether it contradicts the domestic

juridical system of the State". Inter-American Court of Human Rights, Advisory Opinion OC-13/93, Series A, par. 29.

107. In this connection, the Commission has repeatedly indicated that the enforcement of amnesties renders null and void the international obligations imposed on States Parties by Article 1(1) of the Convention^[FN67] to respect the rights and freedoms recognized therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights, without discrimination of any type.

[FN67] The Inter-American Court of Human Rights has established that this Article (1(1)) contains the obligation assumed by the States Parties in relation to each of the rights protected (by the Convention), such that any assertion that one of these rights has been infringed necessarily implies that there has also been an infringement of Article 1(1) of the Convention. The Inter-American Court of Human Rights, Velásquez Rodríguez Case, July 29, 1988 judgment, Series C No. 4 (1988), par. 162; Inter-American Court of Human Rights, Godínez Cruz case, January 20, 1989 judgment, Series C No. 5 (1989), par. 171; Inter-American Court of Human Rights, Neira Alegría case and others, January 19, 1995 judgment, footnote 63 supra, par. 85. See also Annual Report of the Inter-American Commission on Human Rights (1996), OEA/Ser.L/V/II.95, Doc.7 rev., of March 14, 1997, Reports N° 36/96 (Chile), par. 78 and N° 34/96 (Chile), par. 76; Annual Report of the Inter-American Commission on Human Rights (1992-93), OEA/Ser.L/V/II.83, Doc. 14, March 12, 1993, Reports N° 28/92 (Argentina), par. 41 and N° 29/92 (Uruguay), par. 51; Annual Report of the Inter-American Commission on Human Rights (1997), OEA/Sere.L/V/II.98, Doc. 6 rev., April 13, 1998, par. 71.

108. The subject of amnesties has been examined by the Commission on various occasions in relation to individual petitions against certain States Parties to the American Convention which have passed amnesty laws granting impunity to serious violations of human rights committed against persons under its jurisdiction. These amnesty laws have deprived large segments of the population of the "right to justice in their just claims against those who committed excesses and acts of barbarity against them."^[FN68]

[FN68] See, Annual Report of the Inter-American Commission on Human Rights (1985-1986), p. 204.

109. In the particular case of El Salvador, the Commission has had the opportunity to examine, in the Las Hojas case,^[FN69] the Amnesty Law (Decree N° 805), which was approved by the Legislative Assembly of El Salvador on October 27, 1987. That law granted "absolute and exclusive legal amnesty" to those who perpetrated or were accomplices in the perpetration of political or common crimes connected with political crimes, or common crimes when no less than twenty people were involved in their execution, if these crimes were committed before October 22, 1987. As the Commission stated, this law "legally eliminated the possibility of an

effective investigation and prosecution of those responsible, as well as eliminating adequate compensation for the victims and their relatives deriving from civil liability for the illicit acts committed." [FN70]

[FN69] Annual Report of the Inter-American Commission on Human Rights (1992-93), OEA/Ser. L/V/II.83, Doc. 14, March 12, 1993, Report No. 26/92, Case 10.287 "Las Hojas" (El Salvador).

[FN70] *Idem.*, par. 11.

110. The doctrine and practice of the IACHR in the area of amnesties is supported by the study on impunity done by Louis Joinet, United Nations Special Rapporteur for Amnesty. [FN71] In his study, submitted to the United Nations Commission on Human Rights on October 2, 1997, Joinet recommended the adoption of forty-two principles aimed at protecting and promoting of human rights through actions intended to combat impunity. [FN72]

[FN71] The Administration of Justice and the Human Rights of Detainees, "Question of the impunity of perpetrators of human rights violations (civil and political)" (E/CN.4/Sub.2/1997/20/rev. 1). This report was prepared by Louis Joinet, in accordance with resolution 1996/119 of the Sub-Committee on the Prevention of Discrimination and the Protection of Minorities of the United Nations Commission on Human Rights.

[FN72] *Idem.*, pp. 13-15.

111. Principle 18 refers to the duty of States in relation to the administration of justice. On this matter, Joinet states that impunity arises from the fact that the States are not fulfilling their obligation to investigate these violations and adopt, particularly in the area of the administration of justice, measures to guarantee that those responsible for having committed the acts will be charged, tried, and punished. It arises, furthermore, from the fact that the States do not adopt appropriate measures for providing the victims with effective remedies, for repairing the damage they suffered, and for preventing a repetition of such violations.

2. The 1993 Amnesty Law

112. The General Amnesty Law for the Consolidation of Peace (Decree N° 486) of March 20, 1993, now under consideration, was approved during the administration of President Cristiani and postdates the amnesty of 1987 (Decree N° 805), which was referred by the Commission in the "Las Hojas" case. Like most of the amnesties studied by the Commission, that of 1993 was also adopted in the interests of national reconciliation and gave full, absolute, and unconditional amnesty to all persons who in any way had participated in the commission of political crimes, related common crimes, and common crimes committed, before January 1, 1992, by persons numbering no less than twenty (Article 1) [FN73] In Article 2, the law broadened the definition of a political crime to include "crimes against the public peace," "crimes against judicial

activity," and crimes "committed because, or as a result of armed conflict, without taking into consideration political status, militancy, affiliation, or ideology."

[FN73] According to Article 1 of the "General Amnesty Law for the Consolidation of Peace" (Decree 486), the "amnesty is extended to the persons referred to in Article 6 of the Law of National Reconciliation, contained in the Legislative decree number 147 of January 23, 1992...", a provision which basically refers to "persons who, according to the Report of the Truth Commission, had participated in serious acts of violence occurring since January 1, 1980, whose imprint on society urgently requires that the truth be publicly known". The Law of National Reconciliation stipulated that the Legislative Assembly could adopt some resolution in such cases, within six months of the issuance of the Report of the Truth Commission. The General Law of Amnesty, furthermore, expressly waives, in Article 6, the rule on the exception of amnesty for those whom the Report of the Truth Commission indicates are responsible. See, Report on the Situation of Human Rights in El Salvador (1994), OEA/Ser. L/V/II.85 rev., February 11, 1994, p. 76.

