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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 48/99; Case 10.545
Title/Style of Cause:	Clemente Ayala Torres, Jose Manuel Palacios Vargas, Bernabe Torres Torreblanca, Santos Hernandez Garcia, Adelaido Barrera Sanchez, Ismael Reyes de la Cruz, Antonio Pablo Terrero, Donacio Rojas de la Cruz, Florentino Salmeron Garcia, Leonel Felipe Dorantes and Felix Octavio Ventura Ramos v. Mexico
Doc. Type:	Report
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.
Dated:	13 April 1999
Citation:	Ayala Torres v. Mexico, Case 10.545, Inter-Am. C.H.R., Report No. 48/99, OEA/Ser.L/V/II.106, doc. 6 rev. (1999)
Represented by:	APPLICANT: the Partido de la Revolucion Democratica
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1. On April 17, 1990, the Inter-American Commission on Human Rights (hereafter "the Commission" or "IACHR") received a complaint submitted by representatives of the Partido de la Revolución Democrática (hereafter "the PRD" or "the petitioners"), regarding various acts that they linked to the elections held on December 3, 1989, in the State of Guerrero, Mexico, in which they allege violation by the United Mexican States (hereafter "the State", "the Mexican State", or "Mexico") of various rights enshrined in the American Convention on Human Rights (hereafter "the American Convention"). In its report N° 33/98 of May 5, 1998, the Commission declared the case admissible with respect to certain facts, and inadmissible with respect to others. Now, pursuant to the decision adopted in the report referred to, the IACHR will state its findings with respect to the substance of the complaint on the responsibility of the State for alleged facts that portray the violation of the following rights protected by the American Convention: the right to life (Article 4), the right to personal integrity (Article 5), the right to judicial guarantees (Article 8) and the right to judicial protection (Article 25).

I. FACTS

2. The complaint indicated that, in connection with the elections of December 3, 1989, in Guerrero, there were a series of widespread attacks on popular sovereignty and on the political rights of the inhabitants of that State, which occurred at various stages of the electoral process ("during preparation, voting, scrutinizing, and vote counting at the polls, in the municipal and district committees, certification of results and qualification..."). The petitioners claimed that the then-Governor of Guerrero, José Francisco Ruiz Massieu,[FN1] had instigated, permitted and

protected such violations of the political rights enshrined in Article 23 of the American Convention.

[FN1] José Francisco Ruiz Massieu was assassinated on September 28, 1994. At that time he held the position of Secretary General of the National Executive Committee of the Partido Revolucionario Institucional (PRI)

3. The various events denounced, which were allegedly committed by agents of the Government of Guerrero or by persons under its protection, include the murder of several persons. Some of these victims were named by the petitioners, who supplied data to the IACHR on the circumstances of their deaths. The petitioners also held agents of that State government responsible for what they deemed excessive repression during public demonstrations against manipulation of the election results. Finally, they denounced acts of illegitimate deprivation of liberty, defamation and calumny committed by those authorities to the prejudice of leaders of the Partido de la Revolución Democrática (hereafter "the PRD") and the demonstrators.

4. With respect to the right to judicial guarantees, the petitioners maintained that Governor Ruiz Massieu on several occasions cancelled the right to public court hearings; that the Attorney General [Procurador de Justicia] of Guerrero refused to receive complaints against certain acts and to investigate certain crimes; that there were no remedies in the face of what they claimed to be 26 political homicides committed as a result of the events that were confirmed subsequent to the elections of December 3, 1989; and that impunity was granted to those responsible for the numerous arrests, injuries and deaths resulting from the events that occurred on February 27, 1990 and March 6 of that year. The petitioners considered that such factors demonstrated that the conditions did not exist in Guerrero for prosecuting the crimes allegedly committed by Governor Ruiz Massieu and his agents.

II. PROCEEDINGS BEFORE THE COMMISSION

5. On May 3, 1990, the Commission requested information from the State; the latter responded on August 8, 1990, asking that the petition be declared inadmissible.

6. On September 29, 1990, the petitioners presented their observations, including the denunciation of new acts. The Commission thereupon requested the State to present its comments within a period of 30 days, and set a time limit of 90 days for it to present its observations on the expanded complaint.

7. On December 28, 1990, the Mexican State submitted its comments on the acts originally denounced by the petitioners, and on March 25, 1991, it provided information regarding the newly denounced acts.

8. During its 83rd session, the Commission held a hearing on this case, at which representatives of the petitioners and the Mexican State appeared.

9. On October 24, 1997, the IACHR requested both parties to submit updated information on certain specific questions relating to the case. The State replied on November 25, 1997, indicating that the information would be transmitted as soon as it was provided by the Office of the Attorney General (the Procuraduría General de Justicia, hereafter the "PGJ") of Guerrero.

10. The petitioners sent in the requested information on January 20, 1998; this information was transmitted to the State on February 4, with a request for its observations thereon. On March 4, 1998, the State sent another communication, which requested that the case be dismissed.

11. On May 5, 1998, during its 99th special session, the IACHR approved report N° 33/98, in which it declared admissible the specific facts of the present case that were the subject of the information requested on October 24, 1997. In that report, the IACHR also decided to declare inadmissible the remaining questions raised in the original complaint; to reiterate to the Mexican State its February 4, 1998, request for information; and to place itself at the disposal of the parties with a view to the procedure envisioned in Article 48(1)(f) of the American Convention.

12. In their communication of May 21, 1998, the petitioners rejected the proposal for a friendly settlement, on the grounds that the complaint "is not susceptible to a procedure for amicable resolution". That communication was reported to the State on May 22, 1998.

13. On June 10, 1998, the State submitted the information that the Commission had requested in its note of February 4, 1998, and again in Report N° 33/98. The observations of the petitioners were received by the IACHR on July 15, 1998.

III.MERITS

14. In its Report N° 33/98, the Commission determined that the requirements set out in article 46 of the American Convention had been fulfilled, and that the exceptions to the remedies in the respective cases claimed by the Mexican State were not appropriate. On the basis of the information received from the State and contained in the observations of the petitioners, the present report will analyze the facts that were declared admissible, in the following order:

- Deaths of Clemente Ayala Torres, José Manuel Palacios Vargas and Bernabé Torres Torreblanca (January 3, 1990, Coyuca de Benítez);
- Death of Santos Hernández García (24 January 1990, Coyuca de Benítez);
- Deaths of Adelaido Barrera Sánchez, Ismael Reyes de la Cruz and Antonio Pablo Terrero (January 22, 1990, El Durazno);
- Death of Donacio Rojas de la Cruz (February 27, 1990, Acapulco);
- Death of Florentino Salmerón García (February 27, 1990, Zihuatanejo);
- Death of Leonel Felipe Dorantes (March 6, 1990, Cruz Grande);
- Death of Félix Octavio Ventura Ramos (March 17, 1990, Conachinicha);[FN2]
- Disappearance of Andrés de la Cruz Zapacala and Daniel López Alvarez;
- Arbitrary arrest and torture of Eloy and Ladislao Cisneros Guillén;
- Investigation of all the above-mentioned facts and, as appropriate, punishment of those responsible;

- Compliance with the standards of due process and effective remedies in the respective cases.

[FN2] Admissibility Report N° 33/98 alluded to the alleged victims according to the names that appear in the record of Case 10,545. In this report, the victims shall be identified according to the official information supplied by the State, i.e.: José Manuel Palacios Cárdenas (José Manuel Palacios Vargas), Donacio Rojas de la Cruz (Donaciano Rojas Lozano), and Félix Octavio Ventura Ramos (Octavio Ventura).

15. The facts identified in Report N° 33/98 under the heading "violent interruption of the marches held on February 27, 1990, in Acapulco and Zihuatanejo", [FN3] will be analyzed with respect to the deaths of Donacio Rojas de la Cruz and Florentino Salmerón García, since this is the only specific information available on those events, as supplied by the parties at the time the above-mentioned report was adopted. The same procedure will be used with respect to the death of Leonel Felipe Dorantes, the only one of the "events that occurred in the municipal offices of the State of Guerrero and its surroundings on March 6, 1990" that was addressed by the State and the petitioners.

[FN3] IACHR, Report N° 33/98, Case 10,545, Mexico, May 5, 1998, para. 22.

16. The IACHR notes moreover that neither of the parties has referred, in its communications subsequent to the admissibility report, to the alleged acts of arbitrary detention and torture of Eloy and Ladislao Cisneros Guillén, nor to the disappearance of Andrés de la Cruz Zapacala and Daniel López Alvarez. [FN4]

[FN4] Idem.

IV. POSITIONS OF THE PARTIES

A. The State

17. The observations of the Mexican State subsequent to Report N° 33/98 were structured on the basis of the following recommendations issued by the National Human Rights Commission (hereafter "the CNDH"): 97/93 (Santos Hernández García), 114/93 (Leonel Felipe Dorantes), 116/93 (Adelaido Barrera Sánchez, Ismael Reyes de la Cruz and Antonio Pablo Terrero), 255/93 (Clemente Ayala Torres, José Manuel Palacios Cárdenas and Bernabé Torres Floreblanca), 210/92 (Florentino Salmerón García), 22/92 (Félix Octavio Ventura Ramos) and 12/93 (Donacio Rojas de la Cruz).

18. The State summarized the proceedings followed in Mexico with respect to each of the recommendations cited, indicating in some cases that the delay and lack of concrete results was due to numerous "difficulties" of various nature, none of which it considered attributable to the Mexican State. In referring to the proceedings followed to comply with the recommendations referred to, the State pointed to the holding of working meetings among officials of the Secretaría General de Gobierno and the Procuraduría General de Justicia de Guerrero and the CNDH. The State reported that as a result of those meetings, it was decided "...to review those recommendations for which progress and compliance was slow".

19. The State concluded that the petitioners had failed to "demonstrate any act or omission imputable to any public authority of the federal or local government", and in this regard it maintained:

The Government of Mexico has conducted serious investigations, and has in fact prosecuted and sentenced some of those responsible for the different murders, and has complied with various recommendations issued by the National Commission on Human Rights, in accordance with the jurisprudence of the Inter-American Court of Human Rights. The fact that it has not been possible to arrest all of the suspects in the crimes included in paragraph 22 of the report in no way signifies that there is "tolerance" on the part of the public authorities for persons who act outside the law.

