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Decided by:	Chairman: Professor Robert K. Goldman; First Vice-Chairman: Dr. Helio Bicudo; Second-Vice Chairman: Dean Claudio Grossman; Commissioners: Dr. Jean Joseph Exume, Dr. Alvaro Tirado Mejia.
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Represented by:	APPLICANTS: the Centro de Derechos Humanos Miguel Agustín Pro Juárez, A.C., Servicios Legales e Investigación y Estudios Jurídicos A.C., and the Center for Justice and International Law
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1. On June 9, 1995, the Centro de Derechos Humanos Miguel Agustín Pro Juárez, A.C. (PRO), Servicios Legales e Investigación y Estudios Jurídicos A.C., and the Center for Justice and International Law (CEJIL) (hereinafter "the petitioners") lodged a complaint with the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") alleging that the United Mexican States (hereinafter "the Mexican State" or "Mexico") had violated the following rights protected by the American Convention on Human Rights (hereinafter "the American Convention"), in the person of Manuel Manríquez San Agustín (hereinafter "Manuel Manríquez"): the right to humane treatment (Article 5), the right to personal liberty (Article 7), the right to a fair trial (Article 8), and the right to judicial protection (Article 25). The complaint also notes the violation of the generic duty of the State to respect and guarantee the rights of persons under its jurisdiction (Article 1(1)).

I. ALLEGED FACTS

2. According to the complaint, on June 2, 1990, while Manuel Manríquez was performing his work as a mariachi in Plaza Garibaldi, in Mexico City, several persons sought the services of his group. Once the members of the group were in the pick-up truck that they usually used to travel together, the aforementioned persons forced them to put their heads down and took them to the offices of the Public Ministry, where they forced them to get out of the vehicle blindfolded. They noted that it was later learned that the persons who had detained them were agents of the Judicial Police for the Federal District. The complainants alleged that the detention was illegal and arbitrary, as no arrest warrant was issued nor was it argued that the unlawful act with which Manuel Manríquez was later charged was being committed in flagrante delicto.

3. The petitioners also adduced that the public officers who detained Manuel Manríquez proceeded to torture him severely, to get him to confess that he had murdered Armando and Juventino López Velasco. The complaint notes that:

Within the offices of the Public Ministry, Mr. Manríquez was gravely tortured. Manuel Manríquez was beaten on different parts of the body, his testicles were burned, gas and spicy chile peppers were put up his nose and mouth.

4. According to the complaint, Manuel Manríquez was brought before the Thirty-Sixth Criminal Judge on June 9, 1990, seven days after his detention, thereby violating the relevant provisions of law. The petitioners also stated that as a result of the torture to which he was subjected, Manuel Manríquez signed a confession. Even though he revoked that confession before the respective judges, Manríquez was found guilty of homicide and was sentenced to 27 years in prison by the Thirty-Sixth Criminal Judge, based primarily on the confession. That decision was affirmed by the Eleventh Criminal Chamber of the Superior Court of Justice; later motions brought against the decision before the First Collegial Court on Criminal Matters for the Federal District (D.F.), before the Ninth Chamber of the Superior Court of Justice for the D.F., and before the First District Court for Criminal Matters were rejected in decisions of October 15, 1992, August 31, 1994, and January 27, 1995, respectively. Manuel Manríquez is currently detained, serving the sentence noted above.

II. PROCESSING BEFORE THE COMMISSION

5. On July 12, 1995, the Commission, pursuant to Article 34 of its Regulations, forwarded to the State the relevant parts of the complaint, and requested information on the facts alleged and on any other information that might cast light on the question of whether domestic remedies had been exhausted, for which it gave the State a period of 90 days.

6. On December 7, 1995, the State, after requesting and obtaining two extensions of the deadline, submitted its response in relation to this case.

7. On December 14, 1995, the Commission forwarded to the petitioners the relevant parts of the State's response; on March 7, 1996, the petitioners, after requesting and obtaining an extension of the deadline, forwarded their observations on the State's response to the Commission.

8. On April 29, 1996, the State sent the Commission its final observations. On May 22, 1996, the petitioners sent the Commission additional information on the case, which was forwarded to the State.

9. On July 8, 1996, the State forwarded to the Commission its observations on the additional information provided by the petitioners.

10. On September 10, 1996, the petitioners asked that precautionary measures be taken on behalf of Manuel Manríquez.

11. On October 9, 1996, a hearing was held to discuss issues relating to the admissibility of the case.

12. On February 14, 1997, the petitioners provided additional information and submitted additional documents. On March 3, 1997, the relevant parts of the additional information received from the petitioners were forwarded to the State and it was informed of the additional documents received.

13. On March 12, 1997, during its 95th session, the Commission adopted Report N° 9/97, declaring the petition admissible; making itself available to the parties to try to reach a friendly settlement; agreeing to continue to examine the merits of this case; and resolving to publish that report in the Annual Report submitted by the Commission to the General Assembly of the OAS.

14. On March 20, 1997, the petitioners stated their willingness to initiate a friendly settlement process; the State indicated likewise on April 9, 1997. On April 24, 1997, a meeting was held at the Commission's headquarters including the petitioners, representatives of the State, and members of the Commission, for the purpose of initiating the effort to reach a friendly settlement.

15. On June 23, 1997, the petitioners, as party to the friendly settlement process, asked the State to agree to adopt certain measures related to the prison conditions of Manuel Manríquez, including limitations on his right to defense consisting of the humiliating treatment accorded his defense counsel, Pilar Noriega, at the prison. On July 8, 1997, the State answered the petitioners' request.

16. On July 25, 1997, a meeting was held in Mexico City with the petitioners, representatives of the State, and the Commission all present, the latter represented by the Commissioner who serves as rapporteur for Mexico and the Executive Secretary, for the purpose of pursuing the friendly settlement process.

17. On August 6, 1997, the petitioners requested that the Commission adopt precautionary measures on behalf of Manuel Manríquez related to his prison conditions.

18. On August 8, 1997, the State provided information on aspects concerning the friendly settlement process. On August 13, 1997, the petitioners provided additional information on the precautionary measures already requested. On August 15, 1997, the Commission asked the Mexican State to adopt precautionary measures related to the conditions of detention of Manuel Manríquez.

19. On August 8, 1997, the State provided additional information on aspects concerning the friendly settlement process. On October 6, 1997, a hearing was held at Commission headquarters with the petitioners and representatives of the State to continue that process. At that meeting the petitioners stated that they were not willing to continue with the friendly settlement process.

20. On February 10, 1998, the petitioners submitted a communication on the mistreatment of Pilar Noriega, defense counsel for Manuel Manríquez. Specifically, on February 6, 1998, the authorities at the Puente Grande Federal Center for Social Rehabilitation in Jalisco had demanded that she strip as a requirement for meeting with her imprisoned client.

III. POSITIONS OF THE PARTIES

A. The petitioners

21. The petitioners argue that there has been an unwarranted delay in the decision of the domestic judicial organs, as the process of investigating the torture suffered by the accused has been extremely slow and drawn-out. They add that the preliminary inquiry began on November 17, 1992--two-and-a-half years after the fact--and then more than three years went by until the respective arrest warrants were issued for the persons responsible for those acts of torture. The petitioners allege that the delay cannot be attributed to the especially complicated nature of the investigation or to actions undertaken to pursue it, as it is clear that the inquiry was stalled for most of those three years.

22. They also state that on December 17, 1992, the Office of the Chief Prosecutor (Procuraduría General de Justicia) for the Federal District declared that it lacked jurisdiction to look into this case of torture, and forwarded the case to the Office of the Attorney General of the Republic (Procuraduría General de la República). The Office of the Attorney General of the Republic did not accept jurisdiction, and returned the case file on January 27, 1993. As of the date the complaint was lodged with the Inter-American Commission on Human Rights, no investigation whatsoever had been carried out, which the petitioners describe as reflecting the lack of a will to investigate and determine the facts of the case.

23. The Comisión Nacional de Derechos Humanos (hereinafter "CNDH": National Commission for Human Rights), in its recommendation 35/94 of March 17, 1994, established that Manuel Manríquez was a victim of torture and arbitrary and prolonged detention. The CNDH also noted the need to conclude the investigations into these allegations, to bring the appropriate criminal action, to call for the arrest warrants, and to ensure that they are executed immediately.

