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Decided by:	Chairman: Professor Robert K. Goldman; First Vice-Chairman: Dr. Helio Bicudo; Second-Vice Chairman: Dean Claudio Grossman; Members: Dr. Jean Joseph Exume, Dr. Alvaro Tirado Mejia.
Dated:	13 April 1999
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Represented by:	APPLICANTS: Robert W. Benson and other lawyers
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1. On March 4, 1996, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition presented by Robert W. Benson and other lawyers (hereinafter "the petitioners"), on behalf of Father Loren Laroye Riebe Star, a North American Catholic priest, and the beneficiaries of six educational, economic, and charitable projects in the State of Chiapas, Mexico. The petition alleges violation by the State of Mexico (hereinafter "the State"; "the Mexican State", or "Mexico") of the following victims' rights enshrined in the American Convention on Human Rights (hereinafter the "American Convention"): right to humane treatment (Article 5); right to personal liberty (Article 7); right to a fair trial (Article 8); right to privacy (Article 11); freedom of conscience and religion (Article 12); freedom of thought and expression (Article 13); freedom of association (Article 16); right to property (Article 21); freedom of movement and residence (Article 22); right to equal protection (Article 24); and right to judicial protection (Article 25).

2. The petition was amplified later by the University Human Rights Workshop and the Center for Justice and International Law (hereinafter "TUDH" and "CEJIL" [their Spanish acronyms], respectively, or, generically, "the petitioners"), which alleged almost identical rights violations against two foreign Catholic priests from the San Cristóbal de las Casas diocese, Chiapas: Father Jorge Alberto Barón Guttlein, an Argentinean, and Father Rodolfo Izal Elorz, of Spanish nationality.

I. CONTEXT

3. The State of Chiapas, on Mexico's southern border, with a 30% indigenous population, is extremely under-developed: 94 of the State's 110 municipalities are considered both remote and deprived, making it the poorest State in Mexico. Since the emergence of the armed dissident

movement known as the Zapatista Army of National Liberation (EZLN) in January 1994, there has been a steady increase in social upheaval and violent conflicts. At the same time, the constantly growing military presence in this area has gone hand in hand with complaints of grave violations of human rights, mainly perpetrated by paramilitary groups with the acquiescence, and, in some cases, active participation, of State agents.[FN1]

[FN1] In this regard, Mary Robinson, UN High Commissioner for Human Rights, described in a press release the situation in the state as "a grim picture of an atmosphere of fear among the indigenous people of Chiapas caught between government forces supported by officially funded militias on one side and armed resistance groups on the other..." Mrs. Robinson added that "...a reduction in the military presence in the region could be an important first step in restoring confidence that a peaceful solution might be found. This would also contribute to improving the current climate of fear." United Nations, HR/98/38, 12 June 1998, High Commissioner for Human Rights expresses mounting concern about situation in Chiapas, Mexico.

4. Since 1995, numerous foreigners acting as observers or defenders of human rights in Chiapas have been expelled from Mexico. It should also be noted that shortly after the EZLN uprising a peace process got under way, with the participation of representatives of the Catholic diocese of San Cristóbal de las Casas, to which Fathers Riebe Star, Barón Guttlein, and Izal Elorz belonged. The President of the National Intermediation Commission (CONAI) set up as part of that peace process, was Samuel Ruiz García, the local bishop, a recognized defender of the human rights of the indigenous population.[FN2] The clearest indication that the talks had broken down was the dissolution of the CONAI in June 1998, followed by an armed clash a few days later in El Bosque, Chiapas, in which seven rural workers and a policeman were killed.

[FN2] Bishop Ruiz has stated that there is "constant and growing aggression" against the San Cristóbal de las Casas diocese, dating back to January 1994. He said:

It is a systematic persecution that has manifested itself in numerous acts such as the expulsion of seven priests on the basis of false accusations; negation in practice of residence permits for foreign pastors; imprisonment of four priests on trumped-up charges and in clear violation of their human rights; the closure of nearly 40 temples, some of which were occupied by the Mexican army; arrest warrants against numerous priests, nuns, and missionaries, and pressure on farm workers to declare that the diocese provides them with arms.

"La Jornada" newspaper. Conai dissolved as a result of "official war strategy", Internet edition of June 8, 1998.

5. The IACHR has received numerous petitions regarding harassment of human rights activists, including Catholic priests and social workers, in Chiapas.[FN3] At the same time, problems associated with the exodus of the indigenous population from their communities for fear of repression and attacks by paramilitary groups have continued and increased.

[FN3] The IACHR is processing case 11.886 regarding Michel Chanteau, a French Catholic priest practicing in the San Cristóbal de las Casas diocese, who was detained by the police on February 26, 1998 and expelled from the country. It has also received requests for precautionary measures on behalf of foreign Catholic workers in Chiapas. Pursuant to Article 34(3) of its Regulations, the IACHR does not prejudice the admissibility of the respective petitions.

II. ALLEGED VIOLATIONS

6. The petition alleges that on the afternoon or evening of June 22, 1995, Father Riebe was induced under false pretenses to leave his rectory and then held abruptly at gunpoint by police. The policemen, who refused to identify themselves and had no arrest warrant, took Father Riebe to the Chiapas State Judicial Police station in Tuxtla Gutiérrez, the capital of the State of Chiapas. There Father Riebe was stripped and subjected to a medical examination. For several hours he was not allowed to go to the bathroom and at no point was he informed of the reasons for his detention. Later on, Father Riebe was taken to the Tuxtla Gutiérrez airport.

7. According to the additions to the petition lodged regarding Father Barón Guttlein, on June 22, 1995, men on an open pick-up truck forced the car he was driving to a halt at the El Carmelito crossroads, Chiapas. Four men got out and, without any warrant or written official order of any kind, forced him to get out, blindfolded him, and covered his face with a jacket. In those conditions they drove him on the floor of the truck for approximately three hours. At that point his captors removed his blindfold and he was able to see that he was in Tuxtla Gutiérrez. The unidentified persons who were holding him captive forced him to strip for a medical examination by another unidentified person. After that, he was taken to the city airport.

8. As regards Father Izal Elorz, the additions to the petition indicate that on June 22, 1995, he was driving his own car when he was intercepted by several armed individuals, who did not say who they were. They took away his car and forced him in to the front seat of an open pick-up truck, where he was guarded by two armed men and driven to an unknown destination. The petition adds that when they got to Tuxtla Gutiérrez, Father Elorz was taken to the Judicial Police station and stripped in front of his captors to check for any bodily harm they might have caused him. The petitioners also allege that Father Izal Elorz was subjected to an intense interrogation consisting mainly of direct charges that he had participated in alleged illicit acts; at no point was he allowed to consult a lawyer. Later, he was taken to the city airport.

9. The three priests taken to the Tuxtla Gutiérrez airport were then flown in a Government plane to Mexico City airport, where they were subjected to a political interrogation by Mexican immigration officers. At that point there were representatives of the U.S., Spanish, and Argentinean Consulates and a lawyer from the National Human Rights Commission (CNDH). However, the petitioners state that those representatives were not allowed to attend or take part in the interrogations, which dealt with political parties, indigenous political groups, the Zapatista National Liberation Army (EZLN), and land invasions.

10. The petition also stated that the Mexican authorities involved in the above procedures told the priests that they were not entitled to: assistance from a lawyer; to be informed of the

charges leveled against them, the evidence adduced, or the names of their accusers; or to any form of defense. Finally, the authorities said that the three priests would be expelled "for engaging in activities not permitted under the terms of their visas."

11. The three priests were escorted by six immigration officers to an American Airlines plane which took off at 8:40 a.m. on June 23, 1995 for Miami, USA. There they received a notification from the Mexican Ministry of the Interior, explaining why they had been deported and the charges leveled against them by the Mexican immigration authorities. According to the petition, the priests were informed of the warrants issued against them after they had left Mexican soil, even though they were dated June 21, 1995.

III. PROCESSING BEFORE THE COMMISSION

12. On April 16, 1996, the Commission requested information from the Mexican State regarding the petition, to which it assigned N° 11.610. The State replied on July 17, 1996, requesting that the petition be declared inadmissible under Articles 46 and 47 of the American Convention. The Commission informed the petitioners of this response.

13. The petitioners submitted their observations regarding the State's reply in a message dated September 14, 1996. The Commission forwarded those comments to the State, which replied with the respective information on November 7, 1996.

14. On July 29, 1997, the IACHR received two communications from TUDH, alleging the same violations and including Father Barón Guttlein as one of the victims. The IACHR incorporated the information into the file on this case and including TUDH and CEJIL as petitioners.

15. On August 18, 1997, TUDH lodged a petition concerning Father Izal Elorz. Pursuant to Article 40(2) of its Regulations, the Commission decided to combine the petitions regarding Fathers Izal Elorz and Barón Guttlein with those in the file of this case. The pertinent parts of the petition regarding the former were forwarded to the State on August 25, 1997; those concerning Father Barón Guttlein were sent on November 18, 1997.

16. The State replied to the petition regarding Father Izal Elorz on September 23, 1997; the petitioners submitted their comments on that reply on November 3, 1997.

17. The State responded to the additions to the petition concerning Father Barón Guttlein on December 9, 1997 and the petitioners' observations regarding that response were received on January 26, 1998. The State commented on those observations on February 27, 1998.