20. Finally the State argued that internal remedies had not been exhausted, indicating that the previously mentioned investigations into the crimes denounced "have not as yet been fully concluded, due to the difficulties explained".

B. The petitioners

21. In their observations, the petitioners indicated in the first place that "the response of the government is limited, since it restricts itself to compliance with actions recommended by the national ombudsman", and they claimed that before the CNDH made its recommendations, the State had taken no action that would demonstrate its willingness to dispense justice in this case. The petitioners maintained that many of the previous investigations were in abeyance while in others it was proposed or decided not to proceed with prosecution, and the complaints were dismissed.

22. The petitioners concluded the following:

In light of the fact that those responsible for the violations of human rights have not been punished, nor have the rights of the victims of those violations been restored, it is obvious that the Mexican State has failed to fulfill its obligation to guarantee respect for the rights of the citizens, for which reason it may be affirmed that the State is liable.

No official of the Mexican government has been punished either through criminal or administered proceedings for his actions during the investigations, despite the resolutions of the National Commission on Human Rights. The picture of impunity becomes even more clear in light of the most recent offer by the government, which amounts to a commitment to "speed up

the investigations", a promise that is now reiterated nearly eight years after the murders were committed (emphasis in the original).

V. ANALYSIS

23. In the first place, it must be remembered that the IACHR has already declared the present case admissible, under the terms referred to above. This point requires clarification, because the State, in its latest communication, alleged that internal remedies available within Mexico had not been exhausted; the Commission must stress that that argument is out of order at this stage in the proceedings. Below, the IACHR will address the questions of substance in the complaint, consistent with the decision adopted in its report N° 33/98 of May 5, 1998.

A. The right to personal liberty (Article 7) and personal integrity (Article 5)

24. The petitioners alleged the following:

The publicly documented kidnapping, illegal deprivation of liberty and torture of the constitutionally elected municipal president of Ometepec Eloy Cisneros Guillén and his brother Ladislao Cisneros Guillén, crimes that involved not only premeditation, treachery and deceit [ventaja], but also treason and deceit on the part of Ruiz Massieu through his agent Aguirre Rivero, who communicated on March 5 with Eloy Cisneros, deceiving him by giving him assurances that there would be a satisfactory political solution to the electoral fraud, only to proceed the next morning to kidnap and torture Mr. Cisneros in the course of personal, outrages and humiliation in front of many witnesses.

25. The Mexican State responded that Mr. Eloy Cisneros Guillén, who had stood as a candidate in the municipal elections of Ometepec on behalf of the PRD, was the leader of a group of persons who "illegally occupied the public offices of the municipal presidency" of that town. According to this version, the Congress of the State of Guerrero, which has the power to qualify the electoral process in the municipalities, confirmed the victory of the PRI candidate in the elections of December 1989. Consequently, the State affirmed that Mr. Eloy Cisneros Guillén was legally responsible for "using public functions and falsification occasion and improper use of documents, for which reason prior investigation N° DGAP/011/90 was launched". As part of that investigation, on March 5, 1990, the judge of first instance for the judicial district issued an arrest order against Eloy Cisneros Guillén for the crimes referred to, and which were "duly proven in criminal case 14/990".

26. The State added that Ladislao Cisneros Guillén, brother of Eloy, was arrested "for flagrant violations involving the bearing of prohibited arms, wounding and resistance". According to the official version the two brothers Cisneros Guillén were turned over to the Public Ministry and "were brought, within the legal time limits", before the criminal judge of the district of Tabares (cases 14/90 and 15/90). In the criminal case in question it was stated that "Eloy Cisneros Guillén was beaten at the time of his arrest as a result of disorderly conduct that arose from his resistance to the clearing of the municipal building". The State maintained the following:

Messrs. Eloy and Ladislao Cisneros Guillén were neither kidnapped nor tortured. The physical condition of Mr. Eloy Cisneros Guillén is stated on the certificate issued on the very day of his arrest by accredited medical personnel and by the authorities of the Regional Center for Social Re-Adaptation of Acapulco.

During the efforts to clear the Municipal Building of Ometepe two members of the judiciary police, Oscar Cruz Anguiano and Aurelio Rojas Domínguez, were wounded by gunfire and a judicial investigation was undertaken. None of the members of the PRD who resisted entry to the building were wounded by gunfire and those who suffered injuries were given attention at government health centers.

On April 27, 1990, Eloy and Ladislao Salvador Cisneros Guillén were released on bail.

27. The observations of the petitioners, presented on September 29, 1990 to the Commission, referred to a report by the nongovernmental organization Americas Watch according to which Eloy Cisneros Guillén was "severely beaten, dragged face down to the rear of a pickup truck and taken into Acapulco where he was held". The interpretation of the response of the State by the petitioners led them to consider that the State "recognizes its full responsibility for the torture of Eloy Cisneros Guillén", since it did not deny the involvement of its agent Angel Aguirre Rivero, nor did it deny the other circumstances alleged in the complaint. The subsequent communications of both parties referred exclusively to the investigation of the facts, a question which will be addressed later in this report.

28. The IACHR will analyze first the allegations referring to the right to personal liberty. Article 7 of the American Convention guarantees the following:

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.
4. 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.
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 a sure his appearance for trial.

29. The petitioners complained in their first communication that the brothers Cisneros Guillén had been kidnapped by agents of the Mexican State. As described above, the State provided specific information to the effect that both persons were deprived of their liberty in accordance with arrest orders issued in the context of an investigation of criminal acts within the meaning of Mexican law. Those persons were brought before the competent judge within the applicable time limits, and were subsequently released on bail. The petitioners provided no evidence that would contradict this version, which means that these facts are not disputed.

30. From the information on the record it was not possible for the Commission to establish that Eloy and Ladislao Cisneros Guillén were deprived of their liberty in an arbitrary manner, nor that they were deprived during their detention of the other guarantees provided in Article 7 of the American Convention. [FN5]

[FN5] See in this connection, IACHR, Annual Report 1997, Report N° 55/97, case 11.137 (Juan Carlos Abella and others), Argentina, OEA/Ser.L/V/II.98 Doc.6 rev, April 13, 1998. The case involved a group of armed civilians who attacked the military barracks at La Tablada, on the outskirts of Buenos Aires, on January 23, 1989. The petitioners denounced that subsequent to surrender, State agents engaged in the forced disappearance, extrajudicial execution and torture of many of the attackers, as well as the violation of the rights to due process and judicial protection in the proceedings where they were convicted. The Commission found in that case that the State of Argentina was responsible for the violation of various rights enshrined in the American Convention, and for the failure to comply with their obligation to investigate the acts that took place after surrender. Even though the Commission established certain presumptions, it did not find violations where the evidence was insufficient or inconclusive (for example, in the case of Juan Manuel Murúa, described in par. 220, p. 325 of Report 55/97).

31. The petitioners also allege that the brothers Cisneros Guillén were tortured by authorities after they were detained. With respect to Ladislao Cisneros Guillén, the response of the State simply affirms that he was not tortured, and the petitioners in turn did not controvert this statement. There is no element in the record that indicates that Ladislao Cisneros Guillén was subject to torture by agents of the State of Mexico, so the Commission cannot find a violation of the right to personal integrity with respect to this person.

32. On the other hand, the State itself admits that Mr. Eloy Cisneros Guillén was beaten at the time of his arrest, and alleges in its defense that this fact was due to the disorder that had been provoked during clearing of the municipal building of Ometepec in March 1990. Neither of the parties has referred to the nature or severity of that beating, nor has been possible to establish with any degree of certainty the circumstances under which those blows were applied. The IACHR cannot conclude otherwise from its analysis that the events were marked by violence on both sides, as demonstrated by the undisputed fact that the occupants of the municipal palace were armed at the time the security forces broke into the building.

33. Consequently, the information available is not sufficient to hold the Mexican State responsible for violating the right to personal integrity protected by Article 5 of the American Convention to the prejudice of Eloy Cisneros Guillén.

B. The right to life (Article 4)

34. The American Convention guarantees the right to life, and no person may be arbitrarily deprived of the right. The petitioners alleged that the right to life of several individuals was violated in the various events related to the outcome of the elections in Guerrero on December 3, 1989, and they point to agents of the State as the authors in some cases, and in a hand in other

cases as accomplices of assassins linked to the ruling PRI. The information available on the file will be analyzed to determine whether the Mexican State is responsible for violating the right to life of the persons named in report N° 33/98.

35. The context in which these events took place is linked to the municipal elections that were held in the State of Guerrero on December 3, 1989. The official outcome of those elections, in favor of the ruling PRI over its opposition PRD, led to various outpourings of popular discontent, which included protest marches and the occupation of the municipal offices by sympathizers of the PRD in 24 different municipalities of Guerrero. The Mexican State reported that 16 of those buildings were recovered through dialogue between the occupiers and the newly elected authorities; while in the case of the other eight buildings it was necessary for the authorities to intervene forcibly.

i. Clemente Ayala Torres, José Manuel Palacios Cárdenas and Bernabé Flores Torreblanca

36. The petition received on April 17, 1990 claims the following:

In the early morning of January 3, 1990, the lookouts at the municipal palace, Roberto Díaz, Bernabé Flores Torreblanca, José Manuel Palacios Cárdenas and Clemente Ayala Torres were shot dead by agents of the official party linked to drug traffickers, who were protected in their flight by the regional director of the Regional State Police, Felipe Ferrer García Junco.

37. In its observations of August 8 1990, the Mexican State replied that all of these acts "were committed without the knowledge of the government" and that "in all cases they constituted common crimes". According to the State, the murder of Clemente Ayala Torres, José Manuel Palacios Cárdenas and Bernabé Flores Torreblanca was apparently committed by two brothers named Vargas Madero, as is apparent from the prior investigation report TAB/I/003/90. According to the State circumstances were as follows:

On January 1, 1990, at 3:30, on a highway in Coyuca de Benítez leading to the village of Aguas Blancas, Bernabé Flores Torreblanca and José Manuel Palacios Cárdenas were shot dead with weapons of different caliber, fired by Pedro Vargas Madero and Roberto Vargas Madero, whose automobile had been stopped at a roadblock set up by members of the PRD. The brothers Vargas Madero then used the same automobile to run down Clemente Ayala Torres, who had been wounded by gunfire, and who died in the Acapulco General Hospital.