24. The petitioners note that only when the complaint was submitted to the Commission was it possible to advance in the investigations into the torture, and that there have been some results, such as the arrest of some of the public officers responsible for the torture, but that nonetheless Manuel Manríquez has received no compensation nor any material or moral reparation for the violations to which he was subjected.

25. In the instant case, it was proved that there was torture, as acknowledged by the Public Ministry itself; therefore the petitioners invoke Articles 5(2) and 8(3) of the American Convention, according to which a confession given under such conditions must be deemed devoid of any evidentiary value.

26. The petitioners also state that according to the principle of the presumption of innocence set forth at Article 8(2) of the American Convention, all individuals who undergo a criminal investigation must be considered innocent until proven guilty; consequently, if there is any doubt as to the individual's guilt, an acquittal is in order. They add that Manuel Manríquez continues to be deprived of his liberty for the alleged crime of homicide, in which the only evidence of his participation in the crime is a confession obtained through torture.

27. The duty to investigate and collect evidence of such torture must be assumed by the State, not by the accused. As the State itself notes, Manuel Manríquez exhausted all legal remedies available in an effort for the courts of justice to void the evidentiary value of the confession obtained by torture; nonetheless, all of his efforts were in vain.

28. According to the petitioners, Manuel Manríquez was transferred to a detention center other than the one where he was originally held, where, petitioners reported, his attorney was forced to strip each time she sought to meet with her client, which not only violates her rights, but is also a limitation on the right to defense of Manuel Manríquez.

29. On November 21, 1996, the Mexican State, through the respective court, entered a guilty verdict against Fernando Pavón, as an accomplice to the torture to which Manuel Manríquez was subjected. Nonetheless, the petitioners add that the verdict in question contains a series of shortcomings as a result of which it too violates the American Convention and the Inter-American Convention to Prevent and Punish Torture (hereinafter "Convention Against Torture"). In this regard, they allege that the verdict does not provide severe sentences, as it is merely a two-year prison sentence, which can be replaced by the payment of a fine, and which in addition does not order that reparations be made to Manuel Manríquez for the damage he suffered from the torture, thereby violating Article 9 of the Convention Against Torture and Article 63 of the American Convention.

30. In that judgment, the judge recognized that Manuel Manríquez was subjected to arbitrary detention, despite which he refrained from punishing Fernando Pavón for that act, in violation of Article 7(5) of the American Convention.

31. On March 26, 1996, José Luis Bañuelos Esquivel, the other person accused of the torture inflicted on Manuel Manríquez, was released. The petitioners indicated that he was released because all the proceedings of the Office of the Chief Prosecutor for the Federal District were declared illegal in the specific case of Mr. Bañuelos Esquivel, as jurisdiction over such proceedings lay with the Office of the Attorney General of the Republic. Yet, as of March 19, 1997, that Office had not begun any new investigation into Mr. Bañuelos Esquivel.

32. The petitioners note that none of the direct perpetrators of the torture inflicted on Manuel Manríquez has been punished.

B. The State

33. In its responses the State affirms that to make a showing of the subjective element of the offense and the liability of the accused under Mexican law, it is necessary to have full and direct

evidence from which direct accusations may be made against specific persons, spelling out the circumstances in terms of the place, time, and manner of execution of the criminal act. It argues that contrary to the petitioners' allegations, the Judiciary, on its own initiative, dismissed the confession obtained by torture, even though it found that evidence other than the confession tended to show the participation of Manuel Manríquez in the crime for which he was convicted, particularly the testimony of Valerio Guzmán Mendoza.

34. The State further affirms that as regards the violation of the principle on the presumption of innocence in the procedure, alleged by the complainant, no violation whatsoever of the individual guarantees set forth in Articles 16 and 20 of the Constitution of Mexico has been shown or can be made out. In this regard, it indicates that in effect the respective judicial authority applied that legal principle throughout the procedure, consistent with Article 8(2) of the American Convention; and that only at the end of the proceeding was the guilt of the accused shown, based on the evidence presented by the Public Ministry in the investigative phase.

35. The State further alleges that in following up on Recommendation 35/94 of the CNDH, the Office of the Chief Prosecutor for the Federal District undertook the appropriate investigations. Upon concluding them, the Office of the Attorney General concluded that judicial police officers Fernando Pavón Delgado and José Luis Bañuelos Esquivel abused their authority and tortured Mr. Manríquez. On November 15, 1995, that same office issued the appropriate papers before the 63rd Criminal Court, which issued the respective arrest warrants; these were executed on November 24, 1995, by the Office of the Chief Prosecutor for the Federal District. The State highlights that judicial police officer Fernando Pavón Delgado was sentenced to two years in prison for his complicity in the torture inflicted on Manuel Manríquez.

36. Given the declaration of nullity of the proceedings with respect to judicial police officer José Luis Bañuelos Esquivel, and his subsequent release, the Office of the Attorney General of the Republic initiated a new preliminary investigation, N° 8660/DO/97, into José Luis Bañuelos Esquivel and all others who turn out to be liable for the crime of torture against Manuel Manríquez and for any other offenses that may be shown.

37. The State alleges that "it would be up to the Public Ministry to assure the material and moral compensation sought by the petitioner upon the conclusion of that trial, if a guilty verdict is the outcome." It adds that the interested party is also authorized to sue, on his own, for such compensation before the courts with jurisdiction, and that Mexico is willing to pay for such compensation so long as the respective judge so orders in his judgment.

38. With respect to the trial of judicial police officer José Luis Bañuelos Esquivel, the State notes that apparently the action for the crime of torture is time-barred, which is an insurmountable difficulty. This circumstance is allegedly being investigated, so that if it is confirmed that such in effect acts took place, the respective responsibilities can be determined, as the State affirms that it does not want the action for torture to remain in impunity.

39. Finally, the State adduces that it has not limited Manuel Manríquez's right to defense; its position is that it will analyze his defense counsel's complaint and will undertake an administrative inquiry.

IV. ANALYSIS BY THE COMMISSION

40. In order to carry out its analysis in this case, the Commission assumes the following facts, admitted by both parties, to be true:

(a) On June 2, 1990, agents of the Judicial Police for the Federal District detained Manuel Manríquez, without any arrest warrant nor any flagrante in committing any offense. Later, those police agents severely tortured Manuel Manríquez, thereby forcing him to sign a confession with respect to events related to the homicides of Messrs. Armando and Juventino López Velasco.

(b) Manuel Manríquez was brought before a judge on June 9, 1990, i.e. seven days after his detention.

(c) By judgment in the second instance, of January 29, 1992, partially affirming the judgment of first instance of July 12, 1991, Manuel Manríquez was sentenced to 24 years in prison for one of the aforementioned homicides. Several remedies were pursued against that verdict, none of which succeeded in modifying it. Manuel Manríquez is now in prison, serving the above-noted sentence.

(d) The State investigated the facts related to the torture of Manuel Manríquez, and determined that the persons responsible for that torture were Judicial Police agents Fernando Pavón Delgado and José Luis Bañuelos Esquivel, who were, respectively, subdelegate and Commander of the Judicial Police for the Iztapalapa Sector when Manuel Manríquez was detained and tortured by police agents assigned to that judicial office. Criminal proceedings were brought before Mexican courts, which issued and executed arrest warrants for those police agents, which led to their effective detention.

(e) On November 21, 1996, the Mexican courts issued a judgment in the first instance against Fernando Pavón Delgado, finding him guilty, as an accomplice, of the torture inflicted on Manuel Manríquez. Pavón Delgado was sentenced to two years in prison, replaceable by a fine, and was disqualified for two years from holding public positions, fined, and publicly admonished.

(f) On March 26, 1996, the Mexican courts handed down a judgment in the case of José Luis Bañuelos Esquivel, voiding the proceedings with respect to him, ordering his release, and leaving open the possibility of a new trial. In fact, the Office of the Attorney General of the Republic initiated a new preliminary inquiry on August 19, 1997, whose prosecution is being studied by the State, for it is considered, as a preliminary matter, that the action is time-barred.

(g) The direct perpetrators of the acts of torture inflicted on Manuel Manríquez have yet to be definitively determined or punished.

(h) Manuel Manríquez has not been compensated for the torture to which he was subjected.

A. Right to personal liberty (Article 7)

41. Article 7 of the American Convention provides:

1. Every person has the right to personal liberty and security.
2. 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.
3. No one shall be subject to arbitrary arrest or imprisonment.
5. 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. His release may be subject to guarantees to assure his appearance for trial.