113. The Commission should emphasize that Decree 486 was applied to serious human rights violations in El Salvador between January 1, 1980, and January 1, 1992, including those examined and established by the Truth Commission. In particular, its effect was extended, among other things, to crimes such as summary executions, torture, and the forced disappearance of persons. Some of these crimes are considered of such gravity as to have justified the adoption of special conventions on the subject and the inclusion of specific measures for preventing impunity in their regard, including universal jurisdiction and inapplicability of the statute of limitations.[FN74] Thus, for example, Article 11 of the American Convention to Prevent and Punish Torture, and Article V of the Inter-American Convention on Forced Disappearance of Persons, establish universal jurisdiction for crimes of torture and of forced disappearance of persons, respectively, and include them under extraditable crimes.[FN75] Article 8 of the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment also considers torture to be an extraditable crime.[FN76] With regard to the statute of limitations, Article VII of the Inter-American Convention on Forced Disappearance of Persons establishes that it will not apply for either the criminal acts or the court's sentences imposed on those responsible.[FN77]

[FN74] See Annual Report of the Inter-American Commission on Human Rights (1996), OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997, p. 175, par. 47.

[FN75] Article VI of the Inter-American Convention on Forced Disappearance of Persons establishes, furthermore, that States Parties which do not grant extradition shall submit the case to its competent authorities as if the offense had been committed within its jurisdiction.

[FN76] Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Adopted and opened for signature through General Assembly Resolution 39/46, of December 10, 1994). It entered into force on June 26, 1987, in accordance with Article 27(1). A Compilation of International Instruments, Vol. 1 (First Part), Universal Documents, United Nations (1993), pp. 293-307.

[FN77] The same Article VII of the Inter-American Convention on Forced Disappearance of Persons establishes that in the case of States Parties in which statutes of limitations are mandatory because of fundamental norms, the period of limitation shall be equal to that applied to the gravest crime in the domestic laws of the corresponding State Party.

114. With regard to disappearances, the General Assembly of the Organization of American States has stated "... that the forced disappearance of persons in America is an affront to the conscience of the hemisphere and constitutes a crime against humanity." [FN78] In its 1988 decision, adopted in the "Velásquez Rodríguez" case, the Inter-American Court observed that international doctrine and practice have repeatedly deemed disappearances to be a crime against humanity. [FN79] At the same time it indicated that the practice of disappearances, in addition to directly violating numerous provisions of the Convention, "constitutes a radical breach of the treaty, in that it shows a crass abandonment of the values which emanate from the concept of human dignity and of the most basic principles of the inter-American system and the Convention." [FN80] The Inter-American Convention on Forced Disappearance of Persons, [FN81] furthermore, reaffirms in its Preamble that "the systematic practice of the forced disappearance of persons constitutes a crime against humanity." [FN82] Therefore, the social need to explain and investigate these crimes against humanity "cannot be placed on the same level as mere civil crimes." [FN83]

[FN78] Resolution AG/RES. 666 (XII-O/83).

[FN79] Inter-American Court on Human Rights. Velásquez Rodríguez case, July 29, 1988 judgment, supra note 40, Series C No. 4, par. 153.

[FN80] Idem., par. 158.

[FN81] Inter-American Convention on Forced Disappearance of Persons, adopted in Belém do Pará, Brazil, June 9, 1994, at the twenty-fourth regular session of the General Assembly. OEA/Ser.P AG/doc.3114/94 rev.

[FN82] Idem.

[FN83] See General Assembly resolutions of OAS: AG/RES. 443 (IX-O/79), of October 31, 1979; AG/RES. 742 (XIV-O/84); AG/RES. 950 (XVIII-O/88); AG/RES. 1022; AG/RES. 1044 (XX-O/90), and IACHR, Annual Reports 1978; 1980/81; 1981-82; 1986-87. See also, inter alia: IACHR, special reports by country, such as that of Argentina (1980), Chile (1985), and Guatemala (1985).

115. The Commission also notes that Article 2 of Decree N° 486 was apparently applied to all violations of common Article 3 and of Protocol II, committed by agents of the State during the armed conflict which took place in El Salvador. It is also important to indicate that many of these violations, such as extra-judicial executions and torture, can be put on a par with human rights violations, which are not subject to suspension according to the American Convention.

116. In regard to the issue of amnesty, the International Committee of the Red Cross has made it clear that Article 6 (5) of the Additional Protocol II—which requests that "the broadest possible amnesty" be granted after the cessation of domestic armed conflicts—cannot be interpreted in the

sense of supporting amnesty for violations of humanitarian law.[FN84] This interpretation was communicated by the ICRC to the Criminal Court Prosecutor for the former Yugoslavia in 1995, and says, in the relevant section, the following:

The preparatory work for Article 6(5) indicates that the purpose of this precept is to encourage amnesty,... as a type of liberation at the end of hostilities for those who were detained or punished merely for having participated in the hostilities. It does not seek to be an amnesty for those who have violated international humanitarian law.[FN85]

[FN84] Article 6(5) of the Additional Protocol to the Geneva Conventions, footnote 51 supra, establishes that "At the cessation of hostilities, the authorities in power shall attempt to grant the broadest possible amnesty to persons who have taken part in the armed conflict or who are deprived of liberty, confined, or detained for reasons related to the armed conflict."