18. During its 97th session, the Commission held a hearing on this case, which was attended by Father Riebe, and by representatives of the petitioners and the Mexican State. The Commission placed itself at the disposal of the parties to initiate a friendly settlement procedure, and established a period of 30 days for the parties to express their position on this matter. On March 24, 1998 the State expressed that it could not accept the proposal if the petitioners pretended to allow the reentry of the priests to Mexico, as that matter was not negotiable before

the authorities. The petitioners responded on March 25, 1998 saying that they agreed to the procedure, as long as the State guaranteed the return of the priests to Mexico, under an immigration status appropriate to their religious duties. Since the condition set forth by the petitioners was not possible, the IACHR considered that such a procedural stage was not viable

19. On May 5, 1998, during its 99th special session, the IACHR approved Report N° 34/98, thereby declaring the instant case admissible.

IV. POSITION OF THE PARTIES

A. The petitioners

20. According to their various communications, the petitioners consider that the authorities who arrested Fathers Riebe Star, Barón Guttlein, and Izal Elorz violated their right to personal liberty. The petition argues that depriving the priests of their liberty violated Mexican law and the American Convention. Indeed, in all three cases, the petitioners allege that the arrests were carried out without any verification of in flagranti illicit acts, by heavily armed individuals who neither identified themselves nor showed the respective arrest or detention warrants. They go on to state that during the entire time that the three priests were being held by the authorities in Chiapas, up to the time they were interrogated at Mexico City airport, they were not told why they had been deprived of their liberty nor were they informed of the charges brought against them. They were not allowed access to a lawyer of their choice, nor were they permitted to see a court authority to determine the lawfulness of their arrest or detention, except via their representatives after they had been deported. For all these reasons, the petitioners allege violation of Article 7 of the American Convention (paragraphs 1, 2, 3, 4, 5 and 6).

21. With regard to the procedures employed to deport the priests from Mexican soil, the petitioners allege violation of the right to a hearing contemplated under Mexican law as well as the right to due process established in the American Convention. According to the petition, such violations occurred because the priests were not allowed to defend themselves against the charges brought against them, nor to be advised by lawyers or persons they trusted. Furthermore, the petition states that the priests were forced to make a statement based on an interrogation about crimes they had not committed, as well as about the social teachings of the Catholic Church; although they requested it, they were not given a copy of their statement. The petitioners say the priests never saw any document, from which the charges against them were supposedly read out, nor any other communiqué or document written by a competent authority justifying their deportation.

22. The petition refers to the indirect protection injunction (juicios de amparo indirecto) filed on behalf of the three priests, and points out that they were rejected by the competent judge without examination of the substance of the matter, a verdict that was upheld on appeal. According to the petitioners, that decision by the Mexican legal authorities constitutes a violation of the right to judicial protection guaranteed under Article 25 of the American Convention.

23. Furthermore, the petitioners complain that the deportation procedure was arbitrary and contrary to Mexico's own laws. They say this violates the rights of Fathers Riebe Star, Barón

Guttlein, and Izal Elorz guaranteed under Article 22(6) of the American Convention. They also consider that the three priests were discriminated against, in violation of Article 24 of the same international treaty.

24. The first petition presented on behalf of Father Riebe Star also complains of violation of the right to have one's honor respected and dignity recognized (Article 11 of the American Convention: Right to Privacy); of Article 12 (freedom of conscience and religion); and Article 16 (freedom of association).

B. The State

25. The Mexican State maintains that the priests were arrested because they were carrying out activities for which they had no authorization ("proselytism on behalf of organizations that carry out unlawful acts, inducing farm workers and indigenous people to act against the authorities and individuals"). That information was supposedly culled from complaints filed by farm workers in the region and, according to the State, confirmed by immigration officers who witnessed the violation by the priests of several provisions of the General Law on Population. Consequently, the State says, the authorities proceeded to "locate and detain" the priests in accordance with the Regulations of that law.

26. Mexico states that on June 22, 1995, the National Migration Institute drew up a formal complaint against the foreign priests, who pleaded their own case; that their human rights were respected at all times; that members of the consulates of the United States, Spain, and Argentina were present, along with representatives of the National Human Rights Commission (CNDH).

27. The State adds that it is false to say that no evidence was produced against the priests, and refers to a denunciation by someone called César Augusto Arévalo to the Assistant Delegate of the National Migration Institute in Chiapas, concerning the above-mentioned unlawful acts. Mexico also states that there is no persecution campaign against the Catholic Church in Chiapas and that, on the contrary, there is full respect for the freedom of belief enshrined in Article 24 of the Mexican Constitution.

28. In view of the above, the State maintains that there was no violation of the American Convention, because the priests were "deprived of their liberty in compliance with an order given by a competent authority"; they were informed of the reasons for their detention and of the charges brought against them; they were tried within a reasonable lapse of time; that their physical, psychic, and moral integrity was respected as evidenced by the medical certificate issued to that effect; that at all times the priests' honor was respected and their dignity recognized; that the protection suit was an effective remedy to protect their legal rights; and that there was no discrimination against them. In light of all that, the Mexican State requested that the Commission declare the case inadmissible since it did not involve any violations of the American Convention.

V. ANALYSIS

29. In its statement admitting the case, the Commission found that the requirements established under Article 46 of the American Convention had been met. Likewise, the Commission concluded that the facts contained in the petition tend to constitute a possible violation of rights protected under that Convention; that the friendly settlement procedure was not viable; and that it was therefore up to the Commission to proceed with analysis of the substance of the petition.

30. The Commission deems it appropriate to start by saying that it recognizes the right of each State to define its immigration policies and laws, and hence to decide on the entry, stay, and expulsion of foreigners from its territory. Nevertheless, the Commission must also point out that Article 1(1) of the American Convention establishes the obligation to respect the rights and freedoms recognized therein. The Mexican State upon ratifying the above international instrument has freely assumed that obligation. Consequently, the exercise of that sovereignty by a State can in no way justify violation of human rights, as the American Convention imposes certain limitation on the exercise of public power by member states.

31. The IACHR will first analyze what happened in terms of the right to personal liberty, then with reference to the rights to due process and effective legal protection. The other allegations will be dealt with afterwards, since the Commission considers that the key issues in the present case have to do with the above-mentioned rights.

A. Right to Personal Liberty (Article 7)

32. Article 7 of the American Convention guarantees every person the right to personal liberty and security in the following provisions:

... 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...

6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful...

33. It is pertinent to refer to Mexican laws applicable to the deprivation of the liberty of Fathers Riebe Star, Barón Guttlein, and Izal Elorz. Article 16 of the Mexican Constitution States:

No one may be molested as a person, family, home, papers or possessions except by virtue of a written order from a competent authority that explains and substantiates the legal basis for such procedure...

34. For its part, the Regulations of the General Law on Population state that the migration authorities are entitled to exercise inspection and surveillance powers over aliens in Mexico and, if need be, to apply the sanctions contemplated in the law, "showing at all times respect for human rights and keeping strictly to the appropriate legal procedures" (Article 140). The next Article in the regulations establishes the requirements for carrying out a migration inspection:

I. The person carrying out the inspection should have a written mandate, stating the purpose of the inspection, the place in which it is to be carried out, and, if available, the name of the person to whom it is directed, the date, the legal basis for the inspection, along with the name, signature, and position of the civil servant issuing the order and of the officer who will be carrying it out.

II. The inspector or officer commissioned for this purpose shall identify himself to the alien or person being inspected by showing his I.D. as a civil servant working for the Office of the Director General of Migration Services in the Ministry of the Interior ("Secretaría de Gobernación").

35. The Migration Authorities must analyze the results of the inspection in order to decide whether the alien should be summonsed; if so, the summons must be sent out indicating when he should appear. At that point minutes of the meeting must be drawn up in front of witnesses and a copy given to the interested party (Article 142 of the above-mentioned Regulations). The Regulations also provide that the Ministry of the Interior should assess whether a violation of applicable law exists, and, if so, that institution should consider the nature and gravity of the offense in order to determine the appropriate sanction "always bearing in mind the circumstances that might have played a role, the proofs submitted by the offender, and his statements regarding what happened." Article 144 of the Regulations establishes that "if a crime has been committed, the offender shall be placed at the disposal of the appropriate authority, in accordance with Article 143 of the Law."

36. The Commission considers that there is no controverting the fact that on June 22, 1995 Fathers Loren Riebe Star, Jorge Barón Guttlein, and Rodolfo Izal Elorz were detained in the State of Chiapas by armed members of the security forces, in three separate operations (see paragraphs 6, 7, and 8 above). Likewise, no one has denied the fact that none of the priests detained was in the process of committing a crime, so there was nothing in flagranti.

37. As for the other circumstances surrounding the deprivation of liberty, the petitioners claim that the State agents who detained the priests refused to identify themselves; that they did not produce any written order issued by a competent authority; and that they were not notified of the reasons for their detention.

38. For its part, the State initially claimed that the Migration Authorities took into account background information showing violations by the priests of the General Law on Population, which is why they proceeded to "locate and detain" them, pursuant to Articles 140 to 143 of the Regulations (cited above). However, in reference to Father Riebe Star, the Mexican State itself declared that "he was notified of the charges against him during the action taken against him under administrative law." The "administrative" proceedings to which the State refers were the interrogation to which the three priests were subjected at Mexico City airport, in the early hours

of June 23, 1995, shortly before they were expelled from the country. None of Mexico's later statements to the Commission provide evidence contradicting the petitioners' version of the circumstances under which the three priests were deprived of their liberty.

