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Decided by: Chairman: Professor Robert K. Goldman;
First Vice-Chairman: Dr. Helio Bicudo;
Second-Vice Chairman: Dean Claudio Grossman;
Members: Prof. Carlos Ayala Corao, Dr. Alvaro Tirado Mejia.
Dated: 22 December 1999
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Represented by: APPLICANT: Americas Watch
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I. SUMMARY

1. On November 16, 1989, the Inter-American Commission on Human Rights (hereafter "the Commission") received a petition from the non-governmental organization Americas Watch (hereafter "Americas Watch" or "the petitioners"), to the effect that the Republic of El Salvador (hereafter the "Salvadoran State", the "State" or "El Salvador") had violated the American Convention on Human Rights (hereafter the "American Convention") to the prejudice of six Jesuit priests and two women, who were executed extra-judicially by agents of the State. According to the complaint, these deeds occurred in the morning of that same day, at the residence of the Jesuit Order located within the premises of the Universidad Centroamericana "José Simeón Cañas" (hereafter "the UCA") in San Salvador. The Jesuit priests concerned were the Director of the UCA, Father Ignacio Ellacuría, 59 years old; the Vice Director Father Ignacio Martín-Baró, 47 years old; and the Rector of the Institute of Human Rights of the UCA, Father Segundo Montes, 53 years old, founder of Socorro Jurídico Cristiano [Christian Legal Aid] "Oscar Arnulfo Romero" and president of the Institute of Human Rights of that University, and Professors Armando López, Joaquín López y López and Juan Ramón Moreno. The women were Mrs. Julia Elba Ramos, who was employed as a cook in the residence, and her 15 year-old daughter, Celina Mariceth Ramos.

2. In additional submissions, the petitioners alleged that the crime was planned and carried out by agents of the State, belonging to the Armed Forces of El Salvador. They claimed that the investigation conducted by the Salvadoran authorities was ineffective, that the intellectual authors of the murders were never investigated despite serious evidence and witness testimony that implicated high-ranking officers, and that efforts were made to cover up the crime.

Furthermore, the only two military personnel convicted of the murders were granted amnesty under the General Amnesty Law of 1993, with the result that they enjoyed absolute impunity for the crime.

3. For its part, the State requested that the case be set aside, because it considered it to have been "duly processed". The State also provided information concerning proceedings under domestic jurisdiction against the soldiers who were charged with the crime.

4. After examining the case, the Commission concludes in this report that the State violated the following human rights enshrined in the American Convention: the right to life (Article 4), the right to judicial guarantees and effective judicial protection for the relatives of the victims and the members of the religious and academic community to which the victims belonged (Articles 8(1) and 25), and the right to know the truth (Articles 1(1), 8(1), 25 and 13). It concludes moreover that the State has failed in its obligation to respect the rights recognized in the American Convention and to guarantee the full and free exercise of those rights (Article 1.1), and in its obligation to refrain from adopting domestic legal provisions that impede the enjoyment of the rights enshrined in the Convention (Article 2).

II. PROCEEDINGS BEFORE THE COMMISSION

5. On November 16, 1989, Americas Watch submitted a petition to the Commission alleging that military personnel of El Salvador had on that day executed six Jesuit priests, a woman working with them as a cook, and her 15 year-old daughter. The petitioners requested the Commission to seek the consent of El Salvador for an in loco visit, in order to investigate the murders and to demand proper protection for members of human rights and social service agencies. On the same day, the Commission transmitted the pertinent parts of the complaint to the Salvadoran State, and requested that it provide such information as it deemed appropriate within ninety days.

6. On November 29, 1989, the petitioners submitted a copy of the testimony presented by an eyewitness to the events. On December 5, 1989, the Commission transmitted this additional information to the State and again asked for the pertinent information.

7. On December 13, 1989, the petitioners presented a report prepared by the organization Christian Legal Aid "Archbishop Oscar Romero" on the summary executions that occurred in El Salvador on November 16, 1989. On February 21, 1990, the Commission received a note from the State referring to the report of the Archbishop's Legal Protection Office [Oficina de Tutela Legal del Arzobispado] concerning the investigations conducted by that office, but limited itself to noting that the report had been submitted to the Criminal Investigation Commission. On March 12, 1990, for the third time, the Commission requested the State to provide information within thirty days.

8. On August 22, 1990, Americas Watch submitted additional documentation in which it reported, among other things, on the inadequacy of the official investigations conducted to date, and charged that there was an ongoing campaign to cover up the crime. On August 28, 1990, the Commission transmitted the relevant portions of this communication to the Salvadoran State and

requested a response within a period of 60 days. On November 9, 1990, the Commission reiterated to the State its request for information on the case. On March 20, 1992, a non-governmental organization, the Lawyers' Committee for Human Rights, (hereafter "the petitioners") replaced Americas Watch as the petitioner in the case, and presented additional information.