[FN85] See letter of April 15, 1997, from Dr. Pfanner, Chief of the Legal Division, International Committee of the Red Cross, central office in Geneva, to Douglass Cassel, Executive director of the International Institute of Human Rights and the Jeanne and Joseph Sullivan program for Human rights in the Americas, University of DePaul, School of Law (filed with the addressee). Comments on the practice of the organs of the inter-American system for the protection of human rights, Douglass Cassel, *Lessons of the Americas: Guidelines for an International Response to Amnesty for Atrocities*, IIHR Journal, vol. 24 (1996), pp. 306-307.

117. The Commission shall now proceed to analyze the argument put forward by the petitioners that by applying the amnesty law to the above-mentioned crimes committed by its agents, the Salvadoran State deprived the relatives of the victims of their rights to a fair trial and to judicial protection, thereby violating Articles 8 and 25 of the American Convention.

E. Violation of the right to a fair trial (Article 8 of the Convention)

118. Article 8, par. 1 of the American Convention, specifically guarantees the right to a fair trial by providing that "every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."

119. Unlike what occurs in other Latin American countries,[FN86] the 1974 Code of Criminal Procedure of El Salvador does not recognize the right of victims to participate in the criminal proceedings in the case of crimes against order.[FN87] Nevertheless, for this type of crime, which is prosecuted by the State, and even for those which are dependent on private prosecution (penal matters), the State has the obligation to investigate and prosecute the crimes, i.e., to preserve public order and guarantee the right to justice. In its capacity as director of punitive action, the State, through the Public Prosecutor's Office, has the obligation, which can neither be delegated nor renounced, to take action or prosecute and push the different procedural steps through to their conclusion.[FN88]

[FN86] See, for example, Article 80 of the Uruguayan Code of Criminal Procedure, which authorizes a victim to request, during the summary proceedings, "all useful measures to investigate the crime and determine who the guilty parties are", and the Code of Criminal Procedure of Chile, Title II, "Regarding Criminal Action and Civil Action in the Criminal Process," Articles 10/41. As has been stated by the Commission, the right of the victim to have recourse to the courts is "essential in order to further the criminal proceeding and move it forward". Annual Report of the Inter-American Commission on Human Rights (1996), OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997, Report N° 34/96, Cases 11.228, 11.229, 11.231, and 11.282 (Chile), par. 62, and Report N° 36/96, Case 10.843 (Chile), October 15, 1996, par. 63.

[FN87] It is appropriate to point out that Article 95 of the Code of Criminal Procedure of El Salvador, which is due to enter into effect in 1998, does recognize this right, in establishing that "in crimes against public order, the victim, through his or her representative, shall be able to participate in the proceeding, with all of the rights and powers envisioned in the Constitution of the Republic, in this Code, and other laws". In other words, El Salvador's criminal procedure legislation recognizes the role of the plaintiff as a participant in the criminal proceeding, i.e., it recognizes the role of someone injured by a crime against public order to appear with the formal request that he be made a party to the action within the criminal proceeding, jointly with the prosecution.

[FN88] In relation to this point, see, for example, Report N° 12/95 Case 11218, Nicaragua, OEA/L/II.90. Doc. 16, September 13, 1995, par. N° 7.19; Annual Report of the Inter-American Commission of Human Rights (1996), OEA/Ser. L/V/II.95, Doc. 7 rev., March 14, 1997. Report N° 36/96, Case 10.843 (Chile), October 15, 1996. In regard to the necessary diligence which the Public Prosecutor's Office must demonstrate in pursuing the proceedings, see Inter-American Court of Human Rights, Velásquez Rodríguez case, July 29, 1988 judgment, par. 79.

120. In the present case, the criminal claims were not pursued, and did not progress for lack of action or failure to expedite the procedure on the part of the Public Prosecutor's Office, and ended in the dismissal of any charges against those who might have been implicated, leaving the crimes unpunished. The impunity in the case of these crimes was confirmed with the promulgation and application of Decree 486, in which Joya Martínez, the only one of those implicated who was being prosecuted, expressly sought protection. The judge declared the request of Joya Martínez legally valid, and ordered final dismissal of charges, based on the fact that the torture and homicides had been committed during "the domestic armed conflict" which existed in El Salvador at the time of the incidents. The others who were allegedly involved remained automatically protected by that same decree.[FN89]

[FN89] Article 4 of the Amnesty Law, relative to the effects of the law, established that persons who were detained would be released as a result of this law, and that in pending cases, dismissal would ensue. This provision added: "in the case of persons who have not yet been subject to any prosecution, the present decree will provide that prosecution might be initiated against them at any time for crimes covered by this amnesty, they may oppose the exception to annulment of the criminal action and request final dismissal". This law envisioned the possibility that a person

would appear before a judge in a court of first instance to seek enforcement of the amnesty. In all cases, the granting of amnesty eliminated civil liability.

121. The petitioners allege that Decree 486 prevented the surviving victims and their relatives from attempting to obtain reparation in the civil courts. In this respect, Article 4 of the decree establishes that when the amnesty is granted it eliminates civil liability in all cases, which according to the Commission's understanding, includes civil liability on the part of agents of both the agents of the State who committed the violations and the State.[FN90]

[FN90] In this regard, it should be pointed out that Article 245 of the Constitution of El Salvador establishes that "The officials and public employees shall answer personally, and the State, in a subsidiary fashion, for the material or moral damages caused by the violation of the rights enshrined in this Constitution."

122. In other cases, the Commission has established that amnesties and their effects may not interfere with the right of the victims or their survivors to obtain, at least, due compensation for violations of the human rights enshrined in the American Convention. This position derives, to a great extent, from the interpretation of the Inter-American Court with respect to the consequences of violation by the State of its duty to guarantee human rights, in accordance with Article 1(1) of the Convention. As the Court stated in its Velásquez Rodríguez judgment: "... the State has the obligation to investigate the violations which have been committed within the scope of its jurisdiction, in order to... assure the victim due reparation." (Emphasis added.) The right to due compensation is also intimately linked to the right to judicial protection enshrined in Article 25 of the Convention.[FN91]

[FN91] Inter-American Court of Human Rights, Velásquez Rodríguez judgment, footnote 40 supra, p. 174.