42. For its part, the Mexican Constitution provides at Article 16 that only in cases of flagrante delicto may anyone detain the accused without a prior judicial warrant. When that happens, the person detained must immediately be placed at the disposition of the Public Ministry.

43. According to the above-noted provisions, the Commission observes that Manuel Manríquez was arbitrarily detained, in violation of his right to personal liberty, pursuant to Article 7(3) of the American Convention. In effect, when he was detained, there was no judicial arrest warrant, nor any flagrant offense, which in certain cases allows the arrest of a person with no prior judicial order.

44. The Commission further observes that Manuel Manríquez also suffered the violation of his right to personal freedom pursuant to Article 7(5) of the American Convention, for not being brought promptly before a judge. The facts of the case indicate that seven days elapsed from the time Manuel Manríquez was detained to the date he was brought before a judge. According to the applicable Mexican legislation, the Judicial Police had to have placed Manuel Manríquez at the disposition of the Public Ministry immediately after he was detained. The Public Ministry, in turn, had to have brought him before a judge with jurisdiction within 48 hours.

45. In consideration of the aforementioned reasons, the Commission concludes that in this case, the arbitrary detention of Manuel Manríquez by agents of the Federal District Judicial Police constitutes a violation of the right to personal liberty set forth at Article 7 of the American Convention.

B. The right to humane treatment (Article 5)

46. Article 5 of the American Convention provides:

1. Every person has the right to have his physical, mental, and moral integrity respected.
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.

47. The Convention against Torture, ratified by Mexico on June 22, 1987, places an obligation on the states to prevent and punish torture. In 1991, a new domestic statute was adopted in Mexico called the "Federal Law to Prevent and Punish Torture."

48. Consequently, torture is clearly and in no uncertain terms prohibited by several international conventions and by the Mexican law cited. Eliminating torture has been a subject of legislative developments in Mexico, thus the IACHR will analyze the practical application of that legislation to this specific case.

49. In this case, it has been shown irrefutably that Manuel Manríquez was tortured by agents of the Mexican State. In this connection, on June 8, 1990, Manríquez was examined at the prison facility Reclusorio Preventivo Norte by Dr. Magdalena Espinoza García, of the General Bureau of the Health Service of Mexico City. The "Certificate of Physical Condition" she issued on that date documents the following lesions:

Ecchymosis on the abdomen as well as burns on the foreskin, on the rear side, and in the middle part of the testicles, and flaying of the skin on the inside of both thighs, and ecchymosis on both.

50. On March 17, 1994, the CNDH issued its Recommendation 35/94 on the case of Manuel Manríquez. That document analyzes a series of factors, including the above-referenced medical certificate; the ministerial certificate of June 7, 1990, which attests to the physical condition of Manuel Manríquez at 3:58 p.m. on that day; and the ministerial certificate of the same day, also drawn up with respect to the same victim at 8:30 p.m. Based on these documents and other procedures, the CNDH concluded as follows:

there is sufficient evidence to state that Manuel Manríquez San Agustín, during the time he was detained, was subjected to torture by those who apprehended him, for at the moment he was brought before Public Ministry, at 3:58 p.m. on June 7, 1990, he had lesions described in the review of the facts in this document. Those lesions, considering how they evolved, i.e. both the purplish color and the presence of an infection in the injury caused by a contusion to the left cheek, are indicative of four to six days having elapsed since they were received. In addition, their location, especially those in the genital region, their multiplicity, and their characteristics, lead to the conclusion that they were produced intentionally and while in detention.

51. The Mexican State has expressly admitted the violation alleged before the Commission. In this respect, in its communication of July 8, 1996, to the IACHR, the State expressed that:

it was fully shown in preliminary inquiries 50/ACI/245/94-03 and SC/11982/92, that the agents of the judicial police assigned to the Office of the Chief Prosecutor for the Federal District who participated in the detention of citizen José Manuel Manríquez San Agustín inflicted grievous bodily harm on him, classified by the Representación Social as "Torture"....

52. The Commission takes note of the information it has been provided regarding the efforts of the State to investigate the torture suffered by Manuel Manríquez and to punish one of the persons responsible for committing such acts of torture. The Commission further acknowledges the work of the CNDH, which meticulously processed the complaint it received with respect to

the events analyzed here, and made a series of recommendations on the case. The State has noted that as a result of the efforts of the CNDH, it proceeded to bring criminal charges regarding the torture inflicted on Manuel Manríquez, and apprehended two of the persons responsible, convicting one of them.

53. Nonetheless, the IACHR notes that the investigation with respect to the torture inflicted on Manuel Manríquez and the punishment of all those responsible has been characterized by its sluggishness, and has not been entirely effective. Indeed, the acts of torture were inflicted on Manuel Manríquez between June 2, 1990, the date he was detained, and June 9, 1990, the day he was brought before a judge and entered prison. Nonetheless, it was not until November 17, 1992--almost two-and-a-half years later--that the Office of the Chief Prosecutor for the Federal District initiated the preliminary inquiry into these acts of torture. It should be noted that by the time the investigations into the torture of Manuel Manríquez began, he had already been convicted in the trial court (July 12, 1991), the conviction had been affirmed on appeal (January 29, 1992), and his amparo action against the verdict on appeal had been denied (October 15, 1992).

54. In addition, more than seven years after Manuel Manríquez was tortured, only one person has been convicted as an accomplice to those acts of torture. The other person who the State considers responsible is free, after a lengthy proceeding in which different national authorities considered that they did not have jurisdiction to hear the matter, and culminating in a judicial decision voiding all the proceedings in the case of this individual. At this time the State considers, as a preliminary matter, that the statute of limitations has run, barring charges against this person. The Commission emphasizes that if the State delayed more than two years in beginning its investigation into the facts, and another three years until it voided the entire process, that it was more than foreseeable that those criminal charges would be time-barred pursuant to the rules of domestic law. In this regard, it should be noted that the duty of the State to investigate a violation of any right set forth in the American Convention "must be undertaken in a serious manner and not as a mere formality preordained to be ineffective." [FN1]

[FN1] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Judgment of July 29, 1988, para. 177.

55. The Commission observes that the first time he was brought before a judge, Manuel Manríquez declared he had been tortured, which was duly set forth in the record. Among the documents that make up the respective preliminary inquiry, and consequently, the record received by the court of first instance when it began to take cognizance of the matter, is a document entitled "Fe ministerial" ("Ministerial certificate"), from the Public Ministry, which is evidence that Manuel Manríquez in effect did have lesions when turned over by the Judicial Police to the Public Ministry.

56. The above-mentioned case file came before five different courts, none of which ordered any investigation into the torture inflicted on Manuel Manríquez. To the contrary, the State itself admitted that the initiation of investigations into the torture of Manuel Manríquez, on November

17, 1992, was in response to the initiatives and investigations by the CNDH. In effect, the State noted as follows in its communication of December 7, 1995:

Considering the facts indicated by Mr. Manríquez San Agustín, experts in medical law from the CNDH also participated; they carried out a study of the existing documentation with respect to the lesions of the injured person.

From the analysis of the information and the documentation collected, the CNDH concluded, among other things, that there was a violation of human rights in this case, and believes that it has sufficient grounds for affirming that during the time he was detained, he was subjected to torture by the persons who apprehended him.

57. Article 8 of the Convention Against Torture provides:

The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case.

Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.

58. On applying the above-noted provision to this case, it is clear that the inaction of the judicial authorities who did not initiate, on their own initiative--and immediately--an investigation into the torture inflicted on Manuel Manríquez, is a violation the obligations Mexico assumed by ratifying the Convention Against Torture, and gives rise to the international responsibility of the Mexican State.

59. The Commission also notes that the actions taken by Mexico to punish those responsible for the acts of torture described have been focused on the persons of the Commander and Subdelegate of the police station where Manuel Manríquez was tortured, yet the direct perpetrators have yet to be tried.[FN2] In effect, under Article 3 of the Convention Against Torture, those who may be held guilty of the crime of torture include public servants or employees who acting in that capacity order, instigate, or induce torture, or who, failing to impede it when able to do so, but also those who directly perpetrate acts of torture.