9. On October 19, 1992, the State requested that the case be set aside. On October 8, 1993, that request was reiterated. On November 3, 1994, the Commission transmitted the State's submission to the petitioners and requested that they present their observations on it within thirty days. That request was repeated on January 9, 1995, and on April 25, 1995. On June 14, 1995, at the request of the petitioners, the Commission granted them an additional period of 45 days to respond.

10. On May 3, 1996, the Commission placed itself at the disposal of the parties in order to arrive at a friendly settlement of the affair. On April 22, 1998, the petitioners declared that "they remained open to the possibility of participating in discussions to arrive at a friendly settlement, provided that the government accepted, as a starting point, the need to clarify the truth and establish the responsibility of the parties responsible for the violations committed in this case". The State, for its part, did not respond to the proposal of the Commission within the time limit set, and the Commission consequently proceeded as provided in the American Convention and the Regulations of the IACHR.

11. On February 8, 1999, the petitioners submitted additional information and requested that the UCA be considered a co-petitioner in the case. On March 16, 1999, the Commission transmitted this communication to the State, giving it a period of 30 days to present its final observations. The Commission expressly requested that it indicate "the points separating the parties with respect to the questions raised, and those points that were accepted, and that it refrain from repeating arguments" pursuant to Article 34(8) of the Regulations. At the date this report was approved, the State had not responded to the Commission's request.

III. POSITIONS OF THE PARTIES

A. The petitioners

12. The Commission will summarize the allegations of the petitioners under the following main headings: the murders and those responsible for them, materially and intellectually; the subsequent cover-up of the crimes; irregularities in the investigation; and the approval and application of the amnesty law.

1. The killings

a. Background

13. The petitioners point out that the facts of the case occurred during the final stages of the armed conflict that raged in El Salvador between 1980 and 1992. During those years, a Catholic religious order, the Company of Jesus (hereafter "the Company of Jesus") was in the forefront

among those calling for a peaceful settlement of the conflict.[FN1] The petitioners maintain that in the years leading up to November 16, 1989, the date of the murders, Jesuit priests were the victim of various attacks by government officials and members of the Armed Forces, which culminated in the extra-judicial execution of the victims.[FN2]

[FN1] A press release of the Company of Jesus, dated 16 November, issued as a result of the murder of the six Jesuit Fathers (included on the files of the case) sheds light on the position of the Company of Jesus with respect to the conflict. That communiqué reads in part as follows: "We hope that our brothers' sacrifice will not be in vain. We are convinced that only with an end to the war, with the cessation of any type of repression, and that with a peacefully negotiated settlement to the conflict will our country be able to extract itself from its present troubles. The murdered priests had put all their efforts into cooperating actively for a just and negotiated peace, based on respect for human rights and the dignity of the poor. Let us trust that their deaths will sow the seeds of a new commitment to bring peace to our country."

[FN2] The petitioners maintain that during those 12 years, at least 25 officials and workers of the church were assassinated in El Salvador. As well, the petitioners refer to several instances constituting persecution against the Jesuits in El Salvador, namely: Jesuits were the targets of six bomb attacks during 1976; six Jesuit Fathers and many students in the country were arrested and deported, and two were tortured; extremist military groups were responsible for a campaign that openly advocated the killing of all Jesuit Fathers who refused to leave the country immediately, but that campaign was never investigated; in 1977 Father Ellacuría was temporarily refused permission to return to the country, although he was a Salvadoran Citizen. The library of the UCA and its printing facilities, as well as the Jesuit residence, were the target of several bomb attacks during the 1980s. In November 1980, Father Ellacuría was forced to flee the country in the face of a military conspiracy to assassinate him; in 1981, Father Ellacuría was included among a list of "traitors" held responsible for the country's problems; in 1986 a member of Parliament, of the ARENA Party, launched a campaign to strip Father Ellacuría of his Salvadoran citizenship; in 1986 the then mayor of San Salvador, Armando Calderón Sol, proposed the creation of a special commission to investigate the activities of Father Ellacuría.

14. With respect to this point, the petitioners point to statements and incidents that occurred during the three years before the extra-judicial executions. For example, the petitioners indicate that in 1986 legislators of the Alianza Republicana Nacionalista political party (hereafter "ARENA") launched a campaign to strip Father Ellacuría of his Salvadoran citizenship, and that subsequently they made common cause with other political figures such as the then President, Napoleón Duarte, who publicly accused the priest of being the "creator of the theory and concept of guerrilla rebellion." [FN3] The petitioners also indicate that the Salvadoran Armed Forces published a statement in which they accused Father Ellacuría of supporting the use of car bombs during the guerrilla campaign in the last months of 1988. The petitioners declare that a similar campaign was conducted against Father Segundo Montes.

[FN3] The petitioners cite as their source the newspaper "El Mundo", of September 6, 1986.