123. In accordance with its jurisprudence, the Commission concludes that in approving and enforcing the General Amnesty Law, the Salvadoran State violated the right to judicial guarantees enshrined in Article 8(1) of the Convention, to the detriment of the surviving victims of torture and of the relatives of Lucio Parada and Héctor Miranda Marroquín, who were prevented from obtaining redress in the civil courts; all of this in relation to Article 1(1) of the Convention.

F. Judicial protection (Article 25 of the Convention)

124. Article 25, paragraph 1 of the Convention, states that "everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws

of the state concerned or by this Convention, even when such violation may have been committed by persons acting in the course of their official duties".

125. The provision referred to incorporates the principle, recognized in international human rights law, of the effectiveness of procedural measures or instruments aimed at guaranteeing those rights. Thus, the generally recognized principles of international law, to which the Convention refers when it speaks of remedies under domestic law[FN92], refer to the formal existence of such remedies, as well as to "their adequacy", i.e., their being suitable "and effective in protecting the juridical situation which has been infringed". It refers, likewise, to their being effective in producing the result for which they were intended.[FN93] The States Parties, consequently, are obliged to provide "effective judicial recourse to victims of human rights violations (Article 25)". All of this is encompassed within the general obligation of the same States have to guarantee free and full exercise of the rights recognized by the Convention to all persons under their jurisdiction (Article 1).[FN94]

[FN92] Article 46(1)(a) of the Convention.

[FN93] Inter-American Court of Human Rights, Velásquez Rodríguez case, July 29, 1988, judgment, Series C N° 4, paragraph 63, 64, 66; Fairén Garbi and Solís Corrales case, Preliminary Exceptions, March 15, 1989, par. 86-90; Godínez Cruz case, January 20, 1989 case, par. 65-69.

[FN94] Inter-American Court of Human Rights, Velásquez Rodríguez case, Preliminary Exceptions, June 26, 1987 judgment, Series C N° 1 (1987), par. 91.

126. In this respect it should be taken into account that the international protection of human rights is based "on the need to safeguard the victim from the arbitrary exercise of public power", and prevent a state of defenselessness due to "the absence of effective domestic recourse".[FN95] As the Inter-American Court stated:

... The absence of an effective remedy to violations of the rights recognized by the Convention is itself a violation of the Convention by the State Party in which the remedy is lacking. In that sense, it should be emphasized that, for such a remedy to exist, it is not sufficient that it be provided for by the Constitution or by law or that it be formally recognized, but rather it must be truly effective in establishing whether there has been a violation of human rights and in providing redress.[FN96]

[FN95] Inter-American Court of Human Rights, Fairén Garbi and Solís Corrales, Preliminary Exceptions, June 26, 1987 decision, Ser. C N° 2 (1987), par. 92.

[FN96] Inter-American Court of Human Rights. OC-9/87, par. 24.

127. The Commission wishes to make clear that, for the purpose of providing an appropriate recourse for remedying serious human rights violations, such as the torture and homicides analyzed in this case, the State, particularly in its capacity as the party directing punitive action, should have initiated procedures to identify, prosecute, and punish all those responsible for

committing said crimes, pursuing all procedural steps to their conclusion. As a result of the application of Decree 486, however, the State did not fulfill its obligation (which cannot be delegated to any other entity), to follow through on the criminal prosecution until its conclusion, and, on the contrary, prevented the identification of the perpetrators, accomplices, and those responsible for covering up the incidents (crimes), and the meting out of appropriate punishment: In this manner, it violated the right of the relatives, even though they did not participate in the criminal proceeding.

128. Furthermore, in expressly eliminating all civil liability (Article 4), this law prevented the surviving victims and those with legal claims on behalf of Lucio Parada and Héctor Miranda Marroquín from access to effective judicial recourse and a decision on their possible efforts to seek civil compensation.

129. The Commission concludes that in promulgating and enforcing the Amnesty Law, El Salvador has violated the right to judicial protection enshrined in Article 25 of the Convention, to the detriment of the surviving victims and those with legal claims on behalf of Lucio Parada and Héctor Miranda Marroquín; all of this in relation to Article 1(1) of the Convention.

G. The obligation to investigate

130. Interpreting the scope of Article 1(1) of the American Convention, the Inter-American Court of Human Rights has stated that the obligation it establishes involves:

... the duty of 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.[FN97]

The Court has furthermore indicated that:

The State has a legal duty to take reasonable steps to prevent human rights violations, and to use the means at its disposal to carry out a serious investigation of violations committed within the its jurisdiction, to identify those responsible, to impose the appropriate punishment, and to ensure the victim adequate compensation.[FN98]

... If the State apparatus acts in such a way that the violation goes unpunished, and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the full and free exercise of those rights to the persons within its jurisdiction.[FN99]

[FN97] Inter-American Court of Human Rights, Velásquez Rodríguez case, July 29, 1988 judgment, par. 166.

[FN98] *Idem.*, par. 174. See also Inter-American Court of Human Rights, *Godínez Cruz Case*, Judgment of January 20, 1989, *supra* note 70, par. 184.

[FN99] Inter-American Court of Human Rights, *Velásquez Rodríguez case*. July 29, 1988 judgment, *supra* note 42, par. 176. Inter-American Court of Human Rights, *Godínez Cruz Case*, Judgment of January 20, 1989, *supra* note 70, par. 187.