At 11 o'clock of the same day, members of the PRD, armed with machetes, knives, sticks and stones prevented personnel of the Public Ministry of Coyuca de Benítez from conducting an investigation at the site of these events. No bodies were found because PRD members had previously carry them away. One hour later, 35 militants of that party entered the emergency room at the local general hospital and violently removed the body of Clemente Ayala Torres. At the same time they seized two employees of the general hospital, who were subsequently released and who brought charges against the group for illegal deprivation of liberty.

38. The State said in the same communication that the authorities had issued arrest orders for the brothers Vargas Madero, who had fled, and that a further inquiry was opened on February 8, 1990, to determine their whereabouts.

39. There is a dispute between the parties as to the circumstances that produced the deaths of Ayala Torres, Palacios Cárdenas, and Flores Torreblanca. As to the date on which the events took place, the petitioners maintain that it was January 3, 1990, while the State indicated in its reply that it was the first of that month and year. There is also dispute as to the existence of a supposed additional victim (Roberto Díaz),[FN6] of which the State makes no mention in its reply, and as to the surname of one of those persons (Palacios Vargas as opposed to Palacios Cárdenas).

[FN6] This person was not included in admissibility Report 33/98 of May 5, 1998 because neither his name nor the fact of his death in the place and date stated, were accredited by the petitioners during the proceedings.

40. In their response of September 29, 1990, the petitioners limited themselves to noting that the State confirmed that the murders had occurred, and it did not deny that agents of the ruling party were the authors, nor that they were protected by State authorities. The petitioners provided no additional information either at this or any other stage of the proceedings before the IACHR. The petitioners did not avail themselves of the opportunity to contradict the official version, despite the fact that, as noted above, that version is totally at odds with the initial denunciation. Consequently the position of the petitioners is limited to the initial claims recorded in their totality above, and for which no subsequent support has been adduced.

41. The elements of judgment available in this case do not support the complaint of the petitioners to the effect that Clemente Ayala Torres, José Manuel Palacios Cárdenas and Bernabé Flores Torreblanca were assassinated by persons linked to the Government of Guerrero, and that the chief of the judicial police of that State assisted them in their flight. Consequently, the Commission cannot hold the State responsible for violating the right to life of the three persons in question.

42. Despite the foregoing, the IACHR notes that the subsequent communications from the parties contained allegations about the judicial investigation of the facts analyzed here, and the determination of the whereabouts of the presumed perpetrators, a question which will be analyzed later on in this report.

ii. Santos Hernández García

43. The complaint states flatly that Mr. Hernández García, another militant and involved in the takeover of the municipal palace of Coyuca de Benítez, was "shot dead" on January 24, 1990 after having been beaten by agents of the ruling party. The State replied that the death of the person referred to occurred in the reservoir of the community of Aguas Blancas, municipality of Coyuca de Benítez, and added the following:

Investigations led to the conclusion that Mr. Hernández García died by falling into the body water in which he was on. In this respect, as stated in the investigation report TAB/IV/011/990, (Annex 39), Mrs. Felicitas Hernández García, sister of the deceased, referred in her statement to the possibility that because of his age (59 years) and the state of his health, Hernández García may have suffered an accident, and that in that case no one was responsible for his death. Despite these statements, the Office of the State Attorney General open and investigation to determine who might have been responsible for murder. This action has been impeded by members of the PRD, who refused to permit an autopsy on the body, and 20 militants of the party, armed with sticks and machetes, blocked the passage of the agent of the public ministry to see whether the body was being carried in the vehicle in which he was traveling.

44. In their observations, the petitioners said:

The allegation of the Government of Mexico cannot be sustained, nor can their reluctance to investigate the facts. It is stated that the investigation by the Government of Guerrero suggest that he suffered a "possible accident". But it excuses itself from conducting a proper investigation to prove that fact, alleging that it was impossible to fulfill its duty and the law because of hindrance by persons affiliated with our party.

45. In their communication of January 20, 1998 to the Commission, the petitioners indicated that the body of Santos Hernández García was found in a reservoir of the village of Aguas Blancas, with a bullet in the neck and signs of strangling. They confirmed that the sister of the presumed victim had declared that, because of his age and ill health, "he may have fallen in alone", but they added that "inhabitants of the village insist that Santos Hernández García was murdered, and that the sister said what she said only out of fear". The remaining considerations in that communication refer to the subsequent investigation of the facts and to Recommendation 97/93 issued by the CNDH.

46. In its final observations, the State limits itself to repeating--as it did in referring to all the other victims--the content of the CNDH recommendation, and to recounting the internal steps taken to comply with that recommendation. It should be noted that the first paragraph of Recommendation 97/93 states that the body of Mr. Santos Hernández García should be exhumed "so that an autopsy can be performed to determine the true cause of death".

47. The information available to the Commission reveals that the circumstances in which Santos Hernández García died are not clear. The argument that his sister declared that he had probably suffered an accident does not constitute legal grounds for closing the investigation into a presumed homicide, particularly when the body was found with a bullet in the neck. Moreover, it is impossible to take seriously the State's argument according to which the autopsy was impossible because militants of the PRD impeded the passage of the vehicle in which officials of the public ministry were traveling. This is confirmed with the lack of subsequent arguments that would justify the omission of this fundamental requirement in the investigation. In fact, the evidence in the record shows that as recently as July 1993--three and half years after the events--the Attorney General of Guerrero ordered an autopsy to establish the true cause of death, and that

in October of that year the report was issued on the examination and autopsy of the body of Santos Hernández García.

48. Since the IACHR does not have the information necessary to determine in what manner Mr. Santos Hernández García died, it cannot determine whether the Mexican State is responsible for violating that person's right to life. Nevertheless, as in the case of the three persons mentioned earlier, the Commission will state its position on the investigation of the facts in the corresponding section of this report.

iii. Adelaido Barrera Sánchez, Ismael Reyes de la Cruz and Antonio Pablo Terrero

49. The complaint to the Commission over deprivation of the right to life of these three persons was cast in the following terms:

On January 22, Adelaido Barrera Sánchez, Ismael Reyes de la Cruz and Antonio Pablo Terrero were killed by agents of the official party, under the protection of the governor, in the community of Durazno, municipality of Tixtla.

50. For its part, the Mexican State replied that the allegation was false, in light of the following:

As demonstrated in the investigation report DGAP/02/990 (Annex 31), the events that occurred in that village on January 13, 1990, have nothing to do with the political events at the time, because the crime was sparked by personal antagonisms that were sharpened by the effects of alcohol.

On January 13, at about 18:30 in the CONASUPO premises of the village of El Durazno, Gabriel Marco Ramírez was arguing with Adelaido Barrera Sánchez, whom he subsequently killed with the weapon he was carrying. Some hours later, Ismael Reyes de la Cruz and Antonio Pablo Terrero went to the scene of the deeds, where they encountered Guadalupe Cruz de la Cruz, and later Gaudencio Casimiro Muñoz, Herminio Casimiro Ranchito, Gabriel Marcos Ramírez, Juventino Casimiro Muñoz, and Alvaro de la Cruz Barrera. These persons opened fire against Ismael Reyes de la Cruz and Antonio Pablo Terrero, who died of the resulting wounds.

51. According to the State, steps were taken to prosecute those responsible and to exact reparation from them, and arrest orders were issued on January 25, 1990. Finally, it indicated that on February 8, 1990, the suspects were arrested and turned over to the competent judge, and on February 12 an auto de formal prisión [formal detention order] was issued for them.

52. The petitioners stated that the official version "was discredited" by the complaint that was presented on January 25, 1990, by the PRD to the attorney general of Guerrero. That complaint stated:

The homicides were the result of actions by the leader of the PRI, Hugo Cesarino Astudillo, who sought to prevent the people from electing their municipal councilors in accordance with the Constitution and Article 8 of the Convention, by unleashing upon them seven persons, all

members of the PRI, armed with shotguns, rifles and AR-15 weapons, amid shouts to the effect that "they could kill as many PRD members as they liked, with no problem, because the PRI would protect them".

53. The petitioners also pointed out that the persons identified in that complaint as responsible for the murders, Gabriel Marcos Ramírez and Tomás Ramírez de la Cruz, as well as the PRI leader referred to, do not appear in the list of persons arrested and prosecuted.

54. In their communication of January 20, 1998, the petitioners maintained that Alvaro de la Cruz Barrera, Carlos de la Cruz and Gaudencio Casimiro de la Cruz were held for two and a half years, and were then absolved. They added that the CNDH adopted Recommendation 116/93 with respect to the case, in which it pointed to "situations contrary to law" and "delays in the administration of justice", in light of which the National Commission recommended that arrest orders be issued and that an investigation be conducted against the public officials who had acted with such negligence. Finally, the petitioners stated the following: that no charges were brought against Alvaro de la Cruz; that there was no investigation into "the probable intellectual instigation of the regional PRI leader"; and that "the murderer Marcos de la Cruz was assassinated on August 2, 1992, a crime that was unjustifiably blamed on two relatives of the murdered PRD member".

55. Here again, there is an apparent conflict over the manner in which the events unfolded, due to the opposing versions of the parties, which do not even agree on the date (January 22, 1990 according to the petitioners, January 13, 1990 according to the State). The additional information provided by the parties does little to clarify the situation, since it is limited to describing the investigation of the facts. Consequently, on the basis of the information available, the IACHR cannot find that the Mexican State is responsible for the deaths of Adelaido Barrera Sánchez, Ismael Reyes de la Cruz and Antonio Pablo Terrero. The investigation of the facts will be analyzed later on.

iv. Donacio Rojas de la Cruz

56. The complaint states only that Donaciano (Donacio) Rojas de la Cruz was "killed by blows during the repression in Acapulco". In its response, the Mexican State claims that, according to the investigation report TAB/1/771/990, Rojas died in Acapulco on February 27, 1990. According to the State, a group of some 300 PRD demonstrators was heading toward the airport, with the intention of occupying it, when the following events occurred:

At the Acapulco Princess hotel, where dialogue with the authorities had again been taken up, the leaders of the demonstrators incited the marchers to violence, and police officers were attacked with stones, clubs, sticks and machetes. The police responded to these attacks and, as recorded in the corresponding autopsy, Donaciano Rojas Lozano (Donacio Rojas de la Cruz) was killed by blows as a result. It should be noted that firearms and edged weapons were seized from the PRD leaders who were arrested in the wake of these events.