[FN2] In the report on the events at La Tablada, in which a group of armed civilians attacked a military base in Argentina in January 1989, the Commission found several violations of the human rights of the attackers after they had been taken into custody and brought under the control of State agents. As regards the acts of torture alleged in that case, the Commission stated as follows:

the State has an international obligation to investigate, clarify, and redress any violation of human rights which gives rise to a complaint and to punish those responsible, in accordance with Articles 1(1), 8, and 25 of the American Convention. In this case, in particular, the State had the obligation to identify those responsible for the violations of the right to personal integrity which

gave rise to the petitioners' complaint. However, as may be seen from the comments of the State and from the evidence in the Sosa case, the violations in respect of which the complaint had been brought were investigated and found to have taken place, but those responsible were never identified.

Report N° 55/97 (Case 11.137 – Juan Carlos Abella and others), Argentina. OEA/Ser.L/V/II.97 Doc. 38, November 18, 1997, par. 392, p. 365-366.

60. On evidentiary matters, inter-American jurisprudence has held that the international judicial procedure should be less formal than its domestic counterpart, for the state that is subject to the claim is in control of the measures for shedding light on events that occurred in its territory. In the Velásquez Rodríguez case, the Inter-American Court of Human Rights decided that it would not limit its consideration of evidence to direct evidence, since it is almost impossible to obtain any direct evidence in cases of forced disappearances attributable to state agents. The Court decided in that case that:

The practice of international and domestic courts shows that direct evidence, whether testimonial or documentary, is not the only type of evidence that may be legitimately considered in reaching a decision. Circumstantial evidence, indicia, and presumptions may be considered, so long as they lead to conclusions consistent with the facts.[FN3]

[FN3] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Judgment of July 29, 1988, para. 130. See also, "Desapariciones en Honduras: la necesidad de representación directa de las víctimas en litigios sobre derechos humanos," essay by Claudio Grossman published in: *El Mundo Moderno de los Derechos Humanos -- Ensayos en honor de Thomas Buergenthal*, Inter-American Institute of Human Rights, San José, Costa Rica, 1996, pp. 346-348.

61. In this case, according to this analysis, the evidence of the violations has been direct, since the acts of torture were fully verified by judicial organs of the Mexican State. Therefore, the Commission concludes that Manuel Manríquez was subjected to torture by agents of the Mexican State, and that even so, no complete, serious, or effective investigation has yet to be carried out; and the victim of the violation has received no compensation. Consequently, in the case of Manuel Manríquez, the Mexican State violated the right to humane treatment, set forth at Article 5 of the American Convention, in relation to Article 1(1), also of the American Convention, as well as Article 8 of the Convention Against Torture.

C. Right to a fair trial (Article 8)

i. The confession under torture of Manuel Manríquez

62. Article 8 of the American Convention provides:

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

...

g. the right not to be compelled to be a witness against himself or to plead guilty.

3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.

63. The Convention Against Torture, at Article 10, provides:

No statement that is verified as having been obtained through torture shall be admissible as evidence in a legal proceeding, except in a legal action taken against a person or persons accused of having elicited it through acts of torture, and only as evidence that the accused obtained such statement by such means.

64. The IACHR shall now analyze the judicial proceeding held with respect to the facts of this matter, focusing on the decisions of the judicial organs in this case. Those decisions are the judgment of the court of first instance, or trial court, of July 12, 1991, in criminal case 112/90, by the Thirty-Sixth Criminal Court (hereinafter "judgment in the first instance"), and primarily the judgment on appeal (de segunda instancia) handed down on January 29, 1992, by the Eleventh Criminal Chamber of the Superior Tribunal of Justice for the Federal District (hereinafter "judgment on appeal"), as this is the final and firm decision that exhausted the regular jurisdiction, and against which no special remedy prevailed.

65. For these purposes, it is observed that those decisions were issued within a criminal proceeding with respect to one person, whose confession was obtained by torture. It should be noted that while the parties agree that Manuel Manríquez was tortured, they disagree on the evidentiary value given to that confession. The petitioners argued that the confession obtained through torture was practically the only evidence that provided a basis for his conviction, while the State argues that the confession was dismissed by the judges, at their own initiative, and that the conviction was based on all the other evidence in the record, especially the testimony of Valeriano Guzmán Mendoza.

66. After the detailed study of those judgments, the Commission considers that in effect the confession of Manuel Manríquez, obtained under torture, was the only part of the evidence that led the judges to determine that he was the direct perpetrator of the homicide of which he was accused. In effect, the judgment of first instance, on analyzing that confession, establishes as follows:

Although he says that they were done to force him to state what was set forth at the Judicial Police and before the Public Ministry in its investigative capacity, in that preparatory statement he accepts that he did state what was set forth in those statements and that he was not advised by nor did he receive suggestions from any police agent; therefore, pursuant to the principle of

procedural immediacy, the first statements are the ones taken into account to consider the participation of the accused in the events proven....

67. In the judgment on appeal, on analyzing the confession, it was considered not proven that any violence had been involved in Manríquez's original confession.

68. Moreover, according to the claimed confession by Manuel Manríquez, he had reached a place where a fight was concluding among several persons, in which Armando and Juventino López Velasco had participated; and when Manríquez arrived, one of them was already on the ground, apparently dead, while Manríquez had helped to kill the other. That confession was decisive in his conviction, as Manríquez was found guilty of only one of the homicides, considering that according to his confession the other person was already apparently dead when Manuel Manríquez arrived on the scene.

69. According to the foregoing, and based on the information that appears in the files, the Commission considers inaccurate the State's affirmation to the effect that:

The Judge, in effect, dismissed the confession *sua sponte* as provided for in Article 20(II) of the Constitution of Mexico, Article 8(3) of the American Convention on Human Rights, and Article 10 of the Inter-American Convention to Prevent and Punish Torture.

70. The State notes that even eliminating all evidentiary value from the confession obtained under torture, the judges had other evidence that Manríquez had killed Armando and Juventino López Velasco (especially the testimony of Valeriano Guzmán Mendoza). The petitioner notes the contrary. To this end, the Commission notes that on May 30, 1990, two cardboard boxes appeared in a trashcan containing the corpses of Armando and Juventino López Velasco, whereupon it was determined that they had been murdered. On the occasion of that finding, that same day inquiry N° 19/1286/990-05 was initiated into these two homicides.

71. On June 2, 1990, witness Guzmán Mendoza came forth voluntarily to give testimony to the Judicial Police; he said that in previous days Manríquez, together with other persons, had hired his services as a driver; and that on that occasion he had transported two cardboard boxes whose contents were unknown to Guzmán, and that after he heard about the boxes with the corpses on the news he presumed they were the same ones he had transported earlier. Immediately upon the conclusion of his statement, the police went with him to the public plaza where Manuel Manríquez usually offered his services as a mariachi. The witness identified Manuel Manríquez as one of the persons who hired him to transport the cardboard boxes, after which the police proceeded to detain and torture Manuel Manríquez to get him to confess to the homicide of Messrs. Armando and Juventino López Velasco.

72. In the brief seeking "recognition of innocence," Manríquez denied having participated in the homicide of those persons, he denied that he had hidden the boxes containing the corpses, and he admitted that he had hired the services of Guzmán with his pick-up truck, and that he had helped him load the boxes on the truck, but he alleged that at that moment he was inebriated, and that he thought the boxes contained crafts, as that was what he had been told by those who

sought his help for the purposes of hiring the pick-up truck and of helping to load the boxes onto it.

73. Consequently, the statement by witness Valeriano Guzmán Mendoza could be evidence, at the most, that Manuel Manríquez participated in the transportation and hiding of the corpses of Messrs. Armando and Juventino López Velasco. Nonetheless, the same evidence is not sufficient, much less determinant, in and of itself, to establish the responsibility of Manuel Manríquez as the direct perpetrator of those homicides.

74. Nor do the rest of the elements weighed in both the judgment of the court of first instance and the judgment on appeal provide any evidence that Manuel Manríquez was the direct perpetrator of the homicides of Messrs. Armando and Juventino López Velasco. That evidence consists of:

- a. Statement by the preventive police officer Catalino Ayala Sánchez, who found the corpses in the cardboard boxes;
- b. Certificate of eyewitness inspection of the corpses;
- c. Certification and transfer of the corpses;
- d. Statement by identification witnesses Ignacia Tolentino San Juan and Catalina Velasco Tolentino;
- e. Identification of and report on the corpses;
- f. Reports on lesions and filiation;
- g. Medical report;
- h. Autopsy report;
- i. Criminalistic and photographic report;
- j. Chemical forensic report;
- k. Weapon's report;
- l. Report on boxes and clothes;
- m. Vehicle report;
- n. Presence of traces of blood on the rubber of the lower part of the pick-up truck.