131. In the present case, the State had the obligation to thoroughly investigate the incidents that are set forth in the present claim. Nevertheless, despite having confirmed the tortures and abuses to which the victims were subjected by agents of the State, and despite the fact that these acts led to the death of two of those tortured, the Salvadoran State did not pursue an effective investigation to bring to light such incidents, aimed at seriously and clearly prosecuting and punishing all persons responsible for the acts. Several of the testimonials in the evidentiary proceedings are revealing on this issue.

132. Fausto García Funes, for example, said in his statement before the Human Rights Commission of El Salvador that he related to the National Guard how he had been detained and tortured during the days when he was being held prisoner by the Salvadoran Army. He indicated, furthermore, that afterwards he was summoned by the Apopa Court in order to establish what injuries he had suffered. The judge, however, did not order a forensic medical examination of the injuries, nor did he seek other evidence, which would tend to establish the facts, despite the fact that, according to the victim, he could demonstrate that he had injuries on several parts of his body.

133. For his part, José Catarino Meléndez stated before the Human Rights Commission of El Salvador that he had first made a statement before the National Guard and later, before the Apopa Court, to the effect that he had been arbitrarily detained and subjected to torture. Meléndez also stated that he had described to the National Guard and to the Apopa Court the various methods of torture used by the Salvadoran soldiers, and said that he had seen when the soldiers murdered Lucio Parada and buried him. On this, he stated: "on the second [of July] they put the hood on me, maybe about ten times, they held my mouth and nose, in such a way that I could not breathe"... "The third of July they continued to beat us in the same way, they took us and hung us from a caulote tree, they tied us up from the waist, and clubbed us for a period of twenty minutes, and they, the soldiers, enjoyed it, they laughed at what they were doing to us". (Underlining not in the original.)

134. María Inés Mendoza stated that at the time they captured Lucio Parada Cea, "the soldiers said they were taking them to ask them some questions"... "at around three in the afternoon, the soldiers returned carrying Lucio Parada and she saw that her life's companion was really beaten up and had been tortured". (Underlining not in the original.)

135. Soldier Salvador Alcides Gómez, originally accused, and the other soldiers who testified before the criminal court of the city of Quezaltepeque (Elmer Ernesto Morán Martínez and Eugenio Roberto Méndez Dueñas), stated that they "captured the victims and proceeded to beat and torture them to get them to say where the arms were", and acknowledged that "they beat and helped to torture the detainees".[FN100]

[FN100] Report on the juridical situation of the Lucio Parada and Héctor Miranda Marroquín case, produced by the Human Rights Commission of El Salvador.

136. It should be pointed out that the Salvadoran State did not diligently investigate the incidents referred to in these statements, since, as the State itself reported,[FN101] the trial court of Quezaltepeque confined itself to issuing an arrest warrant (case 148/89) for two of the soldiers allegedly involved, and only in relation to the death of the two alleged FAL commanders killed as a result of the tortures. The warrant says, literally: "the present criminal trial has officially been initiated against the soldier (not present) César Vielman Joya and Colonel Salvador Alcides Gómez... both of whom were charged with being members of the Atlacatl Battalion and of the First Infantry Brigade and prosecuted for the crime of the secret homicide of Mr. Lucio Parada and Mr. Héctor Joaquín Miranda Marroquín, on 2/7/89, in the canton of Camotepeque, jurisdiction of Nejapa, Article 152 Pn". This clearly demonstrates that the State did not duly fulfill its obligation to investigate the tortures inflicted on the other five farmers, despite the fact that the victims and their relatives appeared before the police and judicial authorities to make their statements on the way in which they had been captured and tortured, identifying those who were responsible for the acts. It also proves that the State did not efficiently investigate the responsibility of the others alleged to be involved, including the superior officers who gave the orders, allowed, or consented to the acts.

[FN101] Defendant's brief of November 8, 1989.

137. The Commission considers it important to indicate that "the duty to investigate.. must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. [It] 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".[FN102] In other words, the authorities should have launched a serious investigation of the facts, in order to establish the objective truth, the real truth. The measures taken by the State, on the contrary, did not provide a diligent investigation of the alleged facts, and were such that the violations remained unpunished, and the rights of the victims were not restored.

[FN102] Inter-American Court of Human Rights, Velásquez Rodríguez case, July 29, 1988, par. 177.

138. In the case of the others who were allegedly involved (soldiers and superior officers who participated, consented to or allowed these crimes), the State also failed to carry out a thorough investigation of their conduct, conferring on them a de facto status of impunity against possible future criminal sanctions. On this matter, the State reported that "in the (judicial) proceedings,

there is witness testimony of how the accused (Colonels Salvador Alcides Gómez and César Vielman Joya Martínez), in abuse of authority, beat all of the prisoners". In other words, it denied that the superior officers had known of the incidents. Nevertheless, it is difficult for the Commission to accept that all of these acts, which according to the State of El Salvador were committed without the knowledge of the superiors and in abuse of authority, were not authorized by these superior officers or, at least, that they were allowed or known about by them. The evidence mentioned allows for the conclusion that the officers in charge of the military unit knew of, or tolerated the acts of torture inflicted, even if they themselves had not ordered them. This conclusion is reinforced by the fact that the surviving victims indicated that they had been tortured both at the temporary base established at El Jute Hill, and at the command headquarters of the First Infantry Brigade, where they remained for seventeen days, which makes it inconceivable that this was carried out behind the backs of the superior officers.