15. In the same vein, the petitioners note that in 1989 Colonel Juan Orlando Zepeda, of the First Infantry Brigade, declared that the assassination of a public prosecutor had been planned within the UCA and he referred to that academic center as "a haven of terrorist leaders from which a strategy of attacks against Salvadoran citizens is planned and conducted." [FN4] The petitioners also maintain that the Vice-Minister of Public Safety, Colonel Inocente Montano, declared publicly that the Jesuits were totally identified with the subversion. [FN5]

[FN4] The petitioners cite as their source the newspaper "El Diario de Hoy", of April 20, 1989. This would appear to be confirmed by the Report of the Commission on the Truth for El Salvador (hereinafter "Report of the Truth Commission", included in the files of the case), which says: "Col. Juan Orlando Zepeda, Minister of Defense, publicly accused the UCA of serving as an operations center for planning the terrorist strategy of the FMLN". Cf. Provisional Report of the working group on El Salvador, of the Speaker of the House in the United States, April 30, 1990, which is also included as evidence in the files of the case.

[FN5] The petitioners cite as their source the Report of the Truth Commission, which says: "Col. Inocente Montano, Vice Minister of Public Safety, said publicly that the Jesuits were totally identified with subversive movements"

16. Moreover, the petitioners indicate that in March 1989 a grenade exploded in the electrical plant of the UCA. One week after the accusations made by Colonel Zepeda, the University press facilities were attacked with bombs. Subsequently, several explosive devices were thrown at the complex housing the press. In July, the press facilities were again bombed.

17. The petitioners relate that on November 11, 1989, the date of launching of the military offensive by the dissident armed group "Frente Farabundo Martí para la Liberación Nacional" (hereafter the "FMLN"), all radio broadcasters were given the order to connect with Radio Cuscatlán, the official station of the Salvadoran Armed Forces, over the national network. From that moment there was no further broadcasting of news on the struggle, and in its place government and military propaganda was carried. Some people called in, in search of their relatives; supposed citizens called in to advocate violence against members of the political oppositions, the labor unions, the church and non-governmental organizations. Some callers voiced support for killing Jesuits, and Father Ellacuría in particular. In one call, the Vice President of El Salvador, Francisco Merino accused Father Ellacuría of "having poisoned the minds of El Salvador's youth".

b. Material responsibility of State agents

18. The petitioners allege that the material authors of the extra-judicial executions were agents of the State, members of the Commando Unit of the Atlacatl Counterinsurgency Battalion (hereafter the "Atlacatl Battalion"), which operated under the orders of Col. Guillermo Alfredo Benavides. Company Commander Lt. Espinoza Guerra, Sub-Lt. Gonzalo Guevara Cerritos, and Lt. Yussy Mendoza Vallecillos, who were accompanied by thirty-six soldiers, led the unit.

19. The petitioners relate the facts involved in the extra-judicial execution in the following manner:

The three lieutenants and the troops under their command proceeded towards the priests' dormitory where they awakened the priests and ordered them outside. The five priests who came out of the dormitory were ordered to lie face down on the ground while soldiers went inside to search for others. The lieutenant in charge, Espinoza, then gave the order to murder the priests. Oscar Mariano Amaya Grimaldi shot to death Father Ellacuría, Father Martín-Baró and Father Montes with an AK-47 specially-assigned to him for this mission. Sub-Sgt. Antonio Ramiro Avalos Vargas shot to death the other two priests, Fathers López Quintana and Ramón Moreno, with a standard military issue M-16 rifle. Immediately thereafter, although another soldier had shot Father López y López, when Cpl. Angel Pérez Vásquez went into the room where the priest had fallen, the dying man grabbed at his leg and Pérez Vásquez shot him to death. Sub-Sgt. Tomás Zarpate Castillo shot Mrs. Julia Elba Ramos, who worked as a cook in a nearby Jesuit household, and her 15 year-old daughter, Celina Mariceth Ramos. The soldier José Alberto Sierra Ascencio shot them again, this time killing them.

20. The petitioners relate that, subsequently, the soldiers simulated a confrontation in front of the priests' residence, in an effort to shift the blame for the deeds to the FMLN, and private Cerritos wrote up a sign reading: "We have executed the dirty informers. Victory or death...FLMN". Another soldier posted this sign on a door of the UCA.

c. Intellectual responsibility of State agents

21. The petitioners allege that Col. Benavides and the temporary platoon of soldiers from Atlacatl, identified as the material authors of the extra-judicial execution, were acting under the orders of high-ranking officers. In this respect, they point to two facts that prove the existence of orders from higher ups: first, the "scouting" or reconnaissance search of the premises that was done on November 13, 1989, with the unstated objective of studying the place where the murders would subsequently be carried out; and second, the lack of any immediate response from the military following the murders. The petitioners interpret these facts as showing that there was an order from above not to intervene.