57. The observations of the petitioners characterized this aspect of the Mexican State's response as "tendentious" and "manifestly inadequate". They maintain that this is proven by a

report from the non-governmental organization Americas Watch on the facts, according to which more than 150 victims took refuge in the Princess Hotel and "when everything was over, a PRD sympathizer, Donaciano Rojas Lozano, lay dead". The rest of the NGO report refers to the injuries suffered by other demonstrators and their arrest.

58. The subsequent communications of the parties relate exclusively to the investigation into the death of Donacio Rojas de la Cruz, so that the information available to the Commission on this point is limited to what is set out above. The State alleged that the leaders of the march were bearing arms and that there was a confrontation between the demonstrators and the security forces, none of which was disputed by the petitioners. The Commission notes that neither of the parties laid blame on any person or group for the death of Rojas de la Cruz: the petitioners said that "he was killed by blows during the repression", and the State said that "he died as a result of blows received".

59. In the absence of conclusive elements to establish the manner in which these events occurred, the IACHR cannot determine whether the Mexican State is responsible for the death of Donacio Rojas de la Cruz. On the other hand, there is information available on the investigation into the facts, and this will be analyzed in the respective section of this report.

v. Florentino Salmerón García

60. In its reference to Florentino Salmerón García, the complaint indicates only that "he was killed by a shot in the back during the repression at Zihuatanejo". For its part, the State replied:

Florentino Salmerón García was killed as a result of the confrontation between the forces of public order and a group of PRD marchers, last February 27, at Km 227+100 on the national highway from Zihuatanejo...that event resulted from the insistence of a group of PRD members to illegally take over the international airport of the city, which constituted a crime against security, public order and the normal functioning of communication routes, which was prevented by the motorized police force.

61. The observations of the petitioners declared that the Government's response had a number of "serious omissions". They referred to statements by eyewitnesses to the events, José Martínez Espino and José Reyes Ramírez made before the Federal Ministerio Público on March 2, 1990, according to which Florentino Salmerón García died "from bullets fired by the police". In their communication of January 21, 1998, the petitioners declared the following:

There are contradictions between what was held by the state justice authorities and the Director of Public Security. On one hand, the ballistics report says that the bullet fired against Florentino came from a weapon with a caliber different from that of the arms carried by members of the Public Security forces, while on the other the Director of Public Security reported that on this occasion his officers were unarmed.

62. The Commission notes that the data available are not enough to clarify the events. The information provided by the parties, in fact, leads to confusion and uncertainty. Under these

circumstances, the IACHR cannot hold the Mexican State responsible for the death of Florentino Salmerón García, although it will analyze below the matter of the investigation into the facts.

vi. Leonel Felipe Dorantes

63. According to the complaint, on March 6, 1990, a contingent of between 250 and 500 police officers, armed with guns and rifles occupied the municipality of Cruz Grande. At 03:15 in the morning on that day, according to the complaint, some 30 judicial police opened fire--without warning or motive--against a kiosk near the municipal palace. Leonel Felipe Dorantes was at that time attempting to leave the kiosk to find refuge in the municipal palace, when he was shot. The petitioners stated:

All indications are that he was fatally wounded in the back by a shot fired at the kiosk, to judge not only from the description of the events, but also from the face-down position in which his body lay before it was retrieved.

64. In turn, the Mexican State noted that the order to clear the municipal palace of Cruz Grande was given on March 6, 1990, 80 days after it had been occupied by sympathizers of the PRD. The security forces, it claims, were "received with gunfire from various weapons, coming from the roofs of houses, from the central garden, and from the municipal palace itself, and the police forces responded to these attacks". The State reported that this confrontation cost the lives of three police officers, Javier Morán Oropeza, Andrés Joaquín González and Eleuterio García Bustos. It added that the ballistics report, the autopsies and the forensic reports, as well as the death certificate of Leonel Felipe Dorantes, provide full evidence of these facts. Finally, the State claimed, in reference to the death of Dorantes, that "no citizen nor any member or leader of the PRD has presented any complaint to the Ministerio Público del Fuero Común".

65. The communication sent by the PRD on September 29, 1990, disputed the State's version as to the manner in which the events in Cruz Grande occurred on March 6, 1990. The petitioners maintain that "the public prosecutor's testimony on which the investigation report is based...is singularly deficient in light of the detailed report of the events that was prepared by the eight commissioners of the National Executive Committee of the PRD", on which the complaint to the IACHR was based.

66. As in the other cases analyzed above, the IACHR is unable to determine exactly how Leonel Felipe Dorantes met his death, and consequently, it cannot assign responsibility to the Mexican State for that event. On the other hand, the Commission considers that the available evidence merits a serious and conclusive investigation by the State, which will be the subject of analysis later on in this report.

vii. Felix Octavio Ventura Ramos

67. The petitioners claim as follows:

On Saturday, March 17, Felix Ventura was kidnapped from his home in the district of Conachinicha, municipality of Tlacoachistlahuaca, and was beaten to death by a group of

criminals led by Daniel Onofre, an agent of Ruiz Massieu who had been sent with dictatorial powers to preside over the municipal government.

68. The Mexican State responded that this was a false claim, since in the preliminary investigation report ABAS/086/990, it had been stated that the death of Ventura Ramos arose from an argument inside a canteen with two men, Martínez Cruz and Luna Santiago. The State referred to the statements of "various PRD members, including the President of the Municipal Committee, Mr. Alberto Jesús López", to the effect that Martínez Cruz and Luna Santiago beat Ventura Ramos to death with clubs, and that they were not active in any political party.

69. The communication of September 29, 1990, from the petitioners does not comment on the Ventura Ramos case. The IACHR notes that on page 57 of that communication, there is a heading underlined, which indicates "4.5 Tlacoachistlahuaca", followed by a blank space. Subsequently, in their communication of January 20, 1998, the petitioners maintained that:

The arrest orders against the presumed persons responsible for these crimes, Juan Luna Santiago and Hernando Martínez de la Cruz, were not carried out...it is noteworthy that authorities have put out a version of the facts to the effect that Felix was assassinated while drinking alcoholic beverages, in order to discredit the political nature of the murder.

70. Again, it is difficult to establish a conclusive version of the facts under analysis. In effect, the petitioners alleged initially that Ventura Ramos was assassinated by a group under the direction of Daniel Onofre; in light of the State's version, they chose first of all not to contest it, and later they referred to the persons that the State held responsible for the murder of Ventura Ramos. Although they deny that the victim was drunk, and reiterate the political nature of the killing, they do not again refer to Onofre, the supposed moral instigator, nor do they explain the reason for this omission. This is incomprehensible, given that the direction of Onofre would confirm a political motive, since he was allegedly an agent of the Governor of Guerrero.

71. For the same reasons repeated above, the IACHR does not have the evidence to conclude that the Mexican State is responsible for the death of Félix Octavio Ventura Ramos, and will refer later on to the investigation of the facts.

viii. Andrés de la Cruz Zapacala and Daniel López Alvarez

72. The first mention that the petitioners made of the two persons named above was in their communication of January 20, 1998, to the Commission. They stated that the CNDH had asked for the case to be re-opened, and that it had been denounced in Mexico as part of the events surrounding the clearing of occupiers from the municipal palace of Ometepec on March 6, 1990. The petitioners claimed the following in their communication to the IACHR:

At this time the whereabouts of the two persons who disappeared is unknown, and Mrs. Consuelo Zapacala, the mother of Andrés de la Cruz Zapacala, is still searching for her son. As for the family of Daniel López Alvarez, they have left the region, and their address is not known.

73. The first communication from the State, following the one referred to above, was sent to the Commission on June 10, 1998; it contained no reference to the two persons who had presumably disappeared. The petitioners also failed to mention this question in their last communication to the Commission, which was sent in on July 15, 1998.

74. The Commission has not been provided with the information necessary to determine that the persons mentioned above were victims of forced disappearance. The communication of January 20, 1998, is limited to stating that Zapacala and López Alvarez had disappeared, but it contains no data that would suggest that they had been illegally deprived of their liberty by agents of the Mexican State, or under the connivance of those agents, nor does it hint at any responsibility for hiding those facts. Given the State's silence in its response to that note, the petitioners did not return to the question, which would suggest that they have desisted in this aspect of their complaint. The IACHR does not have the evidence needed to examine the question, and therefore must set it aside without further consideration.

C. Investigation of the alleged violations of the right to life: right to judicial guarantees (Article 8) and to judicial protection (Article 25), in connection with the obligation contained in Article 1(1).

75. International human rights law has established that any violation of the right to life requires that the respective State fulfill its duty to guarantee, which includes undertaking a judicial investigation in the hands of a criminal tribunal appointed to "process, prosecute and punish those found responsible for such violations".[FN7] The foregoing analysis and conclusions show that in the present case it has not been possible to establish the responsibility of the State for violations of the right to life of the persons named as victims by the petitioners. Nevertheless, in several of those cases this outcome appears to be linked to the lack of conclusive information on the circumstances in which the presumed victims lost their lives.

[FN7] Human Rights Committee, *Bautista v. Colombia*, Decision of October 27, 1995, par. 8.6. See also in that regard, IACHR, Annual Report 1992-93, Reports 28/92 (Argentina) and 29/92 (Uruguay). Also, the Inter-American Court of Human Rights has established that "the State is obligated to investigate every situation involving a violation of the rights protected by the Convention". I-A Court, *Velásquez Rodríguez case*, Judgment of July 29, 1988, par. 176.

76. The complaints alleging violation of the right to life in the present case warrant a serious, full and exhaustive investigation by the competent bodies of the Mexican State. In this section, the Commission will assess whether the Mexican State has fulfilled that obligation. The information available in the file refers to a follow-up of the recommendations issued by the CNDH,[FN8] which will serve as a basis for the present analysis, following the chronological order of the respective events.