139. In an interview given by Joya Martínez to the Mexican newspaper La Jornada on October 10, 1989, he stated that the death squads existed and that during 1988 and 1989 he had belonged to one of them, pursuing, kidnapping, forcibly taking from their houses and later executing many people whom he barely knew, or whose name he did not even know. He also stated that it is the Salvadoran Army and the United States advisors who organize and pay for these special bodies, as they are known, in order to camouflage their clandestine activities..."[FN103] In the same interview, Joya Martínez stated that high-ranking military chiefs were responsible for giving the orders to execute the clandestine operations of the death squads. These military officers, according to him, were: Colonel Francisco Elena Fuentes, head of the First Infantry Brigade; Colonel Orlando Zepeda, former head of the same unit, and the Minister of Defense, Colonel Carranza, as well as Battalion Commander Belloso and other military officers of lesser rank, such as Major Díaz Hernández, head of the First Infantry Brigade's Department 2.[FN104]

[FN103] Petitioner's brief of additional information, November 23.

[FN104] Idem.

140. The Commission considers that the responsible officers had the obligation to stop the acts of torture inflicted on the prisoners, as recognized in El Salvador's Penal Code itself, in providing, in Article 22, that "He who fails to stop something which, given the circumstances, should have been prevented, will be viewed as if he had committed the act. The duty to act is incumbent on anyone who, by law, has the obligation of caring for, protecting, or monitoring (...).[FN105] The State has the responsibility to investigate the behavior of these officials and assure the right of the victims to have those human rights which were infringed, restored; however, this was not done.

[FN105] In international law there are rules along the same lines. Thus, for example: Article 1 of the United Nations Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (approved by the General Assembly on December 10, 1984), indicates that "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person..." constitutes acts of torture", (...) when such pain or suffering is inflicted

by or at the instigation of or with the consent or a connivance of a public official or other person acting in an official capacity." Article 4 establishes that "Each State Party shall ensure that all acts of torture are offences under its criminal law" and "shall make these offences punishable by appropriate penalties which take into account their grave nature." By the same token, Article 12 of the Convention provides that "Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction."

141. In regard to this point, the Commission wishes to emphasize that, regardless of the complicity or consent of the officers involved, it is clear that the perpetration of the acts described here, which were a violation of human rights, by virtue of having been committed by its agents (soldiers), implies the international liability of the Salvadoran State.

142. The Commission concludes, therefore, that the State did not fulfill its obligation to investigate the tortures of which José Catarino Meléndez, Andrés Hernández, Faustino García, Emilio Martínez Guevara, and Ernesto Marroquín were victims, and that it acted in such a way that these violations went unpunished. In the case of Lucio Parada Cea and Héctor Miranda Marroquín, the State initiated criminal prosecution against two of those allegedly involved (Colonel Salvador Alcides Gómez and César Vielman Joya Martínez), but the dismissal of the charges against the former for lack of evidence and the later dismissal of charges against the latter as a result of the amnesty, despite the existence of incriminating evidence against them, shows that the State also failed to fulfill its obligation to investigate and that it acted in such a way that the human rights violations committed by those people remained unpunished.[FN106]

[FN106] With regard to the criminal process initiated against Colonel Gómez, the judge dismissed the charge in November, 1989, based on lack of proof of his participation in the acts. The criminal process proceeded only against Joya Martínez, who was a fugitive and had requested political asylum in the United States, for fear of being murdered for his revelations about the operation of the death squads in El Salvador. The Salvadoran judicial authorities demanded that the United States extradite him, and in October, 1992, this occurred. Upon returning to El Salvador, the case against him proceeded, but charges were finally dismissed as a result of the enforcement of the amnesty law.

143. At the same time, it should be pointed out that the mandate of the Truth Commission made it clear that the actions of this body did not have judicial status, in expressly stating that: "the actions of the Commission are not jurisdictional".[FN107] In other words, the Commission did not have the status of a court or tribunal, and the judicial function was expressly reserved for the Salvadoran courts.[FN108] Its work was limited to investigating individual cases or incidents which, due to their singular nature, deeply affected the Salvadoran society and/or international society, as well as a series of individual cases with similar features which revealed a systematic pattern of violence or mistreatment, and which, viewed in its totality, also had a disturbing effect

on Salvadoran society. The Commission really did not study all of the human rights violations, but rather those which had the greatest repercussions and caused the greatest social disorder.

[FN107] Mexico Agreements, *supra* note 3, p. 2.

[FN108] See Report of the Truth Commission, *supra* note 7, p. 2.

144. Unlike what occurred in other countries of the Hemisphere, the Salvadoran Truth Commission did give the names of those responsible for these acts, because it considered that "the whole truth can not be told if names are omitted." [FN109]

[FN109] *Idem.*, p. 15.

145. In any case, given the nature of its mandate, the Commission lacked competence to set sanctions or to order the payment of compensation in relation to the incidents that were investigated and established. The Commission acknowledged this in stating: "the direct enforcement of a sanction against those responsible is beyond the powers of the commission: it... can not, therefore, decide that a given sanction be enforced against a given person. That is a function which, by its nature, is the responsibility of the courts of justice..." [FN110]

[FN110] *Idem.*, p. 190.

146. The IACHR considers that, despite the importance of the Truth Commission in establishing the facts related to the more serious violations and in promoting national reconciliation, the functions it carried out can not be considered to be an appropriate substitute for the judicial process. Neither does it replace the State's obligation to investigate the violations which were committed within the scope of its jurisdiction, as well as to identify those responsible, impose sanctions, and assure the victim appropriate reparation (Article 1(1) of the Convention). [FN111]

[FN111] Inter-American Court of Human Rights, Velásquez Rodríguez case, July 29, 1988 judgment, *supra* note 42, par. 174.

147. The Commission concludes, therefore, that in approving and implementing the Amnesty Law, the Salvadoran State failed to fully meet the obligation stipulated in Article 1(1), thus injuring the petitioners.

H. The right to the truth

148. The right to know the truth with respect to the incidents which took place and the serious human rights violations which occurred in El Salvador, as well as to know the identity of those who participated in them, constitutes an obligation which the State has to the relatives of the victims and to the society, as a consequence of the obligations and duties assumed by that country in its capacity as a State Party to the American Convention on Human Rights. Such obligations fundamentally arise from the provisions of Articles 1(1), 8, 25, and 13 of the Convention.