75. The above-noted evidence could turn out to be suitable or relevant to a showing that two corpses were found; that their identity was determined; that the cause of death was established; and that the vehicle in which those corpses were transported was found. Nonetheless, and in the absence of other admissible and relevant evidence, there is no showing that Manuel Manríquez murdered those persons.

76. The Commission observes that the practice of torture as a method of police investigation is compounded by the legal force that the Mexican legal system attributes to the first statement by the accused, which is not taken by a judge, but by the Public Ministry. On this point, the Supreme Court of Justice of Mexico has even established that where there are two contrary statements by an accused, the first in time should prevail:

Confessions. First statements by the detainee. Based on the principle of procedural immediacy, and unless the confession be lawfully retracted, the first statements by the accused, uttered

without sufficient time for preparation or defensive reflections, should prevail over the later ones.[FN4]

[FN4] Tesis número 82, Seminario Judicial de la Federación, Appendix to Jurisprudencia Definida 1917-1971, Second Part, First Chamber, p. 175.

77. This thesis has been erroneously characterized in Mexico as the thesis of immediacy (inmediatez or inmediación). The Commission considers it timely to clarify that inmediación only occurs, legally, when the judge himself or herself is present at the procedural acts.[FN5]

[FN5] Argentine jurist Julio B.J. Maier defines procedural immediacy [inmediación procesal] in the following terms:

the uninterrupted presence of the procedural subjects during the hearing that incorporates knowledge for debate and for deciding the case.

The same author refers to the control of the evidence to be weighed by the court in the judgment, stating that:

This is the main reason for oral and public debate, regulated by the modern procedural laws that reformed the inquisitorial model, instituting it as the culmination of the procedure, and to provide a basis for the judgment. This debate is carried out with the uninterrupted presence of the procedural subjects (immediacy), including the accused and his or her defense counsel, and it incorporates the only elements of evidence suitable for laying a foundation for the judgment; this type of procedure ensures control of the evidence by all persons interested in the decision....

Julio B.J. Maier, *Derecho Procesal Penal*, Tomo I - Fundamentos, Editores del Puerto S.R.L., Buenos Aires, Argentina, 1996, pp. 878 and 585, respectively.

78. Historical experience has clearly shown that giving evidentiary effect to extrajudicial statements, or statements made during the investigative stage of the proceedings, is an incentive to use torture when the police prefer to save on investigative effort, extracting a confession from the accused.[FN6]

[FN6] Anneliezze Pereira, *La lucha contra la Tortura en el Derecho Internacional*, Universidad Pontificia de Salamanca, Spain, Final Memoir for Master's Degree in European Studies and Human Rights, p. 61.

79. The comparative analysis of the various judicial guarantees in the hemisphere clearly shows that the process must be conducted directly and immediately by the judge, placing special emphasis on the direct relationship between him or her and the person of the accused. Both the International Covenant on Civil and Political Rights and the American Convention provide that the accused must be brought "... promptly before a judge"[FN7]

[FN7] The International Covenant on Civil and Political Rights notes at Article 9(3): "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other judicial officer authorized by law to exercise judicial power...." Similarly, the American Convention, at Article 7(5), provides: "Any person detained shall be brought promptly before a judge...."

80. The logic of the criminal procedure guarantees is based on the personal involvement of the judge, conceived of as the adequate organ for safeguarding them. The objective of the principle of procedural immediacy is to try to avoid a distancing of the judge from the elements of the process, especially the accused.[FN8] In addition,

The principle of immediacy seeks to ensure citizens that the most serious matters, including criminal matters, will be examined by an organ vested with a series of safeguards that guarantee, above all, its independence and impartiality.[FN9]

[FN8] Cristián Riego, *El Proceso Penal Chileno y los Derechos Humanos*, Volume I, Aspectos Jurídicos, Cuadernos de análisis jurídico, Law School, Universidad Diego Portales, Chile, pp. 37-39.

[FN9] *Id.*

81. On criminal matters, the principle of procedural immediacy is fundamental, since the problems to be resolved by the court affect the basic faculties of the human person, in the face of possible conviction and sentencing by the criminal justice powers of the State.[FN10] Therefore, in any event, "procedural immediacy" should be considered to operate solely between the judge and the accused; consequently, one should dismiss the improper and mistaken interpretations that include under this concept statements made to the police or before the Public Ministry, as neither of these is before a judge.

[FN10] *Id.*

82. The principle of procedural immediacy as conceived of by the Mexican State, instead of serving as a procedural guarantee for persons accused of crimes, is becoming its antithesis, a source of abuses of the accused. In effect, these persons, instead of being accused without delay before the impartial organ adequate to safeguard their rights, as is the judge with jurisdiction in each specific case, are held for 48 or 96 hours by the judicial police, with no judicial supervision whatsoever, who often use coercion and torture to extract self-incriminating testimony from the accused.[FN11]

[FN11] The Human Rights Commission of the Federal District of Mexico has noted in this regard: "This Commission notes that the ways in which a prisoner can be harmed in the pre-judicial stage are many, and that the Office of the Attorney General for the Federal District, the Deputy Prosecutor for Preliminary Inquiries, and the Director General of the Judicial Police cannot have their gaze fixed on all corners in which some abuse may occur against the persons deprived of their liberty".

Op. cit., at. 20, p. 67.

83. In this regard, the IACHR notes that it has not received any information alleging torture during the period that persons accused of crimes have been brought before a judge with jurisdiction. In contrast, the Commission has learned of several cases of torture that occurred while the accused were in the custody of the judicial police, both federal and state.

84. Based on the foregoing on the principle of procedural immediacy and the guarantees of due process, the IACHR notes that the statements that should prevail as fully admissible evidence are the judicial statements, i.e. those made before a judge with jurisdiction, not those made during a pre-judicial stage.

85. Pursuant to the foregoing, the Commission receives the complaint insofar as the confession obtained through torture was in effect the only evidence relied upon in the judgment of the court of first instance to convict Manuel Manríquez as direct perpetrator of the homicide of which he was accused. The Commission also concludes that the right to the presumption of innocence set forth at Article 8(2) of the Convention was violated, as Manuel Manríquez was forced to give testimony against himself under torture, to declare his guilt, and for having accepted his confession obtained by coercion as valid. In addition, the Commission concludes that on assigning evidentiary value to that confession, the State also violated the provision of Article 10 of the Convention Against Torture.

ii. Restrictions on the right to defense of Manuel Manríquez

86. As an integral part of the judicial guarantees set forth in the American Convention, Article 8(2)(d) provides that due process includes the right of all persons accused of a crime "to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel." Article 8(2)(c) of the same instrument guarantees the right of the accused to "adequate time and means for the preparation of his defense."

87. In this case the petitioner denounced actions by State agents that it considered detrimental to the right of defense of Manuel Manríquez. Specifically, the petitioners alleged that the transfer of Manuel Manríquez to the Federal Center for Social Rehabilitation (Centro Federal de Readaptación Social, CEFERESO 2) of Jalisco is an arbitrary measure that affects the right to free and private communication between the prisoner and his defense counsel. Bulletin N° 278/96 of September 6, 1996, which communicates the transfer of Manuel Manríquez and several other prisoners to CEFERESO 2, indicates that the measure was authorized "for reasons having to do with the security of his custody and that of the other prisoners." In addition, the communiqué states as follows:

In all transfers of prisoners, the classification of his clinical-criminological personality is the factor that determines his placement in the High Security Federal Center, based on the provisions of the applicable regulation, and with absolute respect for his human rights. There are indications that these prisoners are part of the political organization PROCUP-PDLP, which supports the activities of the group that calls itself EPR.

88. The petitioners also indicate that:

The defense attorney for Manuel Manríquez, Pilar Noriega, was forced to strip on several occasions before being allowed to enter CEFERESO 2 in Puente Grande, Jalisco. Even on January 16, 1997, Pilar Noriega was forced to lift her blouse and braier when leaving Puente Grande, for she was required to expose her breasts. We consider such measures denigrating, and that they should cease, as they could be considered a means of humiliating the visitors and the defense of the prisoners.