39. Based on the above facts, the Commission establishes that on June 22, 1995, Fathers Loren Riebe Star, Jorge Alberto Barón Guttlein, and Rodolfo Izal Elorz were arrested by armed members of the security forces, who did not identify themselves, had no written warrant from a competent authority. Nor were the priests notified of the reasons why they were deprived of their liberty, or of the charges brought against them. Each of the priests was taken overland to State installations in Tuxtla Gutiérrez, after which all three were flown to Mexico City airport, where the authorities informed them of the reasons for their detention and proceeded to interrogate them.

40. Thus Fathers Riebe Star, Barón Guttlein, and Izal Elorz were also denied the right of recourse to a competent court, in order for that court to decide without delay on the lawfulness of their detention. Indeed, the facts show irrefutably that they did not even have access to a lawyer, which might have allowed them to present a judicial remedy to end their arbitrary detention and prevent their summary expulsion. This issue will be examined below, under right to due process and effective judicial protection.

41. The Commission concludes that the Mexican State violated the right to personal liberty--guaranteed under Article 7 of the American Convention--of Father Loren Riebe Star, Jorge Barón Guttlein, and Rodolfo Izal Elorz.

B. Right to a fair trial (Article 8) and to judicial protection (Article 25)

42. The American Convention guarantees everyone the right of recourse to the tribunals, to state their case within a framework of due process, and the right to obtain a ruling from the competent tribunal. Thus, Article 8(1) of the American convention stipulates that:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

43. The right to effective judicial protection is enshrined in Article 25 of the above-mentioned international instrument, the first paragraph of which reads as follows:

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.

44. In the instant case, the petition states that Fathers Riebe Star, Barón Guttlein, and Izal Elorz were denied a hearing, since they had no access to a competent authority to determine, first of all, the lawfulness of their detention; secondly, to examine the validity of the evidence

compiled against them by the Migration Authorities and to present evidence countering those charges; and, thirdly, to allow them to develop the possibilities of judicial remedy under domestic law that could have enabled them to impugn the decision to deport them from Mexico. As for judicial protection, the petitioners claim that the protection of civil rights appeal (*recurso de amparo*) turned out to be neither effective, simple, or prompt in protecting Fathers Riebe Star, Barón Guttlein, and Izal Elorz against the acts that they consider violated their rights, particularly the decision to expel them from Mexico on the basis of evidence they were not allowed to challenge.

45. The Mexican State maintains that the rights reviewed in this report were respected at all times in the case of the three foreign priests, because the procedure applied "contains all the basic elements required for the legality of the administrative procedure", according to the pertinent law. Hence, the State alleges that when the officials at the National Migration Institute drew up the minutes, the priests were able to argue their own case; that the respective consuls and representatives of the CNDH were present at that time; that the authorities had sufficient evidence of violation by the priests of the laws governing migration; and that the priests' lawyers were able to challenge the decision of the administrative authorities when they filed an appeal.

i. Right to due process: prerequisites for the guarantee of a hearing

46. The above-mentioned provisions guaranteeing the right to due process are applicable to administrative as well as judicial procedures. This emerges from the text of Article 8(1), which refers to "...the determination of his rights and obligations of a civil, labor, fiscal, or any other nature".[FN4] Here reference should be made to the jurisprudence of the Inter-American Court of Human Rights, which has established that the provisions of the American Convention "must be interpreted in the light of the concepts and provisions of instruments of a universal character."[FN5] The Inter-American Court has also stipulated that "a balanced interpretation is obtained by adopting the position most favorable to the recipient of international protection".[FN6]

[FN4] See, on this aspect, the Inter-American Institute of Human Rights, *Guide to the Application of International Law in Domestic Law*, "Guarantees regarding Administration of Justice in international human rights norms", San José de Costa Rica, 1996, page 56.

[FN5] Inter-American Court of Human Rights. "Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism", Advisory Opinion OC-5/85 of November 13, 1985. Series A No.5, paragraph 51.

[FN6] Inter-American Court of Human Rights. *Sistematización de la jurisprudencia contenciosa de la Corte Interamericana de Derechos Humanos, 1981-1991*, Viviana Gallardo and others, decision of November 13, 1981, paragraph 16, page 115.

47. The Commission must first determine whether the guarantees of due process enshrined in the American Convention were respected in the administrative procedure applied to verify the denunciation concerning the alleged illicit activities of the foreign priests.

48. In that regard, the IACHR notes that Article 50 of the Law of Administrative Procedures applied in the instant case stipulates that in such procedures "...any kind of proof will be admitted, except the authorities' replies to interrogatories". That provision was invoked by the Mexican State to justify using denunciations made by private individuals against Fathers Riebe Star, Barón Guttlein, and Izal Elorz. However the State provides no substantiation whatsoever for the authorities' decision not to accept replies by the accused to the charges leveled against them, which would have allowed them a minimal right of defense.

49. The petitioners stress that the above mentioned authorities opted to carry out the investigations over a very short period of time, and consequently the action taken against the foreign priests is both arbitrary and disproportionate. The petition states that, in fact, the procedure was adopted merely in order to give a certain air of legality to a decision taken beforehand by the Mexican authorities: namely to accuse the foreign priests of having committed serious offenses, to arrest them, and to deport them summarily without having proved the accusations in criminal proceedings.

50. The petitioners also invoke Articles 140 and 141 of the Regulations to the General Law on Population, which the IACHR cited above in its analysis of the right to personal liberty and they state that the inspection warrant contemplated in those regulations was never shown to them by the Office of the Director General of Migration Services.

51. The Mexican authorities have stated their case regarding the essential requisites for an administrative procedure, which they describe as "those that guarantee an appropriate and timely defense prior to the privative act". Specifically they have established that:

The guarantee of a hearing established by Article 14 of the Constitution consists of granting citizens the opportunity to defend their case prior to any act depriving them of liberty, property, possessions, or rights, and due respect for that guarantee obliges the authorities, among other things, to "comply with the formal prerequisites inherent in the procedure". That means the formalities required to guarantee adequate defense prior to the privative act, in other words basically the following requirements: 1) notification of when the procedure begins and its consequences; 2) the opportunity to present and expound evidence supporting their case; 3) the opportunity to argue their case; 4) a verdict settling the issues raised. Failure to fulfill these requisites constitutes failure to comply with the purpose of the right to a hearing, which is to avoid leaving an affected party defenseless.[FN7]

[FN7] Direct amparo under review 296-90, Optica Devlyn del Norte S.A., March 12, 1992. Unanimity of 19 votes, Semanario Judicial de la Federación, Volume II, December 1995, Thesis P.J. 4795, page 133.

52. As regards the scope of the guarantee of a hearing, the Mexican courts have issued similar rulings:

In order to comply with the essential formalities of any procedure, be it administrative or judicial, it is not enough just to allow the person charged a hearing. It is also essential that he be permitted to produce evidence in his favor; because to deny him this right arbitrarily would render the granting of a hearing meaningless. Thus, failure to take legally proffered evidence into account constitutes failure to observe an essential procedural requirement, a negation of the right of defense, and a violation of a fundamental aspect of the guarantee of a hearing enshrined in Article 14 of the Constitution.[FN8]

[FN8] Amparo under review 3456-81, Albertina Domínguez, widow of García and joint agents, October 20, 1983, Unanimity of 4 votes, *Semanario Judicial de la Federación*, Volume 175-180 Third Part, page 65.

53. It is also worth mentioning another legal precedent applicable to the case of the foreign priests, regarding administrative procedures concerning witnesses. Here, the Mexican courts ruled that when the authorities take statements from witnesses without giving the accused "unrestricted opportunity to be present and to question the witnesses, it should be considered a violation of the guarantee of a hearing".[FN9] The Commission has reviewed numerous similar quotations in Mexican jurisprudence, all of them agreeing as to the prerequisites for fulfillment of the guarantee of a hearing contemplated in the Mexican Constitution.

[FN9] Amparo under review 103-90, Tittinger Compagnie Commerciale et Viticole Champenise S.A. March 20, 1990, Unanimity of votes, *Semanario Judicial de la Federación*, volume V, Second Part, page 224.

54. The IACHR considers that the interpretation of the legal precedents under domestic law is applicable to the case of Fathers Riebe Star, Barón Guttlein, and Izal Elorz, given that it is compatible with the provisions of the American Convention which guarantee the right to due process. In order to establish a broader and more complete legal framework, within the scope of interpretation permitted under Article 29 of the American Convention, we shall now proceed to cite legal precedents in other human rights systems, as well as jurisprudence within the Inter-American system itself.[FN10]

[FN10] The International Covenant on Civil and Political Rights establishes the requisites for the deportation of foreigners that are lawfully in a country, as well as the right to due process. The relevant provisions of the Covenant are the following:

Article 13 – An alien lawfully within the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14(1) – All persons shall be equal before the courts and tribunals. In the determination of any criminal charge brought against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law...

The Mexican State ratified the Covenant with a reservation to Article 13, in view of Article 33 of the Constitution of that country; however, Mexico formulated no reservations to the pertinent articles of the American Convention. The U.N. Human Rights Committee has interpreted the above provisions in the following sense:

if the legality of an alien's entry or stay is in dispute, any decision on this point leading to his expulsion or deportation ought to be taken in accordance with Article 13. It is for the competent authorities of the State party, in good faith and in the exercise of their powers, to apply and interpret the domestic law, observing, however, such requirements under the Covenant as equality before the law...