22. The petitioners allege that the reconnaissance search conducted on November 13 was ordered by Col. Joaquín Arnaldo Cerna Flores, Chief of the C-3 of the Joint High Command of the Salvadoran Armed Forces[FN6], who in turn received the order from Col. René Emilio Ponce, Chief of Personnel of the Salvadoran Armed Forces. Col. Cerna Flores ordered Lt. Espinoza of the Atlacatl Battalion to conduct the search, and it was Espinoza who also led the murder mission three days later. According to the petitioners, about thirty-five members of the Atlacatl Battalion took part in the reconnaissance exercise, many of whom would also be involved in the murders. As well, Lt. Héctor Ulises Cuenca Ocampo, an officer of the Intelligence Service, was added to the group although he had no formal connection with the exercise[FN7]. According to the petitioners, the soldiers made only a cursory inspection of the University premises, which as they maintain shows their lack of interest. The petitioners also cite the testimony of several witnesses to show, in contrast to earlier records, that more attention was

devoted to the location of rooms and the features of the building itself than to the books and papers found in it.[FN8]

[FN6] The specific function of Unit 3 (C-3) of the Joint High Command of the Armed Forces was primarily that of coordinating military operations at the level of the High Command. See the statement of Col. Joaquín Arnaldo Cerna Flores on September 21, 1990, given before the Fourth Criminal Court of San Salvador, at p. 2325 of the respective file.

[FN7] The petitioners cite testimony from Capt. Herrera Carranza given before the Fourth Criminal Court of San Salvador.

[FN8] Submission by the petitioners dated August 22, 1990.

23. The petitioners also claim that the excuse offered by the Army for the reconnaissance mission is unsustainable. In fact, there were at that time already three security rings in place around the UCA, and the area was under military control. According to the petitioners Col. Ponce "claimed that he ordered the search in response to counter-intelligence reports of an FMLN attack and infiltration of the UCA campus. However, no evidence has been produced to corroborate that any counter-intelligence report was ever made, and the search turned up no evidence of guerrillas or weapons".

24. The petitioners claim, moreover, that the events immediately following the murders also point to senior officers as bearing intellectual responsibility for the crime. Despite the fact that the incident at the UCA "involved machine-gun fire, grenade explosions and the launching of a flare in the midst of the most highly guarded military zone in the city", the petitioners maintain that there was no immediate military reaction, nor is there even a record that the shooting was investigated, whereas such procedure is called for under standard military rules of conduct.[FN9] According to the petitioners, the only explanation for this lack of response is that "the High Command was well aware of what was happening at the UCA".[FN10] They point out that on the night of November 15, at 7.30 p.m., some 20 members of the High Command had met and had agreed that stronger measures were needed to defeat the FMLN. According to Lt. Ricardo Espinoza Guerra, who headed the operation, Col. Benavides gave the order at 11.15 p.m. that very night that the Jesuits should be killed.[FN11]

[FN9] The locale where the events took place was totally militarized and under the control of the National Army, which maintained a series of military surveillance posts in the Torre Democracia ["Democracy Tower"], in Colonia Militar Manuel José Arce, at the gateway to the UCA, on the periphery of the university campus, in the Ceiba de Guadalupe, and in the zone known as Colonia Jardines de Guadalupe. ("Report of the Legal Protector's Office [Tutela Legal] of the Archbishop of San Salvador on the investigations into the violent deaths of six Jesuit priests and two service employees", submitted by the petitioners as evidence, page 33).

[FN10] The petitioners also refer to the civilian leaders of the government, claiming that "at best, they were responsible for creating an atmosphere that was hostile to the Jesuits and, at worst, they connived at the planning and cover-up of the murders." In this respect, they note that President Cristiani authorized the search of the UCA complex, and was present at military

headquarters on the night of November 15, at the meeting of senior officers. For his part, the Vice President Francisco Merino visited the Atlacatl Battalion in the afternoon of November 11, 1989, two days before the battalion units were deployed to the Military Academy.

[FN11] Submission of the petitioners, dated August 22, 1990.

25. The petitioners consider that these conclusions are reinforced by those of the United Nations Commission on the Truth for El Salvador (hereafter the "Truth Commission"), in the sense that officers of the High Command decided to assassinate Father Ellacuría, and ordered that no witnesses be left alive.

2. The cover-up of the role of State agents

26. The petitioners claim that, according to the Truth Commission, high-ranking Salvadoran officers brought pressure during the investigation to ensure that soldiers made no reference in their legal testimony to the orders that they had received from above. Moreover, the petitioners allege that the daily logbooks of the Military Academy recording troop movements on the day had disappeared and were subsequently burned. Further, the barrels of the rifles used to commit the murders were destroyed and replaced, and consequently any ballistic tests conducted were meaningless.

3. Irregularities in criminal investigations and proceedings

27. The petitioners point out that the investigation of the crime was placed in the hands of the Investigations Unit of the Investigation Commission (hereafter the "Investigation Commission") [FN12] and the Special Commission of Military Honor of the Salvadoran Armed Forces (hereafter the "Honor Commission"). In the view of the petitioners, both of these agencies did everything possible to cover up the intellectual authors or responsibility of those who planned and ordered the crime, and they acted with incompetence and in bad faith. In fact, according to the petitioners, although there was serious evidence that senior officers had been involved in planning and covering up the crime, no official investigation was undertaken along these lines.