In addition, in the communications between Manuel Manríquez San Agustín and his defense, at Puente Grande, the rights to defense and to confidentiality in attorney-client communications have been violated, as a guard has been situated such that he can hear the conversation between the prisoner and his attorney, and by prohibiting the attorney from bringing pencil and paper into the prison and so preventing Manuel Manríquez from sending blank sheets signed by him, so that Pilar Noriega might use them in the relevant procedural steps, since CEFERESO 2 at Puente Grande is some four hours from Mexico City, where the defense attorney has her domicile.

89. In response to that situation, the petitioner asked the Director General for Prevention and Social Readaptation of the Interior Ministry, the Secretaría de Gobernación (hereinafter "Gobernación") to submit the documents supporting the measure adopted. Mr. Gabriel Betancourt Garciamoreno, private secretary for Gobernación, answered on September 30, 1996, denying all the documentation sought. He based his refusal by noting that the evidence of the alleged participation of Manuel Manríquez in the PROCUP-PDLP "is only submitted before the competent authority"; that the studies on his personality are "official public documentation that cannot be removed from the prisoner's file"; and that "for reasons of security of the Federal Centers for Social Rehabilitation, the manuals and internal instructions are of restricted use."

90. As part of the friendly settlement procedure, which was still ongoing at that moment, on July 29, 1997, the IACHR asked the State to report on the measures adopted to improve the prison conditions of Manuel Manríquez San Agustín, to assure adequate access to his attorneys, and to consider alternative means of releasing him.

91. On August 8, 1997, the petitioners submitted a request for precautionary measures in this case, denouncing what had happened on August 5, 1997:

When attorney Pilar Noriega tried to enter CEFERESO 2, she was told that she couldn't do so unless she filled out a visit request and stripped, as she had on prior occasions.... Since attorney Pilar Noriega refused to be stripped--but not to be searched--she was not allowed to enter to visit Manuel Manríquez San Agustín.... On August 6, when attorney Pilar Noriega tried again to enter

CEFERESO 2, she was told once again that if she did not strip, as per the rule, she could not go in.

92. On August 8, 1997, the State communicated, in response to the Commission's communication of July 29, 1997, that it was not possible to transfer Manuel Manríquez to another penitentiary, arguing that "the prisoner still matches the clinical-criminological profile for staying at the High Security Center." The State also reported that it could not improve the conditions of Manuel Manríquez's detention, since "by the rules it is not possible to accord privileges to one prisoner with respect to others, since prisoners enjoy the same rights and obligations." With respect to adequate access to his attorneys, the State indicated that the entry to CEFERESO 2 is governed by "the rules existing in the instructions on visits to Federal Centers," which all attorneys must abide by, and that it would not be possible to grant privileges to just some of them. He ended by stating his willingness to continue to pursue a friendly settlement.

93. On August 13, 1997, the petitioners provided additional information on the request for precautionary measures. They indicated that the "Instructions on visits to the Federal Centers for Social Rehabilitation," published in the Diario Oficial of April 25, 1994, prescribe the procedure by which defense attorneys are to have access to those Centers. Article 53(d) of that document provides that the physical search of the defense attorney and his or her belongings shall be done pursuant to the "Specific manual on organization and functions of the Security and Functions Corps of the Security and Custody and the Security and Guard Corps." The petitioners indicated that none of the manuals mentioned has been published, and that despite the reiterated requests from attorney Pilar Noriega to the authorities, they have not been provided; as indicated above, she received a communication from Gobernación justifying that refusal on "grounds of security for the very Federal Centers for Social Rehabilitation."

94. On August 15, 1997, the IACHR asked the State to adopt precautionary measures in this case, and forwarded the relevant parts of the petitioners' communication, summarized in the previous paragraph. The request was formulated in the following terms:

Without prejudice to other measures which, in the view of your Illustrious Government, are necessary to further that purpose, the Commission, in order to safeguard the rights and prevent irreparable harm to Mr. Manríquez San Agustín, considers it necessary that the full exercise of due process be ensured, and judicial guarantees in particular, allowing attorney Pilar Noriega to visit him as necessary to prepare his defense, to ensure confidentiality in the attorney-client conversations, and to afford her the dignified and non-discriminatory treatment to which all legal professionals are entitled.

95. The State did not respond to the request of the IACHR. On October 6, 1997, a hearing was held at the offices of the Commission in which representatives of the Mexican State and the petitioners were present. The representatives of the State held, with respect to the complaints presented by attorney Pilar Noriega, that the visiting days could not be changed, and that the rules were enforced "to the letter." The representatives of the State added that "it would be ridiculous" to subject the attorney to a procedure such as that alleged, since there are mechanisms that enable one to observe the person "without any need for exhibition." They indicated that they needed further details on the complaint.

96. The hearing continued, and the IACHR consulted the State with respect to adopting precautionary measures. The response was that "measures are being taken in the matter and things are moving forward well." When asked about the standards used in Mexico to determine the degree of danger posed by the criminally accused, the representatives of the State argued that first one undertakes a psychological analysis, which is repeated periodically, to determine dangerousness; and that a committee is responsible for evaluating these analyses, which makes it difficult to accede to the request for the transfer of Manuel Manríquez.

97. Immediately thereafter, the Commission continued to inquire into the persistent complaints by attorney Noriega, requesting that the State intervene in the matter. It also highlighted the importance of having access to the psychological exams, and to the standards used to classify the inmates in Mexico prisons. In response, the State asked for a period to analyze the complaint of the victim's attorney and for carrying out an administrative investigation in the prisons, and reiterated that it needed "further details." The hearing concluded with the petitioners' decision to abandon the procedure under Article 48(1)(f) of the American Convention, alleging that the Mexican State displayed a lack of will to solve this case.

98. The petitioners, on February 10, 1998, provided "urgent, recent, and relevant information" on the case, and requested that a hearing be set. According to that information, on February 6, 1998, attorney Pilar Noriega went to the CEFERESO to visit her client. One hour later, the prison officials demanded that she strip as a condition for meeting with her client. She refused, and lodged a complaint with the assistant legal director of the prison, Mr. Alfredo Lara Guerrero; he showed her the Rules on Visits, in which there was no provision indicating that the attorney must strip or bare one's breasts in order to visit a client. According to the note from the petitioners, he said that "those were orders from Gobernación, that they were the norms, and that everyone had to abide by them."

99. The petitioners further expressed that attorney Noriega took several initiatives before the Mexican authorities to prevent such situations from recurring. In this regard, they indicated that she sent a communication dated January 26, 1998, to the Bureau for Prevention and Social Rehabilitation of the Secretaría de Gobernación of Mexico, attaching a copy of the request for precautionary measures from the IACHR. Attorney Noriega sought to communicate with several officials prior to her last visit to CEFERESO 2, but to no avail. As the petitioners indicate, she has also shown that other attorneys are not required to strip to enter that prison; she noted the specific case of Mr. Francisco Javier Galindo Sandoval. Finally, the petitioners indicated that even though they had abided by all the procedures required for that purpose, the attorney has yet to receive from the authorities the identification card issued as authorization to enter CEFERESO 2. This difficulty, which largely hinders her entry to the prison, was described by the petitioners as part of the "attitude of harassment" to which Pilar Noriega is subjected in her capacity as Manuel Manríquez's defense attorney.

100. The Inter-American Court of Human Rights has stated that the limits imposed under Article 32(2) of the American Convention should always be strictly circumscribed. In this regard, the Court has stated as follows:

"public order" or "general welfare" may under no circumstances be invoked as a means of denying a right guaranteed by the Convention or to impair or deprive it of its true content. (See Article 29(a) of the Convention). Those concepts, when they are invoked as a grounds for limiting human rights, must be subjected to an interpretation which is strictly limited to the "just demands" of "a democratic society," which takes account of the need to balance the competing interests involved and the need to preserve the object and purpose of the Convention.[FN12]

[FN12] Inter-American Court of Human Rights, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 of the American Convention), Advisory Opinion OC-5/85 of November 13, 1985. Series A, No. 5, para. 67.

101. That provision has also been interpreted by the IACHR in the case of Mrs. X and her daughter Y against Argentina, with respect to the vaginal inspections that both had to undergo as a condition for visiting the husband of X, who is the father of Y. In that case, the Commission found that the Argentine State had imposed an illegal condition on prison visits, violating the rights protected by Articles 5, 11, and 17 of the American Convention. On analyzing whether the measure denounced was a violation of the American Convention, the IACHR set forth the following rule:

A measure that in any way affects the rights protected by the Convention should necessarily: (1) be prescribed by law; (2) be necessary for the security of all and in accordance with the just demands of a democratic society; (3) and its application must be strictly confined to the specific circumstances present in Article 32(3) and be proportionate and reasonable in order to accomplish those objectives.[FN13]

[FN13] Report N° 38/96, Case 10.506 - Argentina, Annual Report of the IACHR 1996, para. 60.