Article 13 directly regulates only the procedure and not the substantive grounds for expulsion. However, by allowing only those carried out "in pursuance of a decision reached in accordance with law", its purpose is clearly to prevent arbitrary expulsions... This understanding, in the opinion of the Committee, is confirmed by further provisions concerning the right to submit reasons against expulsion and to have the decision reviewed by and to be represented before the competent authority or someone designate by it. An alien must be given full facilities for pursuing his remedy against expulsion so that this right will in all the circumstances of his case be an effective one. (emphasis added)

United Nations, Compilation of general comments and general recommendations adopted by human rights treaty bodies, HRI/GEN/1/Rev.3, 15 August 1997, pars. 9 and 10, p. 21.

55. For reference purposes, the Commission notes that Protocol VII of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) prohibits the arbitrary expulsion of an alien legally residing in a particular State. Article 1 of Protocol VII stipulates that a foreigner has the right to present arguments against his being expelled, to obtain a revision of his case, and to be represented to that end before the competent authority. The right to submit arguments against deportation is even prior to the right to have a decision revised; for that reason, the person concerned must be given a chance to cull evidence or other material with which to substantiate his case before the authority that deprived him of his liberty, or at the start of the proceedings.

56. As for Inter-American jurisprudence on this subject, the IACHR previously ruled on a case filed against Canada by Mrs. Cheryl Monica Joseph, a citizen of Trinidad and Tobago.[FN11] The petitioner had lived in Canada for several years and requested permanent residence as a refugee; the Government denied that she had that status and ordered her deportation. The Commission studied the case and decided to declare it inadmissible, because the deportation order did not violate the human rights of the petitioner, who had had the opportunity to process her request before the Canadian authorities and to appeal in the courts against the decision taken by those authorities. Although the IACHR did not in that case expressly establish the minimum procedural requirements needed to avoid a deportation being assessed as arbitrary, it did stress the fact that the petitioner had had several opportunities to go to court in Canada, at various stages of the respective procedure, before the final deportation order was carried out.

[FN11] IACHR, Annual Report 1993, OEA/Ser.L/II.85, Doc. 8 rev., Report N° 27/93, Case 11.092 - Canada, February 11, 1994.

57. Especially relevant to this case is the recent report approved and published by the IACHR on the situation of human rights in Mexico, prepared on the basis of information received before, during and after the on-site visit to that country in July, 1996. In the chapter on the right to freedom of expression, the Commission recommended the following to the Mexican State:

To review claims of arbitrary expulsion of foreigners who reside legally in Mexican territory, so as to strictly conform such decisions to rules of due process set forth in internal and international law.[FN12]

[FN12] IACHR, Report on the situation of human rights in Mexico, OEA/Ser. L/V/II.100, Doc. 7 rev. 1, September 24, 1998, para. 672. That report, available on the Commission's internet home page (www.iachr.org) has a reference to this case at para. 665.

58. The Commission also considers it appropriate to cite the following precedent in the doctrine of the Inter-American system:

As regards all kinds of trials, the elements considered to constitute the right to defense are: the right to be present during the proceedings, to be able to submit evidence, and to contradict those presented by the opposing party.[FN13]

[FN13] IIDH, *op.cit.*, page 61.

59. Within the legal framework outlined above, the IACHR will proceed to analyze the way in which domestic Mexican law was applied to the foreign priests. The facts of the instant case show that the administrative proceedings against them consisted in the procedures applied in a matter of hours at Mexico City airport. Indeed, it should be borne in mind that the priests were arrested in the afternoon or evening of June 22, 1995, taken to the capital of the State of Chiapas, and then to the national capital. By 8:30 a.m. the next day they had already been expelled from the country and to this day they have not been allowed to return. In order to evoke the circumstances surrounding those proceedings, the IACHR draws on the account by Father Riebe Star:

During the night, the immigration officers interrogated us and typed out statements for us to sign. My interrogation began around 2 a.m. Two individuals, who said they were from the Immigration Department, asked the questions and told a clerk what he should write down and when he should do so. A fourth individual identified himself as a lawyer with the Mexican

National Human Rights Commission. None of these individuals showed me credentials proving their identity or position. Nobody explained why the lawyer from the National Human Rights Commission was present. He said nothing while I was in the room with the interrogators...[FN14]

[FN14] Affidavit of Father Loren Riebe Star, taken on April 4, 1996 in Phoenix, Arizona, USA, before a notary public, and added to appeal file 979/94, paragraph 22.

60. As mentioned earlier, the statements made by Fathers Jorge Barón Guttlein and Rodolfo Izal Elorz were taken under the same circumstances. It is quite clear that the three priests were not given the opportunity to prepare their defense, formulate their claims and submit evidence, taking into consideration the unreasonably short time in which the government's decision was carried out and the distance between where they were and their place of permanent residence in the State of Chiapas, where the witnesses or documents they might have produced in their defense were located.

61. In that regard, the order for the deportation of Rev. Riebe Star mentions the "analysis and evaluation of the evidence in the record...especially the claim submitted by Mr. César Augusto Gómez Arévalo, who made direct accusations against the foreigner as well as the report of the immigration officers charged with the investigation of the claims of the aforementioned person". These elements were used by the immigration authorities to conclude "with complete certainty" that Rev. Riebe Star had engaged in the following:

Organizing the indigenous peoples to steal cattle, to invade small plots of land, using to that end a non determined amount of catechists, inviting the faithful to join organizations that engage in illegal activities while threatening their lives if they did not accept, inciting them to act against the government and small landowners, arguing that the latter are "those who exploit the indians", as well as leading them into crime and to gather arms distributed among the indians who sympathize with them, also causing damage to property and to those persons who choose not to join their cause. He has also used his sermons to incite the population to invade lands using violence against small landowners and ranchers, as well as the Government...

62. The three priests were charged with engaging in the same events, and it is clear from the record that they did not have the opportunity to challenge the "analysis and evaluation of the evidence" carried out by the immigration authorities to establish that those events really took place. On the other hand, the Commission deems it necessary to further consider the legal grounds for the expulsion of priests Riebe Star, Barón Guttlein and Izal Elorz. The acts mentioned in the preceding paragraph are describe by the State as "activities different to those authorized by the immigration status" of the foreign priests. Actually, they are very grave accusations, especially taking into account the context of the armed conflict in Chiapas. Obviously, no legislation would consider such acts to be "authorized activities" for immigrants or for anyone else.

63. Based on the aforementioned analysis, the IACHR considers that in those proceedings, the authorities did not comply with the explicit requirements of Mexican law, the jurisprudence established by that country's legal authorities and the American Convention, to protect the right to a hearing enshrined in Article 14 of the Mexican Constitution, which is compatible with Article 8 of the American Convention and with other international human rights instruments.

64. As regards the right to representation, the petition alleges that the priests did not have access to an attorney during the administrative proceedings. For its part, the State pointed out that in the amparo proceedings regarding this case, the criminal judge established that the administrative proceedings "do not provide for the possibility that the foreigner must be assisted by an attorney to advise him". The judge clarified that even though it is an individual guarantee under Article 20 of the Constitution, such provision alludes to criminal procedure, but is not applicable to administrative proceedings such as that carried out against the foreign priests.

65. The text of Article 8(2) of the American Convention refers to the rights of "every person accused of a criminal offense", including "the right to be assisted by legal counsel of his own choosing". The Commission notes that the scope of the right to a fair trial has been defined by the Inter-American Court in these words:

For cases which concern the determination of a person's rights and obligations of a civil, labor, fiscal or any other nature, Article 8 does not specify any minimum guarantees similar to those provided in Article 8(2) for criminal proceedings. It does, however, provide for due guarantees; consequently, the individual here also has the right to the fair hearing provided for in criminal cases.[FN15]

[FN15] Inter-American Court of Human Rights, "Exceptions to Exhaustion of Domestic Remedies (Articles 46.1, 46.2.a), and 46.2.b): American Convention on Human Rights," Advisory Opinion OC-11/90 of August 10, 1990. Series A, No. 11, par. 28.

66. The European Commission on Human Rights has established, in general, that the rights to a fair trial and to defense are applicable to administrative proceedings and investigations.[FN16]

[FN16] European Commission of Human Rights, *Huber v. Austria*, 1975 Yearbook of the European Convention on Human Rights, Martinus Nijhoff, The Hague 1976, pars. 69 to 71. In the same sense, the European Court of Human Rights has considered that the principles of due process are applicable, *mutatis mutandis*, to disciplinary sanctions of an administrative nature. European Court, *Case of Albert and Le Compte*, Decision of 10 February 1983, Series A Vol. 58, Council of Europe, Carl Heymanns Verlag KG, par. 39.