[FN12] The purpose of the Investigation Commission was to look into violations of human rights by the Army and the Security Forces.

a. The Investigation Commission

28. In the opinion of the petitioners, the investigation for which the Investigation Commission was responsible suffered from the following shortcomings:

Delay in sealing off the scene of the crime, with the result that evidence was removed. After having sealed off the scene, the investigators overlooked some important pieces of evidence and destroyed others.

They failed to investigate the calls to the radio station of the Armed Forces, which in the days leading up to the murders had advocated that the Jesuits should be killed.

No military personnel were interrogated until more than a month after the murders.

Col. Benavides was not interrogated before he was charged, although he was the officer in charge of the area where the murders took place.

The logbooks of the Military Academy were not examined for evidence relating to movements, entries and exits of troops.

Prosecutors were not kept informed of the progress of the investigations.

There was no investigation into the destruction and cover-up of essential evidence by military personnel.

b. The Honor Commission

29. The petitioners indicate that on January 27, 1990, the President of El Salvador, Alfredo Cristiani, appointed a Special Commission of Military Honor to determine responsibility for the murders. The President took this step on the basis of information supplied by the United States Embassy, to the effect that Col. Benavides had supposedly confessed his involvement in the crime to the Director of the Investigations Unit.[FN13]

[FN13] The petitioners cite as their source the newspapers "Diario de Hoy" of January 8, 1990 and the "Miami Herald" of January 9, 1990.

30. In less than one week, the Honor Commission announced the names of nine soldiers and officers presumably responsible for the murders. According to the petitioners, the report did not specify the method used for reaching such a conclusion.

31. The petitioners indicate, moreover, that there was no attempt to investigate any senior officers. On the contrary, the Truth Commission found that Rodolfo Antonio Parker Soto, legal adviser to the Honor Commission, had altered the testimony of witnesses implicating officers of the military High Command in the crime.

c. The Public Prosecutor's Office

32. The petitioners claim that on January 8, 1991, Henry Campos and Sidney Blanco, officials of the Public Prosecutor's Office who were working with the Fourth Criminal Court in charge of the case, resigned their positions because the Public Prosecutor was attempting to interfere in their investigation of the intellectual authors of the murders.

d. Criminal trial and procedural maneuvering following the judgment

33. According to the petitioners, only Col. Benavides, who was held to be responsible for the eight killings, and Lt. Mendoza, who was found guilty of the execution of the 15 year-old girl who died in her mother's arms, were convicted for the crimes. Espinoza, the commander of the company who led the soldiers on their murderous mission and gave the final order, was absolved of charges of homicide, as were all the other defendants.

34. The petitioners point out that the report of the Truth Commission, released in March 1993, concluded that officials of the High Command were involved in the murder. Moreover, that report revealed an extensive cover-up undertaken by the Investigation Unit and the Commission of Military Honor. Despite this, the State brought no charges against the officers named in that report.

35. The petitioners note that, despite the conclusions contained in the Truth Commission Report, El Salvador proceeded to issue an amnesty law that absolved from all liability, both civil and criminal, persons who participated in any way in political crimes, common crimes related to political crimes, and common crimes committed by at least 20 persons, prior to January 1, 1992.

36. The petitioners note that, by virtue of this amnesty law, the constitutionality of which was confirmed by the Supreme Court of Justice of El Salvador, Benavides, Mendoza and the various soldiers who were accused with them were set free, and all further investigations into the facts revealed in the Truth Commission's Report were suspended.

37. The petitioners ask that the Salvadoran State be found responsible for having violated Articles 1, 4, 8 and 25 of the American Convention. They also seek condemnation of the State for violating Articles 2 and 6 of the International Covenant on Civil and Political Rights. Finally, they seek a declaration that the State has violated the precepts of humanitarian law and has committed crimes against humanity.

B. The State

38. The State did not present its first submission to the IACHR with respect to this case until October 22, 1992. It limited itself therein to declaring that "the Government of the Republic reiterates that it will not shrink from its policy of promoting and defending human rights, and it requests the IACHR to set aside this case, because it has been duly processed, the persons guilty of the crime have been tried, and for the first time in the history of our country a high-ranking military officer has been convicted."

39. In this respect, the State declared that:

On November 16, 1989, the Jesuit priests Ignacio Ellacuría, Ignacio Martín-Baró, Segundo Montes, Armando López, Joaquín López y López and Juan Ramón Moreno, Mrs. Julia Elba Ramos and her daughter Celina Mariceth Ramos were assassinated in their residence located next to the Universidad Centroamericana José Simeón Cañas. For those crimes, proceedings were conducted in the Fourth Criminal Court against Col. Guillermo Alfredo Benavides, Lts.