102. In the case being analyzed, the State has restricted the right to defense of Manuel Manríquez, guaranteed by Article 8(2) of the American Convention. As has been noted in the preceding paragraphs, those acts have been the subject of many complaints to the IACHR, which has transmitted them to the State. The Commission has also included this aspect of the complaints in the above-mentioned request for precautionary measures which, as has been seen, has met with no response from the State.

103. Despite having been requested on several occasions, the State has not provided the normative grounding of the restrictive measures adopted with respect to Manuel Manríquez and his defense attorney, specifically the psychological analysis that determined that Manríquez was "highly dangerous"; the "convincing grounds" for giving credence to allegations of his participation in illegal organizations; and the manual or regulation that establishes the requirement that defense attorneys must strip to gain access to the prison.

104. The State's attitude with respect to the issue analyzed here has been arbitrary and unreasonable. In effect, as the documents requested are not accessible to the general public, the only way to determine whether the measures applied were prescribed by law, for the purpose of analyzing the violation alleged, would have been for the Mexican State to provide those documents. Nonetheless, the State not only failed to provide any document, it did not respond to the Commission's request for precautionary measures in this case. It should be noted, in this regard, that Article 48(1)(a) of the American Convention provides that the information requested of a state in the processing of a case before the Commission "... shall be submitted within a reasonable period to be determined by the Commission in accordance with the circumstances of each case." The IACHR has stated in this regard that the American Convention requires the states to provide the information requested by it in the development of an individual case.[FN14]

[FN14] Report N° 28/96, Case 11.297 (Guatemala), October 16, 1996, Annual Report of the IACHR 1996, para. 40. The Inter-American Court of Human Rights has held similarly, establishing that:

The procedures of Articles 48 to 50 have a broader objective as regards the international protection of human rights: compliance by the States with their obligations and, more specifically, with their legal obligation to cooperate in the investigation...Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, para. 59.

105. Bearing in mind all the foregoing, the IACHR concludes that the Mexican State has violated Manuel Manríquez's right to defense, which is among the judicial guarantees protected by the American Convention (Article 8(2)(c) and (d)).

D. Right to Judicial Protection (Article 25)

106. Article 25 of the American Convention provides that:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

107. Manuel Manríquez sought to exercise several remedies against the judgment on appeal, none of which was effective to revert the situation:

- Amparo remedy before the First Collegial Court for Criminal Matters of the D.F. The decision of October 15, 1992 affirmed the judgment on appeal, arguing that Manuel Manríquez's retraction was not valid, as there was no evidence that the original statement was made through torture.
- Motion for "necessary pardon" or "recognition of innocence," before the Ninth Chamber of the Superior Court of Justice of the D.F. On August 31, 1994, that court declared the petition inadmissible and without any basis, as it considered that the requirements for the admissibility of such a motion had not been met.

- Amparo remedy brought against the First District Court for Criminal Matters, against the judgment mentioned in the previous paragraph. That amparo was rejected by decision of January 27, 1995, as the court was of the view that there was not sufficient evidence of the torture inflicted on Manuel Manríquez.

108. The Commission has established above that the judgment on appeal violated the right to a fair trial set forth at Article 8 of the American Convention, in the person of Manuel Manríquez. Even though the above-noted remedies were brought against that judgment by Manuel Manríquez, he did not succeed in challenging or protecting himself against that violation, thus the Commission concludes that in this case Mexico also violated the right to judicial protection protected by Article 25 of the American Convention, to the detriment of the victim.

V. ACTIONS AFTER REPORT N° 2/98

109. On February 19, 1998, during its 98th Regular Session, the IACHR adopted Report N° 2/98 in this case, under Article 50 of the American Convention. Pursuant to that decision, the Commission forwarded the report to the Mexican State, and gave it two months to adopt the measures necessary to carry out the recommendations, and thereby to remedy the situation analyzed here. That period ended on April 25, 1998, with no response whatsoever from the State.

110. Furthermore, the Commission notes that after that period expired, and at the request of the petitioners, on May 13, 1998, the request for precautionary measures in this case was reiterated to the Mexican State. The request was made bearing in mind that attorney Pilar Noriega had planned to visit her client Manuel Manríquez on May 19, 1998, and that the State had not adopted any measure to carry out the prior request of the IACHR along the same lines, as described from paragraphs 94 to 105 supra. In its reiteration, the IACHR specifically requested that the authorities of CEFERESO at Puente Grande facilitate communication between the attorney and her client, Manuel Manríquez, especially on occasion of the imminent visit; that they respect the personal and professional dignity of attorney Noriega, and refrain from imposing on her an obligation to strip as a condition for gaining access to the prison; and that the Government provide the Commission the manuals and instructions of the Federal Centers for Social Rehabilitation.

111. On May 19, 1998, the State forwarded a copy of the note by virtue of which the Third General Visitaduría of the CNDH requested that the Director General for Prevention and Social Rehabilitation of the Secretaría de Gobernación of Mexico adopt the measures. The Director General, in a note of May 18, 1998, reported to the CNDH on the instructions he gave "so that the day attorney Noriega comes to visit inmate Manuel Manríquez she would meet with no problem in having the interview at the time scheduled and at the facilities provided for." As for the "review of the rules," the Director General instructed the director of the prison establishment to use equipment to detect metal and drugs, and that "a manual bodily search involving direct contact of the hands of custodial personnel on the attorney's body should be performed by female custodial personnel and should be supervised by the director himself, with strict respect for dignity and human rights." The Director General concluded by indicating that the rules governing the Federal Centers for Social Rehabilitation were published in the Diario Oficial de la Federación on August 30, 1991, and that the instructions governing visits to the prisons were

published in the same publication on April 22, 1994, and thus "are immediately available to the honorable Commission and any interested person."

112. The Commission observes that after the communications summarized above it did not receive any further complaints regarding the treatment accorded attorney Noriega by the Mexican prison authorities. Nonetheless, it should be noted that the State did not comply with the third point of the request, to provide the prison manuals and instructions on visits, even though the official responsible indicated to the CNDH that they are public. That reticence takes on greater significance in the context of the facts related in paragraph 93 supra, together with the circumstance that the Mexican State waived its right to present observations to the Article 50 (of the American Convention) report prepared in this case. In light of the above, the Commission considers that there has been partial compliance with the precautionary measures and it highlights the State's cooperation in that regard, specifically in facilitating the visits of Pilar Noriega to her client Mr. Manuel Manríquez.

VI. CONCLUSION

113. The Commission concludes that the Mexican State violated the following rights protected by the American Convention in the person of Manuel Manríquez: the right to humane treatment (Article 5), the right to personal liberty (Article 7), the right to a fair trial (Article 8), and the right to judicial protection (Article 25); these violations also constitute a violation of the generic duty of the State to respect and guarantee the rights of persons under their jurisdiction (Article 1(1)). The Commission also concludes that in respect of Manuel Manríquez the State violated the provisions of Articles 8 and 10 of the Inter-American Convention to Prevent and Punish Torture.

114. Despite the lack of a response from the Mexican State to Report 2/98, adopted in this case, the Commission also concludes that the actions summarized in the previous chapter aimed at guaranteeing the right to defense of Manuel Manríquez represent the first step towards carrying out the recommendation to that effect, made in said report. Consequently, that recommendation was reformulated in the terms of paragraph 115(6) infra.