149. As the Commission has indicated, Article 1(1) of the American Convention establishes that the States Parties are obliged to "respect" the rights recognized in it and to "guarantee" their free and full exercise. This obligation involves, according to the Inter-American Court, truly fulfilling the "obligation to act" on the part of the States allowing for an effective guarantee of such rights.[FN112] As a result of this obligation, the Salvadoran State has the juridical duty to reasonably prevent human rights violations, investigate, with the means at its disposal, violations which have been committed within the scope of its jurisdiction, identify those responsible, impose on them the relevant sanctions, and assure proper reparation to the victim.[FN113]

[FN112] "The second obligation of the States Parties is to "ensure" the free and full exercise of the rights recognized in 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 judgment, 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."

[FN113] Velásquez Rodríguez case, *Idem.*, par. 174, Godínez Cruz case, *Idem.*, par. 184. See also 1997 Annual Report of the IACHR, *supra* note 64, p. 540, par. 70; 1992-1993 Annual Report of the IACHR, *supra* note 72, Individual Report N° 25/98 (Chile) and individual reports N° 28/92 (Argentina), and 29/92 (Uruguay) p. 162-174.

150. The interpretations issued by the Court in the Castillo Páez case[FN114] and others related to the generic obligations of Article 1(1), allow for the conclusion that the "right to the truth" arises as a basic and indispensable consequence for all States Parties, given that not knowing the facts related to human rights violations means that, in practice, there is no system of protection capable of guaranteeing the identification and possible punishment of those responsible. Specifically, in the case of forced disappearances—which are considered violations of ongoing execution—[FN115] the Court has understood that while the final fate of the disappeared person remains uncertain, the duty to investigate this type of incident endures.[FN116]

[FN114] Inter-American Court of Human Rights, Castillo Páez case, November 3, 1997 judgment, par. 86.

[FN115] Inter-American Convention on Forced Disappearance of Persons, OEA/Ser.P, AG/doc.3114/94 Rev. 1, supra note 84, Article 31.

[FN116] Velásquez Rodríguez case, supra footnote 39, par. 181.

151. The "right to the truth" is a collective right which allows a society to gain access to information essential to the development of democratic systems, and also an individual right for the relatives of the victims, allowing for a form of reparation, especially in cases where the Amnesty Law is enforced. The American Convention protects the right to gain access to and obtain information, especially in cases of the disappeared, in regard to which the Court and the Commission have established that the State is obligated to determine the person's whereabouts.

152. The right to the truth is also related to Article 25 of the Convention which establishes the right to have a simple and prompt remedy for the protection of the rights enshrined in it. The presence of artificial or legal impediments (such as the amnesty law) to accessing and obtaining important information regarding the facts and circumstances surrounding the violation of a fundamental right, constitutes an open violation to the right established in the provision referred to, and hampers the establishment of domestic remedies which allow for judicial protection of the fundamental rights established in the Convention, the Constitution, and the laws.[FN117]

[FN117] The Commission adopted this view previously in individual report N° 25/98 (Chile) OEA/Ser.L/V/II.98, and in individual reports N°. 28/92 (Argentina), p. 42-53, and N° 29/92 (Uruguay), p. 162-174 published in the Annual Report of the Inter-American Commission on Human Rights, 1992-1993, OEA/Ser.L/V/II.83, doc. 14, March 12, 1993.

153. In addition to the relatives of the victims directly affected by a human rights violation, the society as a whole also is entitled to the right to be duly informed.[FN118] As the Commission has maintained, "The entire society has the right, which can not be given up, to know the truth about what has occurred, as well as the reasons and circumstances in which aberrant crimes came to be committed, in order to avoid these incidents recurring in the future. At the same time, nothing can prevent the relatives of the victims from knowing what happened to the human beings closest to them. Such access to the truth involves not restricting freedom of speech; the forming of investigative commissions whose make-up and competence shall be determined in accordance with the appropriate domestic law of each country; and the granting of the necessary means so that it is the Judicial Branch, itself, that can launch the necessary investigations." [FN119]

[FN118] Amnesty International, Peace-Keeping and Human Rights, AI Doc. IOR 40/01/94 (1994), p. 38. Inter-American Commission of Jurists, Written communication submitted to the Subcommittee on Discrimination and Protection of Minorities, 44th session, E/CN.4/Sub.2/1992/NGO/9.

[FN119] IACHR, annual Report 1985-1986, OEA/SER.L/V/II.68, Doc. 8 rev. 1, p. 205.

154. The United Nations Committee on Human Rights has established, on various occasions, and specifically in relation to the violation of the right to life, that the direct relatives of the victims have the right to be compensated for these violations due, among other things, to the fact that the circumstances of the death and the identity of those responsible for the crimes are unknown.[FN120] In this regard, the Committee has made it clear, and insisted on the fact that the duty to redress the damage is not satisfied solely by means of offering a quantity of money to the relatives of the victims. In the first place, an end must be put to the state of uncertainty and lack of information in which these people have been placed, i.e., provide complete and public knowledge of the truth.[FN121]

[FN120] UN-CHR, Case N° 107/1981, Elena Quinteros Almeida and María del Carmen Almeida de Quinteros vs. Uruguay, cases N° 146/1983 and 148-154/1983, Johan Khemraadi Baboeram and others vs. Suriname, case N° 161/1983, Joaquin David Herrera Rubio vs. Colombia, case N° 181/1984, A. and H. Sanjuán Arévalo vs. Colombia.