[FN8] The National Commission of Human Rights was created in Mexico by a federal law that entered into force on June 1992. That law provides that the CNDH is a "decentralized organ,

with juridical personality and its own patrimony, with the essential goal of protecting, observing, promoting, studying and disseminating human rights established in the Mexican legal system" (Art. 2). Among its functions, the CNDH may adopt recommendations to "indicate those measures that shall be taken for the effective restitution of the victims in the enjoyment of their fundamental rights and, where applicable, for the reparation of the damages that may have been inflicted on them". (Art. 44)

i. CNDH Recommendation 255/93

77. The deaths of Clemente Ayala Torres, José Manuel Palacios Cárdenas and Bernabé Flores Torreblanca in January 1990 originated investigation TAB/I/0003/90, in which the brothers Pedro and Roberto Vargas Madero appear as the presumed culprits. In 1993, the CNDH recommended that "the necessary steps should be taken to clear up the deficiencies" in the above mentioned investigation report, that "the parties responsible be identified and verified", and that extradition proceedings should be renewed against the Vargas Madero brothers, with the authorities of United States of America. The CNDH recommended moreover that the Attorney General of Guerrero should undertake an internal investigation to determine the responsibility of agents of the State judicial police who had participated in the arrest and transfer of the presumed murder victims, as well as the responsibility of officials of the public ministry for their failure to produce a proper and complete investigation report.

78. The State reported that Recommendation 255/93 was "accepted"[FN9] on January 12, 1994, by the Attorney General of Guerrero. Thereupon that official instructed the general director of prosecutions and the general director of investigations to carry out the recommendations of the CNDH⁸. The State prepared a report on the actions taken by those officials, including: the opening of an internal investigation (January 1994); the request for documents from the competent court for purposes of reviewing the application for extradition of the Vargas brothers (February 1994); and issuance of orders to public prosecutors throughout the country, seeking their collaboration in carrying out the arrest order against the suspects (September 1996).

[FN9] Article 46 of the CNDH law provides:

The recommendation shall be public and autonomous, and its nature shall not be imperative for the authority or civil servant it is addressed to; accordingly, it may not in and of itself nullify, modify or render ineffective the resolutions or acts against which the claim or petition was presented. In any case, once it is received, the authority or civil servant in question shall inform, within fifteen working days of notification, if he accepts said recommendation. If such were the case, he shall submit, in an additional period of fifteen working days, the respective evidence of compliance with the recommendation. This time period may be extended when the nature of the recommendation so allows.

79. With respect to the persons investigated for shortcomings in the investigation report, the State reported that in May 1994 the general directorate of initial investigations of the Attorney

General's office of Guerrero determined that "the statute of limitations for bringing criminal charges against attorneys Raúl Chacón Montañez, Cristino Ruiz Guzmán, Juan García Rosales, Juan José Arciniega Cisneros and Felipe Alberto Ferrer García Junco has expired, since the events took place on January 1, 1990". The assistant inspector of the CNDH, Juan Manuel Orozco Barranco, stated that the resolution was in order, because the time limit for prosecution has expired."

80. The State proceeded to describe a number of actions taken between January 1997 and February 1998. These included holding working meetings between the general director of monitoring, control and evaluation of human rights of the CNDH and the authorities of the Guerrero Attorney General's office, to review outstanding questions relating to the recommendations "for which has been a delay in compliance". In the last of those meetings, the Attorney General of Guerrero requested that Recommendation 255/93 be considered as fulfilled, "in light of the many steps and requests for collaboration in securing the capture of the brothers Pedro and Roberto Vargas Madero", and because the request for extradition submitted on Sept. 18, 1991 to the Government of the United States of America was rejected and returned on May 7, 1993. By virtue of agreement number one of 10 February 1998, the CNDH agreed to this request and declared that Recommendation 255/93 should be considered "fully implemented."

81. The Commission notes that more than three years elapsed between the death of Clemente Ayala Torres, José Manuel Palacios Cárdenas and Bernabé Flores Torreblanca and decision by the competent body of the Mexican State to "accept" the recommendation of the CNDH. During that lapse of three years, the suspects fled, and the CNDH itself found that there were elements for considering that agents of the State were responsible for this fact, as well as for the inadequate preliminary investigation into the homicides referred to. Eight years after the commission of those crimes, the criminal responsibility of their perpetrators has not been judicially established, the suspects were never found, and the officials supposedly responsible for their remaining at-large and for the inadequate procedures that allowed them to escape justice, were beneficiaries of the statute of limitations.

82. Without examining the grounds for considering that the recommendations of the CNDH were "totally fulfilled", the information supplied by the parties shows that serious crimes have gone unpunished.

ii. CNDH Recommendation 97/93

83. The death of Santos Hernández García in Coyuca de Benítez lead to preliminary investigation report TAB/IV/011/990. The CNDH recommended the following: that the body be exhumed to determine "the true cause of death"; that any internal investigation be conducted within the Guerrero Attorney General's office to determine the responsibility of agents of the public ministry who were involved in that preliminary investigation; and that there be an investigation of the "lack of activity" of the judicial police who were responsible for investigating the facts of the case.

84. According to the information supplied by the Mexican State, Recommendation 97/93 was accepted on July 28, 1993, by the Guerrero PGJ, which issued instructions to carry it out. The

body of Santos Hernández García was exhumed an autopsy was performed in October 1993, and in January 1996 the CNDH proposed that a panel of experts be convened to exchange opinions with the forensic medical experts who had been involved. The director of forensic services of Guerrero replied to the notice convoking the panel, stating that "the doctors are no longer in the service of this institution, for which reason is not possible to notify them, and their present address is unknown". In October 1996, the PGJ informed the CNDH that the professionals convened, Edgar Lemus Delgado, Jesús Maqueda Mendoza and César Aguilar Zamora had terminated their contractual relationship with the forensic services in April 1993, February 1994 and January 1995, respectively.

85. As to the persons presumably responsible for the defective preliminary investigation report and for negligence on the part of the judicial police in investigating the case, the PGJ found that "the statute of limitations on criminal action applies to the lawyers Angel, Solache Pineda, Gabino Palma Hernández and Gilberto Terraza Santiago because the events occurred on January 20, 1990". The CNDH expressed its opinion in August 1994 to the effect that the resolution of the PGJ was in order.

86. On February 20, 1995, the head of the PGJ was asked to consider the failure to take criminal action and the decision to set aside the preliminary investigation report on the death of Santos Hernández García, "because the investigation of the police officer Matías Espinoza Barreto concluded that the victim had been drowned, as demonstrated by information provided by his sister to that effect".

87. The State recounted the working meetings that had been held by officials of the PGJ and the CNDH during 1997 and 1998. Those meetings produced the following results: a promise on the part of the State authorities of Guerrero that "all steps necessary will be taken to ensure that the preliminary investigation reports will be completed, administrative procedures will be taken, and arrest orders will be carried out" (June 1997); the conclusion that the Recommendations of the CNDH "are behind in their fulfillment" (July 1997); and the offer of the PGJ to "order a speed up in the process of preparing the preliminary investigation report TAB/IV/011/90" (January 1998).

88. Despite the length of time elapsed, and the involvement of various organs of the Mexican State, it has not been possible to date to determine definitively the cause of death of Santos Hernández García. The IACHR considers that the statement by the sister to the effect that the death of Santos Hernández García might have been caused by "a possible accident" cannot be taken as serious evidence, since the Mexican authorities confirm that they are continuing with the investigation.

89. The State highlights the efficiency and willingness of the Mexican authorities in clearing up the facts and punishing those responsible. Yet the results show precisely the opposite: the statute of limitations has been applied in favor of those suspected of failing to conduct a proper investigation of the facts, and it was not even possible to find the three medical experts who had taken part in the exhumation and autopsy of the body. The last of those professionals to leave the forensic medical service did so only in January 1995, that is to say, one and a half years after the report was prepared, and one year before the CNDH decided to hold a medical panel. The PGJ

simply reported that it could not find the experts, without showing that it had made any effort in this regard, and the CNDH accepted that explanation without objection. As to the expiration of the time limit for bringing criminal charges against the public officials named as suspects in other crimes linked to the failure to determine the facts and punish those responsible, the CNDH merely acquiesced in the situation without insisting that the investigation be continued, on the grounds that the statute limitations would make it impossible to prosecute the guilty parties.

90. The CNDH considered it necessary in 1993 to establish "the true cause of death" of Santos Hernández García. Yet eight years after those events, the authorities of that entity are still meeting with the PGJ of Guerrero to "speed up" the investigations. In the meantime, those responsible for the murder and for the failed investigation have enjoyed total impunity.

iii. CNDH Recommendation 116/93

91. The judicial authorities of the State of Guerrero opened criminal case 01/990 into the assassination of Adelaido Barrera Sánchez, Ismael Reyes de la Cruz and Antonio Pablo Terrero on January 22 1990 in El Durazno. Four years later, the CNDH recommended to the PGJ of Guerrero that "it should proceed immediately to carry out the arrest orders" that had been issued by the competent judge and that "it turn over to the proper jurisdictional body the suspects Gabriel Marcos Ramírez, Rogelio de la Cruz de la Cruz and Juventino Casimiro Muñoz." It recommended furthermore that the PGJ undertake an internal investigation to determine the reason for noncompliance with those judicial orders.

92. The public ministry of Guerrero accepted Recommendation 116/93 in July 1993, and issued instructions to carry it out. In September of that year, the director general of the judicial police of Guerrero reported on "progress made in the efforts to locate the suspects", in which he stated that "until now there has been no success". In April 1994, the PGJ decided not to proceed with criminal action against David Morales Palma, who was group chief of the judicial police at the time the events were committed, "since the suspects were no longer in this State". The decision was notified to the CNDH, which informed the PGJ on August 17, 1994 its opinion that the decision was in order.

93. In January 1995, the PGJ requested the Executive Director of the federal voter's registry of Mexico to verify into the voter's list the names of the suspects Ramírez, De la Cruz and Muñoz. The coordinator of judicial studies for the federal elections Institute (IFE) "reported that it was impossible for that Institute to meet the request." In September that year, the PGJ requested the cooperation of its counterparts in the other States of Mexico and the Federal District, as well as the Attorney General (PGR), in order to carry out the order for arrest of the suspects. The only trail that was thrown up by the investigation turned out to be useless: in March 1996, information was received as to the possible whereabouts of Rogelio de la Cruz, but it turned out that this was another person with the same surname who worked in the city of Chipalcingo as a police guard. There were repeated requests for collaboration made to the PGR, the PGJDF (Public Ministry of the Federal District) and the state public ministries of Mexico during 1996 and 1997 without success.