VII. RECOMMENDATIONS

115. The Commission considers that the facts as established in this case are not isolated, but rather part of a serious problem that the Mexican State must solve. Therefore, the IACHR refers to the recommendations adopted in this connection in the recently approved "Report on the situation of human rights in Mexico", specifically in the chapter regarding the right to personal integrity.[FN15] Also, based on the foregoing analysis and conclusions,

[FN15] IACHR, Report on the situation of human rights in Mexico, OEA Ser.L/VII.100 Doc.7 rev.1, September 24, 1998, paras. 339 to 350. The report is available in the Commission's web site on the internet: <http://www.iachr.org/>

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

1. That it adopt the appropriate and necessary measures to review the validity of the trial of Manuel Manríquez, considering the violations of his rights--especially the full evidentiary value accorded his confession under torture, as an element in his conviction--so that the judicial organs duly analyze his liability for his possible material participation in the homicides of Armando and Juventino López Velasco, and for his participation in the acts following the homicides of those persons.
2. That adequate compensation be paid to Manuel Manríquez for the violations of his human rights by the authorities of the Mexican State, as established in the conclusions to this report.
3. That those responsible for the possible prescription of the criminal action against police agent José Luis Bañuelos Esquivel, with respect to the acts of torture inflicted on Manuel Manríquez, be duly investigated.
4. That an investigation be undertaken to identify the direct perpetrators of the arbitrary detention and torture inflicted on Manuel Manríquez, and proceed to apply the proper punishment under law.
5. That an investigation be carried out into the unreasonable delay in initiating the investigation into the torture inflicted on Manuel Manríquez, especially with respect to the judicial authorities before whom the case of Manuel Manríquez came, who failed to order such an investigation for the purposes of ensuring adequate punishment of those who turn out to be responsible.
6. That it guarantee the right to defense of Manuel Manríquez, to which end it should: permit reasonable access for his defense attorneys to the prison where he is being held; refrain from imposing on them abusive or degrading treatment; and to provide the IACHR and the defense attorneys all official documentation that is the basis for applying any restrictive measure imposed on said prisoner and said attorneys, including, specifically, the manuals and instructions of the Federal Centers for Social Rehabilitation.[FN16]

[FN16] The Commission considers that this recommendation has been complied with. See paragraph 119 of this report.

* On March 26, 1999, after the publication of this report was approved, the petitioners informed the Commission that Mr. Manuel Manríquez had been declared innocent by the Superior Court of Justice of the Federal District of Mexico. That decision was handed down in response to the motion for recognition of innocence filed by Mr. Manríquez' defense counsel, who attached Report N° 47/98 on this case as "supervening evidence." In its decision, the Superior Court of Justice of the Federal District of Mexico referred to the IACHR report as follows:

The Court recognizes that it was by virtue of the IACHR's recommendations that an investigation of the torture was initiated ... and that therefore we find that the report in question

can be taken into consideration as evidence. As a result of this decision, Mr. Manríquez was freed on March 29, 1999.

On April 9, 1999, the petitioners sent a further communication in which they added the following:

As of this date, payment of the sum to be given, by way of reparations, by the Government of the Federal District to Manuel Manríquez himself is being processed. In addition, talks continue on the implementation of all the other recommendations issued in the Report.

The foregoing information demonstrates full compliance with recommendation 1 supra and, in addition, sets an important precedent for compliance with the IACHR's recommendations by the competent authorities of the Mexican State.

VIII. PUBLICATION

116. The Commission transmitted Report 47/98--the text of which is in the preceding sections I to VII--to the Mexican State and the petitioners, in accordance with Article 51(2) of the American Convention, and gave the State a period of one month to comply with the preceding recommendations. At the end of that period, the State forwarded a note reiterating its position on the merits of the case and mentioned certain measures it had taken whereby, in its view, it complied with the above-mentioned recommendations. The Commission forwarded that note to the petitioners requesting its observations. The petitioners' response, received on February 17 1999, holds that the State is not willing to bring to justice the persons responsible for the violations set forth in this case.

117. In its letter, the Mexican State does not address compliance with the recommendations contained in paragraphs 1, 2, and 5 supra. As to recommendation 3, it states that "on August 15, 1997, a request was made to begin a preliminary inquiry to determine Mr. José Luis Bañuelos Esquivel's liability," and that the proceeding "is currently under way." The letter also says that a copy of the file was sent to the Council of the Federal Judicature on March 9, 1998, for that body "to examine and pass upon the conduct" of judicial officials Imelda Gutiérrez Muñoz and Ricardo Hernández Torres.

118. Regarding the recommendation in paragraph 4 concerning the direct perpetrators of the detention and torture of the victim in this case, the State indicates that the inquiry itself, mentioned in the preceding paragraph, is the means of compliance. It also states "that the preliminary investigation will be completed once the Council of the Federal Judicature publishes the ruling handed down by its Executive Secretariat. This proceeding must be completed before the above-mentioned judicial official can be criminally prosecuted."

119. As to recommendation 6, the Mexican State summarized the actions it had taken as part of the precautionary measures sought by the IACHR in behalf of defense attorney Pilar Noriega and Manuel Manríquez. These measures are contained in paragraphs 110 to 112 supra. Among the more recent measures taken, it should be noted that the State attached to its letter of December 5, 1998, a copy of the Regulations of the Federal Centers for Social Rehabilitation and the Instructions on Visits to the Federal Centers for Social Rehabilitation. These documents had already been requested as part of the recommendations made in Report N° 2/98, which was

transmitted to the State on February 25, 1998. The IACHR observes that the State never provided its observations on the report.

120. In addition, on January 13, 1999, the Commission received a letter from Viviana Krsticevic, Carmen Herrera (representatives of CEJIL), Pilar Noriega, Edgar Cortez (PRODH Center), and Joel Solomon (Human Rights Watch/Americas). They wrote that they had gone to the Government of the Federal District to request compliance with the recommendations of Report N° 47/98, and sent as an attachment the reply they had received, which was signed by Ms. Rosario Robles, Secretary of the Government of the Federal District. Relevant parts of the reply are transcribed below:

On instructions from Mr. Cuauhtémoc Cárdenas Solórzano, pursuant to Article 20, section XIV of the Federal District Public Administration Act, and in reply to your kind note dated November 16, 1998, to the Mayor (Jefe de Gobierno) of the Federal District, informing us of the recommendation by the Inter-American Commission on Human Rights in its Report No. 47/98, issued in case No. 11.509 in proceedings against the Mexican State for violations, between 1990 and 1995, of the rights of Mr. Manuel Manríquez San Agustín under the American Convention on Human Rights, I would like to inform you that the Office of the Mayor of the Federal District will accept that recommendation for relevant legal purposes.

I also would like to inform you that we shall immediately proceed to examine the content of report No. 47/98 that you sent us, in order to implement the measures authorized under our current laws. We shall inform you of those measures in due course.

121. The Commission recognizes the efforts made by the Mexican State to comply with the recommendation regarding Mr. Manuel Manríquez' right of defense. Likewise, the IACHR takes note of the letter sent to the petitioners by the Government of the Federal District and is pleased at the initiative it has taken with a view to future compliance with the recommendations of this report. The Commission notes that international responsibility for human rights violation committed by public officers--regardless of the agency they work for--is attributed ultimately to the State. In light of Article 28 of the American Convention, the IACHR trusts the Mexican State will immediately adopt all relevant measures so that the recommendations issued here may be complied with by the competent authorities.

122. Finally, the Commission concludes that the Mexican State has complied with the recommendation regarding Manuel Manríquez's right to defense as set forth in paragraph 6 supra. Conversely, the State's failure to comply with recommendations 1 and 2, as evident from its failure to respond to them, has been noted. With respect to recommendation 3, the information merely mentions the start of a preliminary inquiry in August 1997--which was already mentioned in paragraph 40(f) supra--that is, six months before report N° 2/98 was sent to the State which never responded to it. The State only indicated that the preliminary inquiry is "under way," without specifying any action or procedure for verifying progress of any kind or even the intention to investigate who was responsible for allowing the statute of limitations to invalidate the criminal action against José Luis Bañuelos Esquivel. The same consideration is applicable to recommendation 4. Consequently, the IACHR concludes that the State has not adopted any meaningful measure to show its willingness to comply with recommendations 3 and 4.

123. Accordingly, and pursuant to Articles 51(3) of the American Convention and 48 of the Commission's Regulations, the Commission decides: to reiterate the conclusions contained in Chapter VI supra, as well as the recommendations in paragraphs 1, 2, 3, 4, and 5; to publish this report; and to include 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 continue to evaluate the measures taken by the Mexican State with respect to those five recommendations, until the State has fully complied with them.*

Approved by the Inter-American Commission on Human Rights in the city of Washington, D.C. on the 23rd day of the month of February 1999. (Signed): Robert K. Goldman Chairman; Hélio Bicudo First Vice Chairman; Claudio Grossman, Second Vice Chairman; Commissioners Alvaro Tirado Mejía and Jean Joseph Exumé.