Yusshy René Mendoza Vallecillos and José Ricardo Espinoza Guerra, Sub-Lt. Gonzalo Guevara Cerritos, Sub-Sergeants Antonio Ramón Avalos Vargas and Tomás Zarpate Castillo and Privates Angel Pérez Vásquez, Oscar Amaya Grimaldi and Alberto Sierra Ascencio, all members of the Army.

After hearing evidence against the accused, the judge referred the case to the plenary Court. The Fourth Criminal Court set a public hearing for 9 a.m. on September 26, 1991, and proceedings continued until January 28, when the Tribunal of Conscience issued an acquittal for José Ricardo Espinoza Guerra, Gonzalo Guevara Cerritos, Antonio Ramiro Avalos Vargas, Tomás Zarpate Castillo, Angel Pérez Vásquez, Oscar Mariano Amaya Grimaldi and Jorge Alberto Sierra Ascencio, for the crime of murdering the victims referred to, while Guillermo Alfredo Benavides Moreno and Yusshy René Mendoza Vallecillos were convicted of the crimes of murder, the first for the killing of the victims Ignacio Ellacuría Beascochea, Ignacio Martín-Baró, Segundo Montes Mozo, Armando López Quintana, José Joaquín López y López and Juan Ramón Moreno Pardo, Elba Julia Ramos and Celina Mariceth Ramos, and the second for the murder of the child Celina Mariceth Ramos.

On January 23 of this year, a final verdict was handed down against Col. Guillermo Alfredo Benavides Moreno, sentencing him to 30 years in prison for the crime of murder against the persons referred to above. He was also convicted of the crime of proposing and conspiring to commit acts of terrorism. Lt. Yusshy René Mendoza Vallecillos was sentenced to 30 years in prison for the crime of murdering the child Celina Mariceth Ramos, and was also convicted of the crimes of proposing and conspiring to commit acts of terrorism, and got concealing a crime.

The Fourth Criminal Court also sentenced Lieutenant Colonel Camilo Hernández to three years in prison for the crime of cover-up.

Sub-Lt. Gonzalo Guevara Cerritos was also sentenced to three years in prison for the crime of proposing and conspiring to commit acts of terrorism.

40. On October 14, 1993, the State supplied supplementary information and reiterated its request to have the case set aside. That information consisted of two documents. The Assistant Judge of the Fourth Criminal Court, Luis Antonio Villeda Figueroa, had sent the first on September 24, 1993, to the Coordinator of Human Rights in the Office of the Public Prosecutor. It reviewed the facts of the case and its legal processing, and referred to the public hearing; the verdict of the jury; the sentences handed down, and the subsequent application of the amnesty law to those convicted. The second document was a report that was sent to the Public Prosecutor of the Republic by the Prosecutors Carlos Figeac Cisneros and Ricardo Marcial Zelaya Larreynaga, containing a similar summary and reporting that on December 19, 1990, the defense had brought an appeal against the decision to convict the nine soldiers, and that on April 8, 1991, the First Criminal Chamber of the First Section had confirmed, in all aspects, the ruling that had been appealed. The State reported as well that the sentence was handed down on January 23, 1992, and was appealed by the defense on January 30 of the year. The State also confirmed that the convicted persons were granted amnesty on March 24, 1993. Both of these submissions merely add that, pursuant Articles 1, 2 and 4 of the General Amnesty Law for Consolidation of

the Peace, the convicted persons were granted amnesty and were subsequently released on April 1, 1993.

41. It remains to be noted that, although the IACHR transmitted to the State on May 3, 1996, the offer of its good offices to assist in arriving at a friendly settlement of the case, the State did not respond to that offer. Moreover, on March 16, 1999, the IACHR transmitted to the State additional information submitted by the petitioners, but to date El Salvador has not responded to that communication.

42. In light of the foregoing, and pursuant to the American Convention and the Statute and Regulations of the IACHR, the Commission will now proceed to decide the case on the basis of the considerations of fact and law set forth below.

IV. ADMISSIBILITY

A. Competence

43. The Commission is competent to examine the petition in question because it alleges violations of human rights protected by the American Convention, to which El Salvador is a State party. The IACHR also has competence because the deeds alleged in the petition took place when the obligation to respect and guarantee the rights established in the American Convention was already in effect for the Salvadoran State.[FN14] The petitioners have standing to appear because they allege violation by a State party of the norms established in the American Convention. The Commission will now examine whether the case is admissible in light of the requirements established in Articles 46 and 47 of the American Convention.

[FN14] El Salvador ratified the American Convention on Human Rights on June 23, 1978.

B. Exhaustion of domestic remedies and timeliness

44. In the present case, the State has not expressly claimed an exception on the basis that domestic remedies were not exhausted. Consequently, the Commission considers that the State has tacitly waived this exception.