94. The Director of the Judicial Police of Guerrero informed the PGJ in November of 1997 of "the reasons that have prevented compliance with the arrest order" and explained that "verbal portraits have been ordered to facilitate this action". The last working meeting between the authorities of the CNDH and the PGJ was held on January 30, 1998, at which the head of the latter office declared that he would proceed immediately to order that execution of the arrest order against the suspects be expedited.

95. As in the previous cases, the real investigation was only undertaken recently, three years after the recommendations were issued by the CNDH; also, these actions have to date borne little fruit. Here again it is apparent that there has been a general negligence and ineffectiveness, as demonstrated by the unjustifiable delay of the public ministry in carrying out the arrest orders, and in preparing the "verbal portraits" after almost eight years had passed since the murders were committed. Also, the PGJ has demonstrated a passive and complacent attitude in accepting the decision not to take criminal action against the head of the judicial police of the district where the events occurred, despite the fact that such a step compromised the possibility of investigating the events and punishing those responsible.

96. The result is the same as was noted in the previous cases above: serious crimes remain unsolved and their perpetrators enjoy impunity, as have those who failed in their duty to effectively investigate the facts.

iv. CNDH Recommendation 112/93

97. The PGJ of Guerrero launched initial investigation TAB/I/771/90 to determine the circumstances surrounding the death of Donacio Rojas de la Cruz, which occurred in February 1990 in Acapulco. That investigation was subsequently set aside, but the CNDH considered that there was sufficient evidence to continue it, and therefore recommended in 1993 that "the investigation be re-opened and that all steps necessary be taken in order to identify the person or persons responsible for the wounding that caused the death of Mr. Donacio Rojas de la Cruz...and that those persons be prosecuted for this crime". Recommendation 112/93 also called for investigation into the improper conduct of prosecutors Cristino Ruiz Guzmán, Juan José Arciniega Cisneros and Arturo Deloya Fonseca, all whom were agents of the public ministry of Guerrero and were involved in proceedings concerning the initial investigation. Finally, the CNDH recommend the following:

That an investigation be carried out into the conduct of Pedro Ramírez Millán, General Legal Director of the Guerrero Public Ministry, Linda Luz Salgado Bautista and Francisco Carmen Méndez Arciniega, assistant officers of the public ministry of that same institution, who approved the DECISION NOT TO PROSECUTE in the case in question, and to set the case aside, when such a decision was out of order and that if those persons are found to have committed administrative or criminal misdeeds proceedings should be taken against them according to law (capitals in the original).

98. Recommendation 112/93 was accepted by the PGJ of Guerrero on July 29, 1993, as a result of which prior investigation TAB/I/771/90 was reopened and the corresponding procedures were initiated. With respect to determining the responsibility of all the officials of

that institution named by the CNDH, the PGJ reported that "the time limit for taking criminal action for the commission of offenses against the administration of justice has expired, since the events occurred on February 27, 1990". The first general inspector of the CNDH found that the decision not to take criminal action against those officials was in order, "in light of the statute of limitations".

99. In November 1995, the deputy Attorney General of Guerrero approached the general director of preliminary investigations "to request a report on progress in the preliminary investigation TAB/I/771/90". In October 1996, the PGJ reported to the CNDH that it had been unable "to find the preliminary investigation report referred to in the archives of the institution."

100. During 1997 and early 1998, working meetings were held between officials of the CNDH and the PGJ, as a result of which it was decided: to review the recommendations "that are encountering delays in that body", and the PGJ agreed "to submit promptly documentation showing that those recommendations have been put into effect" (6 April 1997); "to review the outstanding issues", with the PGJ offering "to proceed promptly to submit the corresponding documentation in evidence of compliance" (July 11, 1997); and again to "review progress" on Recommendation 112/93, to which end the PGJ "offered to order a speed-up in preparing the preliminary investigation report TAB/I/771/90 on the crime of homicide committed against Donacio Rojas de la Cruz."

101. The Commission notes that the tortuous proceedings described above produced no progress in the investigation into the death of Donacio Rojas de la Cruz, but rather that it has receded. In fact, the persons who appear to have been responsible for crimes against the administration of justice were allowed to benefit from the statute of limitations, and the CNDH accepted that result without objection. If the PGJ had conducted any type of internal investigation to clarify the facts--whether at its own initiative or at that of the CNDH--the guilty parties still might not have been subject to punishment under criminal law, but it would at least have been possible to dismiss them and to avoid absolute impunity for such crimes.

102. Equally telling is the disappearance of the file containing the initial investigation report. The Commission is not aware of any investigation carried out by the PGJ to clear up this serious fact, and to punish those responsible; nor is it aware of any initiatives or requests for information from the CNDH in this regard, although it has full powers to do so.[FN10] In this way there has been full impunity both for the perpetrators of the murder and for those who obstructed the investigation of that murder; and yet at the very same time, the CNDH and the PGJ have been holding meetings to "speed up the process".

[FN10] The second paragraph of Article 67 of the CNDH law establishes that:
The State and municipal authorities shall supply the National Commission of Human Rights with the information and data that said organ requests, in the terms set forth by this law.

v. CNDH Recommendation 210/92

103. The preliminary investigation report AZUE/110/90 on the death of Florentino Salmerón García had been set aside within the PGJ. The CNDH recommended that that report should be reopened and all steps considered necessary should be taken to complete the report and that once this was done, it should proceed according to law. Recommendation 210/92 also requested the PGJ to investigate "the likely responsibility of public servants who failed to take the necessary measures for proper preparation of preliminary investigation AZUE/110/90, and that if there is sufficient evidence, the responsibility of those persons should be established according to the law". The PGJ accepted that recommendation in November 1992, and reported that it had taken criminal action and an restitution of damages against Nicolás Nazario León as the person presumed to be responsible for the murder of Florentino Salmerón García and for other crimes, to which end the competent judge issued the respective arrest order on December 27, 1992.

104. The PGJ of Guerrero reported in March 1993 that the director general of preliminary investigations had ordered to set aside the internal investigation on the improper nature of the proceedings in preliminary investigation AZUE/110/90. The reason for that decision was that the preliminary investigation in question had been delivered to the Criminal Judge of First Instance of the Judicial District of Teniente José Azueta in November 16, 1992, requesting that action for criminal prosecution and reparation of damages be undertaken against Nicolás Nazario León.

105. In June 1993, the Commander of the Judicial Police of Guerrero reported that Nicolás Nazario León had been a member of the Motorized Police of that State, and had been dismissed on January 3, 1992. The senior police official indicated that there was unofficial information to the effect that León had been involved in illegal activities, and that he had been wounded in a confrontation with the police; other "rumors and family versions" indicated that he had died of his wounds. Finally, the PGJ reported that the death certificate of the former police officer had been submitted in the cases 223/993 and 003-III/992, for which reason the competent judge of the judicial district of Azueta declared the criminal proceedings against Nicolás Nazario León closed on February 10, 1993. The PGJ sent the CNDH a copy of the respective files, stating that "this recommendation may now be deemed FULLY IMPLEMENTED" (capitals in the original).

106. The Mexican State did not report what was the result of the request of the PGJ to the CNDH, so that it is not possible to determine whether the CNDH agreed that its Recommendation 210/92 had been complied with. Regardless of that, it is clear that the death of an accused person cannot conclude the investigation of the murder in this case, since the Mexican jurisdictional bodies never determined definitively the circumstances under which Rojas de la Cruz had died, i.e. whether Nicolás Nazario León was the actual perpetrator (or one of the perpetrators), or whether there were one or more intellectual instigators.

107. It is noteworthy that León had continued to be a member of the motorized police--and that he rose to the rank of Group Commander--even after an investigation had been undertaken into serious acts that appeared to implicate him, and that he was only dismissed some two years after the events occurred. Although the Mexican State did not spell out the reasons for his dismissal, it did supply the details provided by the PGJ about the criminal activities of which he was suspected from the time he left the police force until his death. There is a clear contradiction in the conduct of the PGJ: on one hand, it closed the preliminary investigation, presumably for lack of evidence that would justify its continuation; while on the other hand, once the death of

the former police officer León was confirmed, it considered that the investigation was concluded, despite the fact that he was never convicted, precisely because there was insufficient information to proceed with the preliminary investigation.

108. The grounds on which the PGJ stated that the preliminary investigation was "duly prepared" rely on the fact that criminal proceedings were initiated against Nicolás Nazario León. The information on the record reveals that the PGJ took this decision in November 1992, after the CNDH had so recommended. It is evident therefore that the decision does not absolve officials of the Public Ministry of Guerrero of possible responsibility, if they failed to comply with their legal obligation to institute the preliminary investigation AZUE/110/90, conduct which is punishable under Mexican law as a crime against the administration of justice. There is no information on the record concerning the reaction of the CNDH to these circumstances.

109. As with the cases analyzed earlier, the actions taken by the Mexican authorities were insufficient to prevent impunity for those responsible for the serious crimes denounced.

vi. CNDH Recommendation 114/93

110. The Public Ministry of Guerrero opened preliminary investigation ALLE/01/04/990 into the death of Leonel Felipe Dorantes, which occurred in March 1990 in Guerrero. The CNDH intervened in 1993, and recommended to the PGJ that "the preliminary investigation" "be duly completed" and that the necessary arrest orders be issued, and carried out immediately. In that document, the CNDH recommended the following:

That the appropriate administrative investigation proceedings be undertaken, to determine the reasons for which no steps were taken for a period of two years in the preliminary investigation ALLE/01/43/990, and to discover why the State Judicial Police did not investigate the facts, despite the request of the Public Ministry. If applicable, to determine the appropriate disciplinary measures to be taken against those public servants found responsible. In addition, if it is apparent that a crime was committed, to undertake the appropriate preliminary investigation, and to proceed with prosecution and the issuing of arrest orders, and to carry these out immediately.