67. The Commission has reviewed the jurisprudence of various States on this subject. With regard to the expulsion of foreigners, the Constitutional Tribunal of Spain has decided that in

order to safeguard important values that might be at risk, it is fundamental that the foreigner potentially subjected to the measure of expulsion be given a hearing, and it is necessary to determine whether or not the foreigner had an adequate opportunity to present his reasons in favor or against the expulsion.[FN17] As regards the extent of the guarantees of due legal process to be observed in administrative proceedings, the Commission notes a consensus in the jurisprudence of several countries. For example, the Constitutional Court of Colombia has established that "any administrative act shall be the result of a proceeding in which the person had an opportunity to express his opinions and present any evidence in support of his rights, and which fully observes all procedural requirements." [FN18]

[FN17] Spain, Constitutional Tribunal, STC 242/1994, FJ6, cited in: Francisco Rubio Llorente, *Derechos fundamentales y principios constitucionales (Doctrina jurisprudencial)* [Fundamental Rights and Constitutional Principles (Doctrine of Jurisprudence)], Ed. Ariel, S.A., Barcelona, 1995, pp.192-193. The U.S. Supreme Court, for its part, has contended that deportation implies a loss of freedom, and that therefore the right to due process should be guaranteed before taking such a measure (*Chew v. Colding*, 344 U.S. 590, 1953; *Sung v. McGrath*, 339 U.S. 33, 1950). The U.S. Supreme Court also found that individuals who find themselves facing possible deportation have the right to a hearing and the right to be represented in the hearing by a lawyer (*Casteneda-Delgado v. INS*, 525 F.2d. 1295, 7th Cir., 1975), and similarly, that there should be "clear, unequivocal, and convincing" evidence prior to deportation (*Woodby v. INS*, 385 U.S. 276, 285, 1966).

[FN18] Colombia, Constitutional Court, Fourth Court of Review, Judgment T-251 of September 19, 1992, Presiding Judge: Alejandro Martínez Caballero, cited in: Comisión Andina de Juristas, *Derechos fundamentales e interpretación constitucional* [Fundamental Rights and Constitutional Interpretation], Series "Lecturas sobre temas constitucionales" [Readings on Constitutional Themes], vol. 13, Lima Peru, 1997, p.484. It is also appropriate to cite the Supreme Court in Venezuela, which has interpreted that the state administration should inform interested parties of the opening of an administrative procedure before giving its opinion, so that the parties can have access to the corresponding file and contribute their opinions:

The right to a defense should be considered not only an opportunity for the accused citizen or alleged law-breaker to hear the allegations but also the right to demand that the State, prior to the imposition of any punishment, carry out a set of acts designed to enable him to hear the exact charges and the legal provisions that are applicable thereto, to make timely statements in his own defense, and to seek and adduce any evidence there may be in his favor.

Venezuela, Supreme Court, Judgment of November 17, 1993, cited in Rafael Chavero, *La participación ciudadana en la elaboración de actos generales* [Citizen Participation in the Elaboration of General Acts], *Revista de Derecho Público* No. 59-60, Ed. Jurídica Venezolana, Caracas, 1997.

68. Similarly, several authors, including specialists in criminal procedural law, regard the right to a defense as an essential component of due process, not restricted to criminal matters. For example, Prof. Julio B.J. Maier maintains that:

Even if we observe the guarantee from the perspective of criminal proceedings, it does not refer exclusively to the State's authority in criminal matters. To the contrary, the term is broad and also includes civil, labor, and administrative proceedings, since it protects all attributes of the person (life, liberty, property, etc.), or rights that he or she might have which are susceptible to being abridged or infringed by a decision of the State ...[FN19]

[FN19] Julio B.J. Maier, Derecho procesal penal [Criminal procedural law] vol. 1: Fundamentos [Fundamentals], Ed. del Puerto S.R.L., Buenos Aires, 1996, 2d ed., p. 541.

69. No less interesting is jurist Agustín Gordillo's view on this matter:

The principle of hearing the interested party prior to deciding anything that may affect him is not only a principle of justice but also a principle of efficacy, because it undoubtedly ensures a better understanding of the facts and therefore contributes to better administration, as well as to a more just decision.[FN20]

[FN20] Agustín Gordillo, Problemas del control de la Administración Pública en America Latina [Problems of Public Administration Control in Latin America] Cuadernos Civitas, Madrid, 1981. Other authors emphasize the importance of the right to a defense among the special rights related to administrative procedure, including as a component thereof the right to be heard. For example, Brewer-Carías says that "it is not possible even to speak of a defense unless the person concerned is present and heard. It is a matter of the right of any interested party to be heard, that is a positive enactment of the principle of jurisprudence known as *audi alteram parti* –in other words, the right to hear the other party ." The same author includes, in addition, as part of the right to a defense, the right to be notified when "subjective rights and legitimate personal interests can be directly affected by the proceeding," as well as the right of the accused to have access to the file on the case, because "this is the basis for the defense." Another right that is included is the right "not only to state reasons but also to present evidence." Allan Brewer-Carías, *Derechos y garantías constitucionales* [Constitutional Rights and Guarantees] vol. 4, "Instituciones políticas y constitucionales" [Political and Constitutional Institutions, Universidad Católica del Táchira, Ed. Jurídica Venezolana, Caracas 1996, pp. 227 - 233.

70. The circumstances of the present case show that the State should have determined the fundamental rights of the accused priests, and that the consequences of an adverse decision—such as that which ultimately resulted—warrant a reasonable interpretation, as broad as possible, of the right to due process. Therefore, bearing in mind the standards for interpretation of the American Convention,[FN21] the IACHR considers that this right should have included the opportunity to be assisted by a lawyer if the accused parties had so wished, or by a representative in whom they had confidence, during the administrative proceeding that was held on the night of June 22, 1995, and in the early hours of the following day at Mexico City airport. This specific aspect will be dealt with in greater detail under the analysis of the right to effective judicial protection.

[FN21] Article 29 of the American Convention establishes that none of its provisions shall be interpreted as "suppress[ing] the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein."

71. The Commission establishes that the Mexican State denied Fathers Loren Riebe Star, Jorge Barón Guttlein, and Rodolfo Izal Elorz the right to a hearing in order to determine their rights. This guarantee should have included the right to be assisted during the administrative sanction proceedings; to practice their right of defense, with enough time to ascertain the charges against them and hence to refute them; to have a reasonable time in which to prepare and formalize their statements; and to seek and adduce the corresponding evidence. Thus the IACHR concludes that the aforementioned State violated said persons' right to judicial protection, in breach of Article 8 of the American Convention.

ii. Effective judicial protection: amparo proceedings

72. In the admissibility report approved in the instant case, it was established that:

The IACHR considers that there was no dispute about the amparo recourse being the most suitable remedy available in Mexico to correct the alleged violations. Nor did the State question the petitioners' statement that the judgment passed by the circuit court of appeals, which confirmed the amparo resolution issued in the case of the three priests, exhausted remedies under domestic law.[FN22]

[FN22] IACHR, Report No. 34/98, Case 11.610, Mexico, May 5, 1998, paragraph 23.

73. Nevertheless, the parties disagree as to the correctness of the timing of presentation of that legal recourse. On the one hand, the State claims that the indirect protection [amparo] suits presented on July 14, 1995, on behalf of each of the foreign priests, gave them an opportunity to claim their rights, with a chance of succeeding. The petitioners, on the other hand, consider that the recourse lacked effectiveness inasmuch as it was impossible to file it before the decision to expel the priests from Mexico was carried out; and because later the courts confirmed the arbitrary decision of the migration authorities.

74. The Commission concluded above that the Mexican State should have guaranteed the petitioners' right to be represented during the administrative proceedings. That conclusion is based not just on the right to a hearing in the context of the instant case, but also from the point of view of effective judicial protection. For that reason, the IACHR in no way agrees with the terms of the judgment that dismissed the amparo filed, as regards Father Izal Elorz.

The truth is that if he lacked counsel to advise him during these proceedings, that was because he never asked for one, a circumstance that on its own is not enough to prove that he was left defenseless...

75. The lack of a lawyer the priests could trust is relevant when it comes to analyzing judicial protection, because a professional of that kind could have counseled his clients regarding their right to file a writ of amparo immediately, in order to preempt consummation of the violations set forth above. The Commission sees no grounds for the State's argument that the presence of the respective consuls and of assistant inspectors from the National Human Rights Commission constituted sufficient representation to ensure the defense of the priests' rights. That is evident when one bears in mind that neither the diplomats nor the CNDH inspectors could represent them in the administrative proceedings.

76. In the case of the consuls, the petitioners allege that the former were unable to do so because they were foreigners and lacked a degree in law accredited in accordance with Mexican domestic law for the exercise of that profession. [FN23] This assertion was not disputed by the Mexican State. For their part, the National Committee inspectors are expressly prohibited by the law that created their institution from intervening as lawyers on behalf of any of the parties. Moreover, from the evidence in the file of the appeal [amparo], during which the administrative proceedings were challenged, it clearly merges that the acts undertaken by the supposed representatives of the priests had absolutely no effect on those proceedings. On the contrary, they restricted themselves to observing and in no way queried the evident irregularities being committed by the Mexican authorities. Such a passive approach would have been unthinkable in a genuine legal representative of the accused.

[FN23] The State of Mexico is a party to the 1963 Vienna Convention on Consular Relations of 1963. That instrument establishes as follows in Article 33 ("Communication and contact with nationals of the sending State"):

1.c. Consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and to correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulation of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended.

77. The IACHR has given its opinion on the right to effective legal counsel in the following terms:

The right to judicial recourse expressed in Article 25 of the American Convention is a fundamental tool for the protection of individual rights within the framework of the American Convention's object and purpose. It is so important that the Inter-American Court has concluded that not even the imposition of states of emergency—which did not exist in Argentina at the time when the petitioners judicial recourse was denied —can "entail the suppression or

ineffectiveness of the judicial guarantees that the Convention requires States Parties to establish, for the protection of the rights not subject to derogation or suspension by the state of emergency, or to control the legality of measures adopted by the executive body due to the state of emergency.[FN24]

[FN24] IACHR, Annual Report 1997, Report N° 30/97 (Case 10.087 - Gustavo Carranza), Argentina, OEA/ser.L/V/II.98 Doc.6 rev., April 13, 1998, par. 80, p. 269.