[FN121] Theo Van Boven, Special Rapporteur, United Nations Committee on Human Rights, Study relating to the right of restitution, indemnization, and rehabilitation of the victims of flagrant violations of human rights and fundamental liberties, Economic and Social Council, Subcommission on Prevention of Discrimination and Protection of Minorities, 45th session, Item 4 of the provisional agenda, E/CN.4/Sub.2/1993/8, July 2, 1993. Other special rapporteurs familiar with the subject also presented findings in this matter. Vgr. L. Joinet, "Question of Impunity of perpetrators of Violations of Human Rights (Civil and Political Rights)," Final Report, pursuant to Subcommission Resolution 1995/35, U.N. ESCOR, Comm'n on Hum. Rts., 48th Sess., Provisional Agenda item 10, U.N. Doc.E/CN.4/Sub.2/1996/18 (1996).

155. The right possessed by all persons and by society to have means of satisfaction and guarantees that the acts will not be repeated,[FN122] of knowing the full, complete, and public truth on incidents which have occurred, their specific circumstances, and who participated in them, are part of the right to reparation for violations to human rights. The right of a society to know, in full, its past is not only to be found in the methods of reparation and elucidation of the incidents which have occurred, but in the objective of preventing future violations.

[FN122] The United Nations special rapporteur, Theo Van Boven, distinguishes, within the right to reparation, four different ways of effectuating such a right: restitution, indemnization, rehabilitation, and satisfaction and guarantees that the acts will not be repeated. Theo Van Boven, op. cit., Chapt. IX, Draft of Principles and Basic Guidelines, General Principles, Forms of Reparation, pp. 64 and 65.

156. In the case of El Salvador, there is no doubt that the Truth Commission, as we stated earlier, carried out meritorious work. Nevertheless, due to the limitations imposed on its mandate, it did not investigate all of the cases of violations of human rights which had occurred between 1980 and 1992, but rather, the most serious and notorious of that period. Despite the

fact that it recommended that there be sanctions against those responsible when the judicial system was changed, and that a series of material and moral reparations be granted, these recommendations were not followed.

157. At the same time, the crimes that were not investigated were not mentioned in its report, such as the case being dealt with in the present report. In any case, as also stated supra, given the non-judicial nature of the investigations and actions of that Commission, they could not relieve the State of its mandatory obligation to investigate in order to gain a knowledge of the truth, and prosecute and punish those responsible; all within the imperative need to combat impunity.

158. As a result of the foregoing, the Commission concludes that the promulgation and implementation of the Amnesty Law did not allow for the investigation of criminal incidents on the part of the State, nor for the identification and punishment of those responsible, for which reason the Salvadoran State injured the right of the surviving victims and their relatives to know the truth of the what had occurred.

X. ACTIONS TAKEN BY THE STATE SINCE NOTIFICATION OF THE ARTICLE 50 REPORT

159. On June 23, 1998, the Commission sent the State provisional report N° 38/98, pursuant to Article 50 of the American Convention, granting it sixty days in which to take the necessary steps to comply with the recommendations therein. The Commission has not received any reply at all from the State indicating measures taken.

160. In view of the above, and in accordance with Article 51, paragraphs 1 and 2, of the American Convention, the Commission reiterates the conclusions and recommendations presented to the Salvadoran State in its provisional report N° 38/98:

XI. CONCLUSIONS

1. Based on all of the foregoing, the Commission concludes that the State has violated the following human rights recognized in the American Convention: the right to security and personal integrity (Article 5); the right to a fair trial (Article 8) and to due judicial protection (Article 25); the right to liberty and to security (Article 7(5)), with respect to José Catalino Meléndez, Andrés Hernández, Faustino García, Emilio Martínez Guevara, Ernesto Marroquín, Héctor Joaquín Miranda Marroquín, and Lucio Parada Cea. In addition, it violated the right to life, (Article 4 of the American Convention) of the last two.

2. The State has also violated, with respect to the same persons, common Article 3 of the Four Geneva Conventions of 1949 and Article 4 of the Protocol II.

XII. RECOMMENDATIONS

The Commission recommends, on the basis of the foregoing, that the Salvadoran State take the following measures:

1. Guarantee the petitioners the exercise of the rights guaranteed by the Convention to all citizens, despite what is provided for in the General Amnesty Law for the Consolidation of Peace (decree N° 486). To that end, if need be, it should annul that law *ex-tunc*.
2. Carry out a thorough, rapid, complete, and impartial investigation into the grave incidents denounced in the present case, and bring to trial and punish all of the responsible persons, despite the decreed amnesty.
3. Make reparation for the consequences of the violation of the human rights enumerated, and pay just compensation to the victims and, as appropriate, to their relatives.

XIII. FINAL ANALYSES AND CONCLUSIONS

161. On November 3, 1998 the Commission transmitted Report N° 71/98 to the Salvadoran State, in accordance with Article 51, paragraphs 1 and 2 of the American Convention. The Commission gave the State two months in which to take the necessary steps to comply with the recommendations made in the report. That deadline expired on January 3, 1999 without the State having made any reply.

XIV. PUBLICATION

162. The IACHR must decide whether the Salvadoran State has taken appropriate steps to comply with the recommendations contained in this Report (N°1/99). Not having received any indication that said recommendations have been followed, the Commission resolves, on the basis of the foregoing considerations and the provisions of Article 51(3) of the American Convention and Article 48 of its Regulations, to reiterate the above-mentioned conclusions and recommendations, to make this report public, and to publish it in the Commission's Annual Report to the General Assembly of the OAS. Pursuant to the provisions contained in the instruments governing its mandate, the IACHR will evaluate any measures taken by the State with regard to the recommendations made in this report until such time as they are fully implemented.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in Washington, D.C. on January 27, 1999. (Signed): Carlos Ayala Corao, Chairman; Robert K. Goldman, First Vice Chairman; Jean Joseph Exume, Second Vice Chairman; Commissioners Alvaro Tirado Mejía, Claudio Grossman and Henry Forde.