111. The recommendation was accepted on August 2, 1993, by the PGJ of Guerrero, the head of which ordered that steps be taken to conclude the preliminary investigation, and to open an internal investigation as recommended by the CNDH. In August 1993, the PGJ reported that it had launched an investigation against the lawyers Adalid Bautista Castro and Felipe Torres Miranda, former officials of the Public Ministry of the Judicial District of Allende, and the investigation of the "probable responsibility of the Commander of the Judicial Police on duty at the place of the events". With respect to the first, the PGJ determined that the time limits for taking criminal action had expired, "since the events occurred in March 1990". For its part, the CNDH concluded that that resolution was not in order, since the events that motivated the complaint took place on March 28, 1992, and the respective ministerial action was undertaken on August 5, 1993.

112. The PGJ reported on other measures taken between September 1994 and June 1997, as "follow up" to Recommendation 114/03, consisting primarily of reviewing the documents in

various parts of the Public Ministry of Guerrero. In September 1995, the PGJ sent notices to Messrs. Bartolo Felipe Carmona and Eloy Rodríguez Felipe to the effect that within fifteen days they should "show cause to justify in law their decision NOT TO PROCEED WITH PROSECUTION as called for in the preliminary investigation report (capitals in the original). The PGJ provided the following information:

On July 19, 1996, the official of the Public Ministry of the Judicial District of Allende determined to return that investigation, with instructions not to prosecute, to the Advising Legal Director of that institution, on the grounds that the requirements established in Article 16 of the National Constitution had not been met.[FN11]

[FN11] Article 16 of the Constitution of Mexico establishes:

A person shall not be disturbed in his family life, home, papers or possessions, except by virtue of a written order from the competent authority, that shall provide the grounds and legal cause for the procedure. Arrest warrants may only be issued by judicial authorities with a preexisting denunciation, accusation or lawsuit based on an act defined by law as a crime, which carries with it a penalty of deprivation of liberty, and where the information available indicates that there are elements to conform the criminal definition and possible responsibility of the accused.

The rest of the provisions of said Article pertain to the carrying out of arrest warrants, flagrancy, the maximum period of time during which a detainee may remain arrested by the public ministry, the inviolability of correspondence and the home, etc.

113. The meetings held between the authorities of the PGJ and the CNDH produced the following result: review of the recommendations "that are slow in their progress and compliance", offering to take the necessary steps to complete the preliminary investigations, administrative proceedings and execution of outstanding arrest orders (June 1997); the PGJ agreed "to submit promptly documentation showing evidence of progress and compliance" (July 1997); the PGJ offered "to speed up the Resolution of the Advising Legal Directorate of that institution, referring to the preliminary investigation ALLE/01/043/990, undertaken into the murder of Leonel Felipe Dorantes" (January 1998).

114. The information available on the record is not clear with respect to the final decision of the PGJ on initiating prosecution, nor on the position of the CNDH on this point. What emerge is that the investigation recommended by the CNDH was never conducted, and that the countless meetings between officials of the two institutions produced no other result than to maintain the status quo indefinitely. Although the CNDH considered that the preliminary investigation had been improperly conducted, no one has been investigated on that account to date; as to the commander of the Judicial Police, who was held "probably responsible" by the CNDH, his name was never mentioned again. The only certain thing is that to date the authorities have not determined who was responsible for the death of Leonel Felipe Dorantes.

vii. CNDH Recommendation 22/93

115. Investigation ABAS/086/990 was opened by the PGJ to investigate the murder of Félix Octavio Ventura Ramos, which occurred March 17, 1990, in the district of Conachinicha, municipality of Tlacoachistlahuaca. The CNDH recommended that the PGJ re-open that investigation, and that "it be assigned to a central agency of the Public Ministry". It also recommended that an internal investigation be launched against Adalid Bautista Castro, an agent of the PGJ, "since he inexplicably failed to undertake the actions that were essential to completion of the investigation in question". Recommendation 22/93 of the CNDH considered, as well, that the PGJ should investigate the group chief of the Judicial Police of the city of Ometepec, since "he failed to render the information portion of the investigation conducted into the murder of Mr. Félix Octavio Ventura Ramos, as was requested by the Social Representative on March 23, 1990".

116. The PGJ advised the CNDH that on March 5, 1993, it was decided to close the internal investigation against Adalid Bautista Castro and Lamberto Bravo Cortés, group chief of the Judicial Police, "because those public servants have left the service of the institution and there are insufficient grounds for proceeding against them".

117. On the other hand, the PGJ prepared a detailed description of the steps taken since November 1992 to carry out the arrest orders against the murder suspects Juan Luna Santiago and Hernando Martínez de la Cruz. Those steps included: issuance of various notices to the General Director of the Judicial Police of Guerrero and the respective reports; numerous "search and capture" actions; request to the Federal Elections Institute to supply data on the fugitives from the electoral rolls; and repeated requests for cooperation sent to the other attorneys general of the country. All of these actions turned out to be fruitless, and in November 1997 the Judicial Police of Guerrero decided to prepare identikits (retratos hablados) of the fugitives.

118. The information available on the record makes no mention of the response from the CNDH to the decision of the PGJ to terminate the internal investigation, nor does it provide the reasons for that decision. This attitude is inexplicable, since Recommendation 22/93 was based on two questions that the PGJ did not even mention: the failure to take fundamental steps in the preliminary investigation, and the failure of the chief of the judicial police to inform his superiors. Recalling that the criminals have not been located to date, the PGJ itself should have taken a greater interest in determining the responsibility of its former officials and in proceeding with the investigation into their actions; and in the absence of such interest, the CNDH could have used its legal powers to obtain information.

119. As to the actions taken to arrest the suspects, it is noteworthy that identikits were prepared only some eight years after the murder was committed (see iii above). Without going into those circumstances, the Commission notes in this case a repetition of the pattern observed in the previous cases: the actions of the Mexican authorities produced no result while those responsible have enjoyed complete impunity.

120. The information summarized above must be analyzed in light of the rights to judicial guarantees and judicial protection, and in relation to the general duty of the State to respect and guarantee the rights enshrined in the American Convention:

Article 1(1)

The States parties to this Convention undertake to respect to rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction of the free and full exercise of those rights and freedoms, without any discrimination for reasons of race , color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

Article 8(1)

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.

Article 25(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.

121. The Mexican State maintains that "it has not been possible to demonstrate any act or omission attributable to any public authority of the federal or local government"; that "it is undertaken all the necessary actions to punish those responsible"; that the competent authorities have undertaken various lines of action to carry out the arrest orders"; and finally, That the public authorities have shown no tolerance towards persons acting outside the law. For their part, the petitioners maintain that the State is responsible because the perpetrators of the violations have not been punished, nor have the victims been restored in their rights, and that all of this is due to the manner in which the competent authorities conducted themselves.

122. The analysis made by the Commission as recorded above reveals that family members did not receive a hearing with the due guarantees and within a reasonable period of time for determining the circumstances of the death of the persons named in this report, and for the punishment of those responsible and compensation for the violations. In fact, more than eight years have passed since the crimes in question, and to date not one single person has been identified as having been punished through either criminal or administrative proceedings, despite the fact that State agencies have established that those persons were murdered and that there were grounds to investigate public officials as material authors in some cases, and as accomplices in other cases.

123. Nor have the family members enjoyed the legal protection that the Mexican State is bound to provide them, since the proceedings undertaken by the PGJ of Guerrero, by the competent judges, and by the CNDH were neither simple nor prompt, and above all they were not effective. A picture of impunity emerges from the information supplied by the Mexican State itself.

124. The jurisprudence of the Inter-American system is clear with respect to the obligations assumed by the States parties to the American Convention. The Inter-American Court of Human Rights has stated the following:

[Article 1(1)] charges the States Parties with the fundamental duty to respect and guarantee the rights recognized in the Convention. Any Impairment of those rights which can be attributed under the rules of international law to the action or omission of any public authority constitutes an act imputable to the State, which assumes responsibility in the terms provided by the Convention.

In certain circumstances, it may be difficult to investigate acts that violate an individual's rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.

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 free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.[FN12]

[FN12] I-A Court of Human Rights, Velásquez Rodríguez case, Judgment of July 29, 1988, pars 164, 177 and 176, respectively.

125. Although Mexican jurisdictional bodies have not determined the direct responsibility of the perpetrators or the complicity of State officials, the State may be held equally responsible if it fails to comply with the obligations set forth in Article 1(1) of the American Convention. The Commission has pronounced itself as follows:

The fact that no one has been convicted in the case or that, despite the efforts made, it was impossible to establish the facts does not constitute a failure to fulfil the obligation to investigate. However, in order to establish in a convincing and credible manner that this result was not the product of a mechanical implementation of certain procedural formalities without the State genuinely seeking the truth, the State must show that it carried out an immediate, exhaustive and impartial investigation.[FN13]

[FN13] IACHR, Annual Report 1997, Report N° 55/97, case 11.137 (Juan Carlos Abella and others), Argentina, OEA/Ser.L/V/II.98 Doc.6 rev, April 13, 1998, par. 412, p. 370.

126. The Inter-American Court has developed its jurisprudence on this matter in the following terms:

In order to establish that a violation of the rights enshrined in the Convention has occurred, it is not necessary to determine, as in the case of domestic criminal law, the guilt or the intent of its authors, nor is it necessary to identify individually the agents to whom those violations may be attributed. It is sufficient to demonstrate that the public authorities have supported or tolerated the violation of the rights recognized in the convention. Moreover, the international responsibility of the State is also engaged if it does not take the necessary actions, in accordance with its own law, to identify and, as appropriate, to punish the perpetrators of those violations.[FN14]

[FN14] I-A Court, Paniagua Morales and others, judgment of March 8, 1998, par. 91. In that case, the Republic of Guatemala was sued before the Inter-American Court for acts of arbitrary and illegal detention, inhumane treatment, torture and murder committed by agents of that State. Reference must also be made of paragraph 95 of the same judgment of the Court:

Even though this Court considers that the violations denounced may not be attributed to a State policy, not that high governmental authorities were informed of those actions, such circumstances are irrelevant in establishing the international responsibility of Guatemala, as a State party to the Convention, since under this instrument it was bound to guarantee all persons, as the victims in this case, the full and free exercise of their human rights. (unofficial translation)

127. The IACHR has held that it is the non-delegable duty of the State to investigate, prosecute and punish human rights violators. This is even more relevant when the State exercises a monopoly over the initiative to prosecute, in systems--such as the one in Mexico--where the victim or its family members do not have standing before the courts.[FN15] In that sense, a case must be cited where serious human rights violations were committed in the State of Guerrero:

[FN15] IACHR, Annual Report 1997, Report N° 52/97, Case 11.218 (Arges Sequeira Mangas), Nicaragua, OEA/Ser.L/V/II.98 Doc.7 rev., April 13, 1998, pars. 96 and 97, pp. 714-715.