78. For its part, the Inter-American Court of Human Rights has stated the following:

Article 25(1) upholds the principle, recognized in international human rights law, of the effectiveness of the instruments or procedural means designed to safeguard such rights...In accordance with this principle, the nonexistence of an effective recourse against violation of the rights recognized under the Convention constitutes a transgression of that Convention by the State Party where such circumstances obtain. Here it is worth underscoring that, for such a recourse to exist, it is not enough for it to be contemplated in the Constitution or the law or to be formally admissible; it has also to be really suited to establishing whether a violation of human rights has occurred and capable of remedying it. Recourses that, whether because of the overall state of the country or even for specific reasons in a given case, are evidently pure illusions cannot be considered effective.[FN25]

[FN25] Inter-American Court of Human Rights, Advisory Opinion OC-9/87 of October 6, 1987 "Judicial Guarantees under States of Emergency" (Arts. 27.2, 25 and 8 American Convention on Human Rights), paragraph 24.

79. In the instant case, the IACHR has already established that the foreign priests, Fathers Riebe Star, Barón Guttlein, and Izal Elorz were arrested arbitrarily, violating Mexican laws and the American Convention which protect the right to personal liberty. It was also determined above that the administrative proceedings to which the victims were subjected at Mexico City airport failed to comply with the right to a hearing to which they were entitled under the above-mentioned provisions. Among other things, because the presence of consular agents from the United States of America, Argentina, and Spain, and visitors from the CNDH at Mexico City airport in the early morning hours of June 23, 1995, did not constitute observance of the right to representation that the Mexican State is obliged to guarantee for the priests from the three countries mentioned.

80. The practically identical judgments passed on July 9, 1996 by the circuit court resolving the priests' appeal [amparo] resulted in the dismissal of charges against all the civil servants accused of violating the claimants' rights. The operative part of those judgments establishes, in the second paragraph, that "the Justice of the Union neither shields nor protects" the priests against the acts carried out by those officials. For its part, the Second Circuit Court of Appeals in

Criminal Matters of the Federal District upheld that verdict in its entirety. The interested parties were notified on January 30, 1997.

81. The simplicity, promptness, and effectiveness of the writ of amparo in the cases of the priests must be measured on the basis of the possibility of verifying the existence of such violations; of remedying them; of making reparation for the damage done; and of punishing those responsible. It is clear that the legal remedy did not comply with the above-mentioned requirements. On the contrary, the final decision of the Mexican courts found, without sufficient legal grounds, that government officials had acted legally. Thus, that decision consolidated the violations of the human rights of the complainants and allowed the violators to go unpunished. In other words, the priests were denied the protection of Mexican justice against transgressions of their fundamental rights, in violation of the right to judicial guarantees.

82. On the basis of all the above, the Commission concludes that the Mexican State violated the right to judicial protection established in Article 25 of the American Convention in the case of Fathers Loren Riebe Star, Jorge Barón Guttlein, and Rodolfo Izal Elorz.

C. Right to humane treatment (Article 5)

83. The petitioners have alleged violation of the right to personal integrity of the foreign priests, on account of the way they were treated at the time of their arrest and while they were deprived of their liberty and held at the disposal of the Mexican authorities in Chiapas and at Mexico City airport. The pertinent paragraphs of Article 5 of the American Convention read as follows:

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

84. The petitioners point out that Father Riebe was arrested when he was in the rectory of his church abruptly and by armed men who did not identify themselves. He himself described the circumstances under which he was transferred to the State capital in the following terms:

Several uniformed men from the State Judicial Police forced me to get into the vehicle. They refused to tell me why they had arrested me or where they were taking me...we drove for approximately 10 miles until we passed a flatbed van. Later I found out that it belonged to the State Security Police. Father Rodolfo was in front. I was forced to get into the back part of the van along with four armed guards. In the hours that followed it got dark, and very cold, and there was wind and drizzle. I was not wearing either a jacket or a sweater. I just had a shirt. Nobody would tell me where we were going nor why. I was frightened. I needed to go to the bathroom and asked them to stop the van. The answer was "No". The journey lasted five hours...After the medical examination... they photographed our faces... they took us to a dark corridor. There for the first time we saw Father Jorge Barón, an Argentine priest who had been working in the town of Carranza. When I began to say something to Father Barón, they told me that prisoners were not allowed to speak. That was the first time the police had referred to us as prisoners. I still did

not know what I was accused of. They led us carefully guarded to the back of the building and handed us over to the State police. Finally, they let us speak. I saw some policemen handing Father Barón his glasses. Then, Father Barón told us that they had taken his glasses off, blindfolded him, and thrown him in the back of a van. He did not even know we were in Tuxtla until I told him...All the time, every time they changed guards or a new officer arrived, I asked why they were detaining me, what had happened, and where they were taking me. I must have asked six or seven times. They never replied...[FN26]

[FN26] Affidavit of Father Loren Riebe Star cited above, paragraphs 11 to 18.

85. For his part, Father Barón Guttlein described what happened as follows:

When we got to the El Carmelito crossing, around 4.40 p.m., I was forced by a van to pull up. Four men got down from the van and forced me, without showing any kind of written order or warrant of a competent authority, to get out of my car and covered my face with a sheepskin jacket. Blindfolded, I was able to perceive that I was taken towards my captors' van. I was thrown onto the floor of the van and covered with a sheepskin jacket or blanket. In that State I was driven for I don't know how long, but certainly for more than three hours...When we stopped, I was taken down from the van and my captors took off the blindfold...In the installations where we were I was forced to strip in front of my captors and given a medical examination by someone whose name I don't know because he refused to tell me when I asked...[FN27]

[FN27] Writ of relief (amparo) presented by the representatives of Father Barón Guttlein before the District Judge of the Federal District for Criminal Matters, paragraphs 3 and 4.

86. The Mexican State chose not to comment on the circumstances denounced by the priests during the proceedings. In its reply to the complaint lodged by Father Riebe Star, it limited itself to the following statement:

The Government of Mexico did not violate Father Loren L. Riebe's right to humane treatment, given that during the administrative proceedings the Mexican authorities respected his physical, mental, and moral integrity, as proved by the medical certificate issued by the coroner on June 22, 1995, which states that the complainant showed no signs of recent external injuries and was physically and clinically well.

87. When he refers to degrading treatment, European Human Rights Commission expert Nigel Rodley says it includes any kind of act "that causes severe mental or physical suffering which, under those particular circumstances, turns out to be unjustifiable." [FN28] For its part the United Nations has stated:

The term "cruel, inhuman, or degrading treatment or punishment" has not been defined by the General Assembly, but it should be interpreted in such a way as to provide the broadest possible protection against abuse, be it physical or mental.[FN29]

[FN28] Nigel S. Rodley, *The Treatment of Prisoners under International Law*, Oxford University Press, Unesco 1987, pages 73 and 74.

[FN29] Nigel S. Rodley, *op.cit.*, page 95.

88. The Commission has to analyze the complaints within the context of the situation prevailing in Chiapas at that time. As we mentioned at the beginning of this report, Chiapas has been subject to serious social unrest, exacerbated by the presence of the dissident armed group known as the EZLN and of paramilitary groups. International public opinion is familiar with that situation indicating the atmosphere of fear surrounding those who work with indigenous groups, especially human rights activists, because both groups are exposed to all kinds of harassment by paramilitary groups, including forced disappearances and extrajudicial executions. We also mentioned above that, in some cases, State security personnel turn a blind eye to crimes committed by the paramilitary, while in others they even play an active part. Here, it is worth recalling the "Ejido Morelia" case, which occurred in the State of Chiapas in early 1994. It was established in that case that three brothers--Severiano, Sebastián, and Hermelindo Santiz Gómez--all of whom were members of an indigenous group and supposedly members of the EZLN, were arbitrarily detained by Mexican army personnel, who tortured and killed them.[FN30]

[FN30] IACHR, Annual Report 1997, OEA/Ser.L/V/II.98 Doc. 6 rev., Report No. 48/97 – Case 11.411 Severiano and Hermelindo Santiz Gómez ("Ejido Morelia"), Mexico, February 18, 1998, pages 655 to 680.

89. In that context, the Commission considers that the fear felt by the three priests was both real and legitimate, given the improper manner in which they were arrested. Indeed, this report has clearly established that they were deprived of their liberty in an arbitrary and illegal fashion, with an unnecessary display of firearms. It should not be forgotten that Fathers Riebe Star, Barón Guttlein, and Izal Elorz were well known and respected for their work in support of human rights, and that all three practiced the priesthood in a predominantly indigenous area, with a strong Zapatista presence. If we add to that the fact that those who detained them did not identify themselves at any point and held them for about ten hours as they were transferred by heavily armed guards from one place to another, there were real grounds for them to fear for their lives and physical integrity.