45. Indeed, as the Inter-American Court has declared, the exception of prior exhaustion of domestic remedies must be claimed expressly in the first stages of the proceeding.[FN15] If this is not done, the exception may be deemed to have been tacitly waived.

[FN15] I-A Court, Castillo Paez case, Preliminary Exceptions, Judgment of 30 January 1996, Series C, N° 24, para. 41.

46. Nor has the State sought an exception on the grounds that the six-month time limit established in Article 46(1) of the Convention was not observed, for which reason the IACHR considers that the State has also tacitly waived this exception.[FN16]

[FN16] I-A Court, Velásquez Rodríguez case, Preliminary Exceptions, Judgment of 26 June 1987, Ser. C N° 1 (1987), para. 88. See also IACHR Annual report 1998, Report N° 27/99. Case 11.697, El Salvador, Ramón Mauricio García Prieto Giralt, para. 35.

47. Notwithstanding the foregoing, the Commission notes that, as both the State and the petitioners have indicated, the court of first instance issued a judgment on January 23, 1992, in the criminal proceedings held with respect to the extra-judicial executions and that that sentence was duly confirmed. On the other hand, the amnesty law was challenged on the grounds that it was unconstitutional, and the Supreme Court of Justice of El Salvador declared that appeal to be inadmissible.[FN17]

[FN17] Resolution of 20 May 1993, Constitutional Court of El Salvador.

C. Duplication of proceedings

48. The IACHR considers that, on the basis of the information contained in the files, it is clear that the issues raised in the present case are not pending resolution in any other international forum. For this reason, the requirement established in Article 46.1 of the American Convention may be considered satisfied.

D. Characterization of the alleged facts

49. In the case under examination, the petitioners have presented evidence that, in principle, tends to characterize possible violations of Articles 1(1), 2, 4, 8 and 25 of the American Convention. The Commission therefore considers that the conditions established in Article 47 of the Convention are satisfied.

E. Conclusion on admissibility

50. On the basis of the considerations of fact and law set out above, the IACHR concludes that it is competent to examine the present case and that the requirements of admissibility set forth in Articles 46 and 47 of the American Convention have been satisfied.

V. ANALYSIS OF THE MERITS

51. Having determined its competence to hear the present case, and having established the admissibility of the petition, the Commission will now declare its position on the merits of the case, taking due account of the fact that the parties declined to subscribe to a process of friendly

settlement, and that the Commission has sufficient elements to pronounce itself on the substance of the case.

A. Considerations on the facts of the case

52. In order to ensure a full understanding of the factual circumstances of the case in question, the Commission considers it useful to provide some details on the violent situation that was afflicting El Salvador at the time of the alleged violations and the circumstances surrounding the creation of the Truth Commission.

53. In this respect, it will be recalled that during the period in which the extra-judicial executions took place, an internal armed conflict, that had begun about 1980, had submerged the country in almost 12 years of violence, giving rise to many regrettable acts and thousands of deaths.[FN18]

[FN18] Report N° 1/99 (El Salvador), case 10.480, Lucio Parada Cea and others, Annual Report of the Inter-American Commission on Human Rights (1998) OEA/Ser.L/V/II.102 Doc 6 rev.16 of April 16, 1999, page 556, para. 3. With respect to the violent situation, the Truth Commission "recorded more than 22,000 complaints of serious acts of violence committed in El Salvador during the period from January 1980 to July 1991. More than 60 percent of these events involved extra-judicial executions; more than 25 percent related to forced disappearance; and more than 20 percent included complaints of torture. Witnesses attributed nearly 85 percent of these cases to agents of the State, to para-military groups allied with them, and to so-called death squads. The complainants held the FMLN responsible for only five percent of the cases. Notwithstanding their great number, these complaints represented only a portion of the acts of violence that actually occurred. The Commission was able to obtain only a sample of such complaints during the three months in which it received testimony." See "From Madness to Hope, the Twelve-Year War in El Salvador", Report of the Truth Commission for El Salvador, IV, Cases and Patterns of Violence.

54. The parties to the conflict were, on one hand, the government, and on the other hand the FMLN, which was created in 1980 through the merger of five armed dissident groups.[FN19]

[FN19] The FMLN was composed of the following five armed opposition groups: Fuerzas Populares de Liberación (FPL), Ejército Revolucionario del Pueblo (ERP), Fuerzas Armadas de Liberación (FAL), Fuerzas Armadas de Resistencia Nacional (FARN) and Partido Revolucionario de los Trabajadores de Centroamérica (PRTC). The FMLN maintained a military presence and control in several portions of the country on a more-or-less permanent basis, especially in the North and East.

55. The events in question occurred in the midst of the most important military offensive launched by the FMLN during the entire civil war. The FMLN military offensive began on

November 11, 1989, following a severe attack committed on October 31, 1989, in the city of San Salvador, in which unidentified groups of the extreme right exploded a bomb in the headquarters of the National Federation of Salvadoran Workers' Unions (FENASTAS). This attack resulted in the deaths of 10 labor union leaders, and wounded 30 other people.