The Commission believes that because of the exclusive and sole monopoly that the public ministry has in Mexico's juridical system for the exercise of criminal proceedings, the rights of individual persons should be assured adequately and effectively so that this competence is not exercised arbitrarily, but in a serious and professional manner to guarantee the right to judicial protection established in Article 25 of the Convention. In this connection, the Commission has already pointed out that "the monopoly on the exercise of criminal proceedings that is conferred

to the public ministry in Mexico requires the establishment of an independent and autonomous, professional, efficient and impartial institution."[FN16]

[FN16] IACHR, Annual Report 1997, Report N° 49/97, Case 11.520 (Tomás Porfirio Rondin and others – "Aguas Blancas"), Mexico, OEA/Ser.L/V/II.98 Doc.7 rev., April 13, 1998, par. 67, p.675. See also, in that regard, IACHR Annual Report 1997, Report N° 49/97, Case 11.411 (Severiano Santiz Gómez and others - "Ejido Morelia").

128. In the instant case, the Commission has established that the Mexican State did not undertake a serious investigation into the complaints about violations of the right to life, and that the courts have not acted to impose sanctions on those responsible. Therefore, the crimes went completely unpunished.

129. Also, there is abundant evidence in the file to determine that Mexican public officials showed tolerance towards the perpetrators of the violations. The clearest example was given by all those officials who benefited from the statute of limitations with respect to prosecution, because the public ministry of the State of Guerrero had failed to initiate an investigation into the serious irregularities in the processing of the preliminary investigations. Another clear example is the case of the judiciary police who allowed the two assassins (Pedro and Vargas Madero, see ("i" supra) to escape, but who benefited from the statute of limitations just as did the officials of the PGJ who committed offenses against the administration of justice in relation to the same events. The systematic ineffectiveness of the PGJ between 1990 and the end of 1992, which appears from the total failure of the proceedings analyzed above, was not altered by the recommendations of the CNDH. In fact, the subsequent investigations were pursued with insufficient vigor, or were stopped without valid grounds. The result is clear to see.

130. Therefore, the Mexican State has violated in this case the right to judicial guarantees and to judicial protection, in relation with its obligation to respect and guarantee such rights established in the American Convention.

VI. ACTIONS AFTER REPORT N° 40/98

131. On September 29, 1998, the IACHR approved Report N° 40/98 on this case, pursuant to Article 50 of the American Convention, and transmitted it to the Mexican State with its recommendations. The State forwarded its observations on December 2, 1998.

132. The State referred in its observations to judicial guarantees and judicial protection, and indicated that "those rights are duly guaranteed in the Constitution of Mexico" through the writ of amparo, by virtue of which "any individual may denounce to the authorities facts which they consider constitute a punishable misdemeanor or felony and invoke the exercise of the State's jurisdiction," and that each individual "has the right to assistance in the corresponding investigations."

133. The State also expressed that "the procedures provided for in the various legal provisions continue their course, and based on their conclusions a determination will be made on how to proceed." In this connection, it summarized the "status of the recommendations issued by the National Commission for Human Rights." The State considered that "the existence of preliminary investigations, arrest orders, and the extensive participation of the CNDH are an implicit acknowledgement that certain public servants committed human rights violations and that they should be punished." Finally, the Mexican State requested that the IACHR "close case 10.545 (Clemente Ayala Torres) and declare its consideration of the matter concluded."

134. The Commission fully agrees with the State that the violations committed by its agents should be punished. The failure to punish human rights violators is precisely the key issue of this report, as well as the cause giving rise to the international liability of the Mexican State. Therefore, there is an obvious contradiction on the part of the State when reference is made to the "alleged impunity of the persons presumably responsible." That is why it is also time-barred, in addition to irrelevant, to analyze anew the actions of the CNDH, especially considering that these were non-judicial procedures with no impact whatsoever on the impunity of the violators. In addition, the meetings the State refers to were held in late January 1998, i.e. several months before the admissibility report in this case was forwarded to the parties, and that it is a reiteration of the same information already provided by the State to the Commission and considered during the evaluation of report 40/98 on the merits.

135. In its observations the Mexican State uses concepts and expressions that evidence its failure to carry out the Commission's recommendations in this case. In that regard, it refers to the "point of view of the IACHR" with respect to the lack of seriousness of the investigations; the "alleged impunity" of the human rights violators; and in terms of the limited nature of the State's response on the merits issues in this case, it stated that "while it is the prerogative of the Commission to give its opinion as it sees fit, it is subjective and unfounded." The IACHR considers it inappropriate to refer in such terms to the final report of an international organ with jurisdiction expressly conferred on it by a valid treaty that is in force. Without prejudice to this, the Commission observes that this report contains the legal analysis of the information that was provided to it by the parties during the processing of the case, with the respective conclusions and recommendations.

136. In this regard, the Commission takes this opportunity to recall what has been established by the Inter-American Court:

[I]n accordance with the principle of good faith, embodied in aforesaid Article 31(1) of the Vienna Convention on the Law of Treaties, if a State signs and ratifies an international treaty, especially one concerning human rights, such as the American Convention, it has the obligation to make every effort to apply the recommendations of a protection organ such as the Inter-American Commission, which is, indeed, one of the principal organs of the Organization of American States whose function is "to promote the observance and defense of human rights" in the Hemisphere.[FN17]

[FN17] Inter-American Court of Human Rights, Case of Loayza Tamayo, Judgment of September 17, 1997, para. 80.

VII. CONCLUSIONS

137. The evidence supplied by the parties in this proceeding has not allowed the Commission to establish that the Mexican State is responsible for violating the right to life of the persons named in the respective section of the preceding analysis. Nor has it found the elements necessary to determine that there were violations of the rights to personal liberty and personal integrity of other persons referred to as victims.

138. The IACHR has established that the Mexican authorities have incurred in tolerance of the presumed authors of the violations of the right to life, and that the State has undertaken no serious investigation in the face of grave denunciations of violations of human rights, a fact that has resulted in impunity for the criminals. This conclusion is fully confirmed after analyzing the State's observations to Report 40/98.

139. Consequently, the Commission concludes that the Mexican State is responsible for violation of the rights to judicial guarantees (Article 8) and to judicial protection (Article 25), both established in the American Convention, in relation to its obligation imposed by Article 1(1) of that international instrument, to the prejudice of the following persons: Clemente Ayala Torres, José Manuel Palacios Vargas and Bernabé Torres Torreblanca; Santos Hernández García, Adelaido Barrera Sánchez, Ismael Reyes de la Cruz and Antonio Pablo Terrero; Donacio Rojas de la Cruz; Florentino Salmerón García; Leonel Felipe Dorantes; and Félix Octavio Ventura Ramos.

140. By virtue of the commitment freely assumed upon ratifying the American Convention, the Mexican State is obliged to repair the consequences of the above mentioned violations.

VIII. RECOMMENDATIONS

141. On the basis of the analysis and conclusions contained in this report,

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

1. To conduct a serious, exhaustive, and impartial investigation to determine the circumstances in which the persons named in paragraph 133 above were deprived of their lives, and to punish those responsible in accordance with Mexican legislation.

2. To conduct a serious, exhaustive, and impartial investigation to determine all the facts of complicity and offenses against the judiciary committed by Mexican public officials in relation to be preliminary investigations and criminal trials for the acts that gave rise to this report; and to apply criminal and or administrative sanctions where appropriate.

3. To adopt the measures necessary to provide adequate compensation to the relatives of the victims named in paragraph 133 above for the violations established herein.

IX. PUBLICATION

142. On February 25, 1999, the Commission sent Report N° 3/99--the text of which is above--to the Mexican State and to the petitioners, in keeping with Article 51(2) of the American Convention; and it set a deadline of one month for the State to comply with the foregoing recommendations. On March 26, 1999, the State sent a communication in which it reaffirmed the position it had taken in previous communications and repeated its challenge to the admissibility of the case and to the IACHR's analysis. According to that Article 51(2), the Commission, in this stage of the process, shall confine itself to assessing the measures taken by the Mexican State to comply with the recommendations and to remedy the situation under review.

143. The communication sent by the Mexican State on March 26, 1999, reaffirms "the current status of the investigations" mentioned in this report. In the case of Bernabé Torres Floreblanca, it argues once more that no remedy exists for reversing the State's decision not to extradite the brothers Pedro and Roberto Vargas Madero. The State also reasserts its position, in the case of Florentino Salmerón García, "that the State's right to prosecute has ceased, in keeping with national law." It adds that "findings have not yet been issued in the preliminary investigation" in the case of Santos Hernández García, and in the case of Donacio Rojas de la Cruz as well. In the case of Leonel Felipe Dorantes, the State indicates that "findings are about to be issued in connection with the investigation conducted by the Legal Office of the Prosecutor in response to the request for a legal opinion on a decision not to prosecute submitted by the Agent of the Attorney General of the Judicial District of Allende, Guerrero, in preliminary investigation ALLE/01/043/990." Lastly, the State affirms that "steps are being taken to execute the arrest warrants" issued in proceeding 01/990, pertaining to the case of Ismael Reyes de la Cruz, Antonio Pablo Terrero, and Adelaido Barrera; and that the arrest warrants in proceeding 239-II/992, pertaining to Félix Octavio Ventura Ramos, "are pending execution."

144. The information provided by the Mexican State clearly demonstrates that no progress has been made in the investigations and that the State has taken no measures to comply with the recommendations set forth in the Commission's Report N° 3/99.

145. 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 Chapters VII and VIII supra; 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 13 day of the month of April, 1999. (Signed): Robert K. Goldman Chairman; Hélio Bicudo, First Vice Chairman; Claudio Grossman, Second Vice Chairman; Commissioners Alvaro Tirado Mejía and Jean Joseph Exumé.