90. That fear was compounded by the humiliating and inhuman treatment they received from their captors. Particularly serious is the fact that Father Barón Guttlein was kept blindfolded during a journey of approximately four hours, especially not knowing who had captured him, why, or where they were taking him. The IACHR considers no less degrading the fact that Rev. Riebe Star was transferred in the same state of uncertainty and fear as we have just described,

and then denied the right to go to the bathroom for a considerable period of time. Furthermore, the three priests were deprived of rest and sleep throughout the time they were held by the Mexican authorities. In this regard, human rights doctrine has the following to say about torture and ill treatment:

More sophisticated, because they leave little physical evidence, are psychological techniques: being deprived of light (or darkness), sound, or sleep, and general disorientation...[FN31]

[FN31] Nigel S. Rodley, *op.cit.*, page 10.

91. The right to personal integrity protected under the American Convention and by other international human rights instruments encompasses far more than a ban on beatings, physical torture or other forms of treatment that leave traces or visible marks on the victim. For that reason, the Commission dismisses out of hand the Mexican State's argument that the medical examination of the victims proves there was no violation of this right in the instant case.

92. The Commission concludes that the Mexican State did not respect the personal integrity of Fathers Riebe Star, Barón Guttlein, and Izal Elorz, since it subjected them to cruel, inhuman, and degrading treatment; and that it failed to treat them, while they were deprived of their liberty, with the respect due to the inherent dignity of the human person. Consequently, the Mexican State has transgressed Article 5 of the American Convention in respect of the victims in the instant case.

D. Right to privacy (Article 11)

93. Article 11 of the American Convention states:

1. Everyone has the right to have his honor respected and his dignity recognized.
2. No one may be the object of arbitrary or abusive interference with his private life, his family, or his correspondence, or of unlawful attacks on his honor or reputation.
3. Everyone has the right to the protection of the law against such interference or attacks.

94. The above facts in the instant case show improper conduct on the part of government officials in the detention and expulsion of the three priests. The State itself told the Commission that those authorities had ascertained that the priests were "promoting the organization of armed groups, organizing and leading local inhabitants to invade farms belonging to private individuals, and sundry unlawful acts". Instead of investigating these grave charges in accordance with the pertinent laws, before the courts and in the framework of due process of law, the State opted to violate explicit constitutional and legal provisions and arrest and summarily deport the foreign priests. They did so despite the fact that the priests had spent many years practicing their priesthood in the region and the file on the case has no record of any previous criminal behavior, nor of problems with the authorities, nor of any immigration irregularities.

95. The result was that the priests were presented to Mexican and international public opinion as dangerous delinquents; nevertheless, because of the government's maneuver, consisting in summary deportation without initiating criminal proceedings, they never had a chance to defend themselves from the serious criminal charges leveled against them. The petitioners have presented numerous publications and official documents discrediting the priests. The IACHR deems it appropriate at this point to refer to the press release issued by the Ministry of the Interior on June 23, 1995, the date of the summary expulsion. That document points to a number of activities carried out by the Mexican State such as "major efforts to ensure just, dignified, and lasting peace" in Chiapas, in order to "combat those who have taken advantage of the situation to cover up illicit activities outside the area of conflict:"

4th)...Thus it was ascertained that the three above-mentioned persons were carrying out proselytizing activities with a clear and marked participation in internal political affairs. Those denouncing these activities pointed to the responsibility of the aliens who have now been deported from the country in creating an atmosphere which exacerbates and radicalizes disputes between communities in Chiapas, by promoting land invasions, threats, and stirring up conflicts between different indigenous groups.

Taken together, the activities referred to contributed to a disturbance of the atmosphere of order, friendliness, and concord required in order to make progress towards a solution of the problems in Chiapas.

96. In addition to the harm done to the priests by deporting them summarily--without even giving them time to collect their personal belongings, much less to defend themselves--is the campaign to discredit them orchestrated by the State. In effect, the evidence cited above is enough to show that they were presented to public opinion as hardened criminals and as a threat for peace in Chiapas, without producing any evidence at all to substantiate these charges. The petitioners consider that one of the objectives of that campaign was to provide political justification--the IACHR considers a legal justification impossible--for the decision to deport the priests and forbid their return to Mexico, despite the fact that they had resided there legally for many years.

97. In analyzing above the priests' right to judicial protection, we noted the Mexican courts' reaction to the government's behavior: denying civil rights [amparo] and Federal protection to the complainants and exonerating all the government officials accused. In light of the preceding analysis, the Commission concludes that the Mexican State violated the right--guaranteed under Article 11 of the American Convention--to protection of the honor and dignity of Fathers Riebe Star, Barón Guttlein, and Izal Elorz.

E. Right to freedom of conscience and religion (Article 12) and right to freedom of association (Article 16)

98. Article 12 of the American Convention protects the right to freedom of conscience and religion, which includes the right of every person to uphold their religion or beliefs and the freedom to practice and preach them both public and privately. To that end, no one can be subjected to restrictive measures that affect such liberty, "subject only to the limitations

prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others." For its part, Article 16 establishes that "everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes."

99. In the instant case, the petitioners allege that the improper conduct by the authorities forms part of a government campaign against the Catholic Church in Chiapas. To substantiate that claim, they cite various incidents of treatment meted out to priests, missionaries, social workers, human rights activists, and Catholics. The petitioners state that:

The persecution has consisted, among other things, in closing down churches and bans on religious meetings by local authorities; the expulsion from Mexico of several foreign priests, including Father Riebe; the lack of government protection for the church, priests, and nuns against attempts to murder them; rape, attacks, and threats; failure to investigate such incidents or to charge those who perpetrated such criminal offenses; the illegal arrest of church workers and raiding of churches, along with attacks and slander in the press, falsely stating that bishop Ruiz and the priests in Chiapas supply arms to the EZLN, encourage violent uprisings and land invasions, and take part in criminal activities.

100. For its part, the State maintains that the events described by the petitioners are "isolated" cases, with no bearing on the present case. It considers that such events "lack any connection or rationality that could bear directly or indirectly" on this case. The State adds that there is no religious intolerance on the part of the authorities and that in Mexico there is respect for the freedom of belief established in Article 24 of the country's Constitution. Finally, it says that there is no persecution campaign since "... there is no record of any such claim by Mexican church authorities".

101. The IACHR does not consider it necessary in this report to pronounce on the existence of a campaign against the Catholic Church in Chiapas, although it has referred in a general way to the issue in the context of the situation in that State. On the other hand, the file on the case states that the priests were known for their religious activity and for their work in defense of the human rights of the people in the localities where they practiced their ministry. The manner in which they chose to profess and disseminate their religion and beliefs is protected by the American Convention. Moreover, it was never demonstrated in a proceeding that met the standards of due process that the priests had violated any Mexican laws that govern such activities.

102. It is worth pointing out one fact not disputed by the Mexican State: the three priests were interrogated by the migration authorities at Mexico City airport about the social teachings of the Catholic Church. It should be added, moreover, that the three priests were deprived of their freedom that same day, in virtually identical operations just a few hours apart, and submitted to the same summary proceeding of expulsion in an action organized by the authorities in advance. In this context, the Commission understands that the conduct of the authorities who interrogated the foreign priests about their religious preference points to a tie between that religious preference and the treatment they received from said authorities: namely, arrest and summary expulsion from Mexico, added to which they were forbidden to return to Mexico under any migration category whatsoever.[FN32]

[FN32] The Commission has pronounced on violation of the rights to freedom of conscience and religion and the right to associate freely in cases dealing with treatment of priests and nuns by agents of the State. On this, see IACHR, Annual Report, 1996, OEA/Ser.L/VII.95 Doc. 7 rev., Report N° 31/96, Case 10.526, Guatemala, October 16, 1996, par. 119, p. 363.

103. Based on these facts, the Commission establishes that the priests Riebe Star, Barón Guttlein, and Izal Elorz were punished because of their religious activity. Consequently, the IACHR concludes that the Mexican State violated the right to freedom of conscience and religion that it was obliged to guarantee in the case of the three foreign Catholic priests.

104. The file on the case also shows that over their long years of legal residence in Mexico, the priests had established strong ties with various private organizations in the State of Chiapas. Indeed, the initial petition of Father Riebe Star contains a list of entities that also present themselves as victims of his expulsion: Casa María, a residence for indigenous children; Rancho Santiago, a residence for indigenous children; the medical clinic, the seamstresses' cooperative, the consumers cooperative, and the library, all of them in the town of Yajalón. The petitioners point out that all these projects provide direct economic and social benefits to many of the indigenous Mayan people of the region, and it is therefore considered that the expulsion of the priests was designed "to intimidate the indigenous people, depriving them of their leaders, and undermining the success of self-help organizations."

105. Taking into account what has been established above in regard to the religious preference of the priests, the Commission considers that the decision to summarily expel them was also a violation of the right to associate freely for religious purposes, since it radically and definitively cut them off from contact with their parishioners in Chiapas.

F. Freedom of movement and residence (Article 22)

106. Article 22(6) of the American Convention establishes:

An alien lawfully in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law.

107. As stated in this report, there is no dispute concerning the fact that Fathers Riebe Star, Barón Guttlein, and Izal Elorz were legal residents of Mexico and that they were authorized by the migration laws of that State to practice their priesthood. Furthermore, the Commission has established above that the decision by Mexico's migration authorities that led to their expulsion was taken in violation of their human rights to due process and effective judicial counsel. Therefore the IACHR concludes that the Mexican State violated the right protected under Article 22(6) of the American Convention in the case of these three persons.

G. Right to equal protection (Article 24)

108. The American Convention establishes that:

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

109. In the instant case, the petitioners invoked in all their communications violation of the priests' right to equal protection before the law; however, the Commission notes that they did not substantiate this point and for that reason the State did not mention it either.

110. Article 46(1) of the Regulations of the IACHR regarding the preparation of reports stipulates that: "... the Commission shall examine the evidence provided by the government in question and the petitioner, evidence taken from witnesses to the facts or that obtained from documents, records, official publications, or through an on-site investigation".

111. The IACHR lacks the wherewithal to analyze the issue of violation of Article 24 of the American Convention in this case and therefore refrains from pronouncing on this aspect.

VI. ACTIONS AFTER REPORT N° 41/98

112. On September 29, 1998, the IACHR adopted Report N° 41/98, on this case, pursuant to Article 50, and transmitted it to the Mexican State with the pertinent recommendations. The State forwarded its observations on December 2, 1998.

113. In those observations, the State made reference to the amendments to the General Law on Population of Mexico, which have been in force since November 8, 1996, when they were published in the Diario Oficial. They included a new Article 154, which "establishes the judicial guarantees applicable in this administrative proceeding," which include the obligation to give prior notice to the non-national, in writing, and with acknowledgement of receipt, to inform him of the reason for the appearance, the place, the facts alleged, and the right to offer evidence and arguments to refute the allegations. According to the Mexican State, the amendments to the General Law on Population are continuing, and are to be published in the first half of 1999. One of the planned articles provides for the possibility of foreigners being advised by counsel or a person of their confidence, with which the non-national "will have the right to argue against the possible expulsion and even file a motion for administrative review as a means of defense, before the possible expulsion is carried out, and has the opportunity to gather evidence or other materials to make his or her case before the immigration authorities, from the outset of the proceeding."

114. The State expressed that those provisions came after the date on which priests Riebe Star, Barón Guttlein, and Izal Elorz were arrested and expelled from Mexico, and that therefore the judges who reviewed the administrative proceeding "acted pursuant to the legislation in force on the date the events in question took place." The State concluded that the Commission "simply calls into question the actions of the federal judges merely because they ruled in favor of the competent authorities," and that there is a contradiction in the statement by the IACHR to the effect that the writ of amparo was the suitable remedy for solving the violation and that the violations were found because the ruling went against the petitioners.

115. As regards the other violations established in Report 41/98, the State argued:

Taking account of these considerations, it does not make sense to derive alleged violations of the rights to humane treatment, to privacy, as well as to the freedom of conscience and religion, the right to association, and, finally, the right to freedom of residence and movement, based on non-logical arguments.

116. The State added that "the writ of amparo has simple, prompt, and effective procedural rules to determine the legality of a detention," and that the action could have been brought by any person, by any means, at any time of the day or night, before any judge. Therefore, it considered that the reference to the requirement to possess the title of attorney to file it revealed the "lack of knowledge of the situation." In addition, the State indicated that "in the specific case, the petitioners limited the request for amparo solely to the right to be assisted by counsel, consequently the judicial body did not take cognizance of alleged violations of other rights."

117. The State also set forth its analysis of the value of the international instruments cited and applied by the Commission in this report, which it defined as being "merely persuasive, as it corresponds to other jurisdictions" and it was of the view that in this case they "lack interpretive force" by virtue of the case law of the Inter-American Court cited at paragraph 67 *supra*.

118. Finally, the State reiterated that the immigration authorities acted "abiding strictly by the legislation in force in Mexico at the time of the events" and summarized the matter of the legislative reforms, which would make it possible "to achieve the levels of protection suggested by the Inter-American Commission." The State, based on its arguments, requested that the IACHR "close the case and declare it concluded."

119. With respect to the observations summarized above, the Commission must first specify that the right to a fair trial cannot be "established" in Mexico by virtue of a law, since it is one of the human rights that Mexico has undertaken to make effective, respect, and guarantee by ratifying the American Convention.

120. As regards the State's argument on the proper application of the Mexican law in force at that time by the administrative authorities and by the judicial bodies, the IACHR refers to Article 27 of the 1969 Vienna Convention on the Law of Treaties, according to which: "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty." In this case, an effort is made to elude compliance with the recommendations of the Commission, the principal organ of the OAS responsible for applying the American Convention, which the Mexican State has undertaken to respect and guarantee, based on a regulatory provision of domestic law.

121. The decision to fail to perform that can be gleaned from the State's response to Report N° 41/98 is also reflected in other expressions used by the State, such as "the levels of protection suggested by the Commission" (emphasis added); that "one cannot accept the conclusion of the IACHR" [with respect to the violation of the right to judicial protection]; and that "it makes no sense to derive violations ... relying on non-logical arguments" [with respect to the IACHR's

analysis in this report]. In this regard, one should recall what the Inter-American Court has established:

[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.[FN33]

[FN33] Inter-American Court of Human Rights, Case of Loayza Tamayo, Judgment of September 17, 1997, para. 80.

122. In addition, the Commission has expressed on numerous occasions that it does not, in principle, have the authority to review the judgments of the judicial organs of the OAS member states, unless a violation of one of the rights protected by the American Convention has been committed. The analysis in this case is not aimed, as the State argues, at determining whether the Mexican judges made sure their decisions were in line with domestic law, for which the IACHR has no authority; in contrast, the Commission is fully authorized to determine whether the decisions of the judicial organs--or any act of authority--constitute a violation of rights protected by the American Convention. The violations have been established in this case based on the information provided by the parties, analyzed in light of that Convention, and interpreted in their proper context with other international human rights instruments, the case law, and doctrine (see paragraphs 46 and 54 supra). In addition, the IACHR has dismissed the allegations of violations of several rights invoked by the petitioners in this case, as it found the factual and legal elements required for that purpose to be lacking.

123. As to another important issue in this case, the reading of paragraph 77 of this report shows that the reason for the presence of an attorney in the hearing is the legal counsel such professional could have been able to provide his or her clients, in the face of the imminence of a decision that was going to affect their fundamental rights. For example, an attorney who is a person of confidence could have explained to the priests the "simplicity and rapidity" of the rules on amparo described by the State in its response to Report N° 41/98, which would have enabled them to file it before the situation of violations described in this report had been consummated. If that had been the case, and the judges had ruled definitively as they did here and confirmed the violations, the Commission would also have found a violation of the right to judicial protection. That is because it would have to submit the writ of amparo to the same requirements set forth in paragraph 83 above: the possibility of establishing the violations, of providing a remedy for them, as well as reparation for the damages caused, and making it possible to punish the responsible party. In any event, the IACHR views favorably the State's recognition, looking to the future, of the importance of non-nationals having an attorney of confidence during the administrative procedure for expulsion, as it is a core violation--though certainly not the only one--in this case.

VII. CONCLUSIONS

124. The IACHR highlights, first, its satisfaction with the advance achieved by the reforms to the General Law on Population of Mexico. In effect, the protection for the right to due process in administrative procedures to expel non-nationals, which will include their right to be represented by counsel of their choice, is a very important stride forward towards consolidating judicial guarantees in Mexico.

125. Without prejudice to the foregoing, the Commission observes that such reforms have not been applied to the case of the foreign priests, which is the reason for this report, and that no recommendations of those put forth in its Report 41/98 have been adopted. Consequently, the conclusions of the following paragraphs are reiterated, with the corresponding recommendations.

126. The Commission concludes that Fathers Loren Riebe Star, of the United States, Jorge Barón Guttlein, of Argentina, and Rodolfo Izal Elorz, of Spain,--all three legal residents of Mexico--were arbitrarily deprived of their liberty and expelled in summary fashion from that country, without being granted a hearing and in violation of their freedom of movement and residence. The injunction [juicio de amparo] filed later by representatives of the deported priests lacked effectiveness as protection against the violations referred to. Likewise, the IACHR concludes that the arrest and expulsion were carried out in violation of the priests' physical integrity, as well as in violation of their right to protection of their honor and dignity. As a result of these arbitrary proceedings by the authorities, the Mexican State is also responsible for violating freedom of conscience and religion, as well as the freedom of association to which the above-mentioned persons were entitled.

127. The Commission concludes that the Mexican State has violated to the detriment of Loren Riebe Star, Jorge Barón Guttlein and Rodolfo Izal Elorz, the human rights provided in Articles 5, 8, 11, 12, 16, 22, and 25 of the American Convention, all of which bear on Article 1(1) of that international instrument. Therefore, the State is duty-bound to make reparation for the consequences of those violations.

VII. RECOMMENDATIONS

128. By virtue of the foregoing analysis and conclusions,

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

1. To take appropriate steps to revise the validity of the administrative proceedings applied to the victims of the instant case.
2. To investigate the responsibilities of the government officials involved in the violations determined in the preceding chapter, and apply the respective sanctions.

3. To reinstitute the juridical situation in which the victims in the present case were deprived of the enjoyment and exercise of their human rights.

4. To make adequate reparation for the human rights violations suffered by the victims in this case.

VIII. PUBLICATION

129. On March 8, 1999, the Commission sent Report N° 4/99--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 April 8, 1999, the State sent a communication in which it reiterated the information presented in response to Report N° 41/98, pertaining to this case, which has already been evaluated supra. In accordance with Article 51(2), the Commission, in this phase 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.

130. The communication of April 8, 1999, contains no information on any measures taken to comply with the recommendations issued by the Commission in Report N° 4/99.

131. 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 VI and VII 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.