56. In the face of this offensive, the government declared a state of siege on November 12, 1989, and imposed a curfew from 6 p.m. to 6 a.m. On November 13, the senior military command decided to create a special security zone (Security Command) embracing the vicinity of the UCA. Also included in the security zone, and only a few blocks away, were the headquarters of the Estado Mayor (High Command), the Ministry of Defense, the Military Academy, the National Intelligence Directorate (DNI), the San Benito Battalion of the National Police, and two military residential compounds, Colonia Arce and Colonia Palermo. The command headquarters for the security zone was located in the Military Academy, and the Director of that academy, Col. Guillermo Alfredo Benavides, was appointed its commander.

57. Since the Military Academy does not normally have combat-ready troops at its disposal, sections of other units were stationed at the school, including 47 men of the Atlacatl Battalion.[FN20] Thus, the scene of the events was totally militarized and under the control of the National Army, which maintained a series of military surveillance posts in the Torre Democracia ["Democracy Tower"], in Colonia Arce, at the northern gateway to the UCA, on the periphery of the university campus, in the Ceiba de Guadalupe, and in the zone known as Colonia Jardines de Guadalupe.[FN21]

[FN20] The Atlacatl Battalion was "a quick response infantry battalion". Report of the Truth Commission for El Salvador, UN S/25500, 11 April 1993, p. 119. This was an elite fighting force, and one of the best-trained and most experienced units of the Salvadoran Armed Forces. Its members were tried for the murder of the Jesuit priests. "The Jesuit Murders Trial". International Commission of Jurists, November 1991, pp. 19-20.

[FN21] "Report of the Legal Protector's Office [Tutela Legal] of the Archbishop of San Salvador on the investigations into the violent deaths of six Jesuit priests and two service employees", submitted by the petitioners as evidence, page 33.)

58. On November 15, after a meeting at which about 20 of the country's highest-ranking military officers were present, it was decided to escalate the military offensive against the FMLN. It was on that same night that the extra-judicial executions took place.

59. The armed conflict that provided the background to these extra-judicial executions came to an end on February 16, 1992, with signature of the El Salvador Peace Accord, in Chapultepec, Mexico City, between the Government and the FMLN.[FN22] The signing of this accord represented the culmination of peace negotiations, conducted under United Nations auspices, which had dragged on for more than three years (1989-1992). During that time, a series of peace agreements were signed: the Mexico City Agreements of April 27, 1991, created the Truth Commission, whose mandate was to investigate "serious acts of violence that have occurred

since 1980, the social scars from which urgently demand that the public should know the truth".[FN23]

[FN22] The signing of this accord represented the culmination of the negotiation process and the beginning of the execution phase of the Peace Accords. It was also stipulated at Chapultepec that the work of the Truth Commission (created on April 27, 1991 in Mexico City, during the eighth round of negotiations) should be linked to clarifying the record and preventing impunity. The El Salvador Peace Accord, in Section 5, Preventing Impunity, says:

We recognize the need to clarify and avoid any special treatment for officers of the Armed Forces, especially in cases relating to respect for human rights. To this end, the Parties will leave consideration and resolution of this point to the Truth Commission.

[FN23] Article IV of the Mexico Accords of April 27, 1991, and Article 2 of the annex to the Mexico Accords of April 27, 1991.

60. The accord provided that the Truth Commission should consist of "three persons appointed by the Secretary General of the United Nations, with the advice of the parties" to the accord.[FN24] The United Nations Secretary-General appointed Belisario Betancur (former President of Colombia), Reinaldo Figueredo Planchart (former Minister of Foreign Affairs of Venezuela) and Thomas Buergenthal (former President of the Inter-American Court of Human Rights). According to its mandate, the Truth Commission was to present a final report with its conclusions and recommendations, which was to be transmitted to the parties and to the United Nations Secretary General.[FN25] The Report of the Truth Commission, titled "From Madness to Hope: The 12-year war in El Salvador" (hereafter "the Truth Commission Report") was published on March 15, 1993.

[FN24] Article 1 of the annex to the Mexico Accords of April 27, 1991.

[FN25] Articles 11 and 12, annex to the Mexico Accords.

1. Uncontroverted facts

61. The IACHR notes that several facts alleged by the petitioners have not been disputed by the State. Some of these facts are related below.

62. On the morning on November 16, 1989, six Jesuit priests were assassinated, as well as a woman who was employed for domestic duties, and her 15 year-old daughter, by agents of the Salvadoran Armed Forces in the Centro Pastoral of UCA. The victims were the Jesuit priests Ignacio Ellacuría, Ignacio Martín-Baró, Segundo Montes, Armando López, Joaquín López y López and Juan Ramón Moreno, Mrs. Julia Elba Ramos and her daughter Celina Mariceth Ramos, 15 years of age.

63. President Cristiani assigned responsibility for investigating these extra-judicial executions to the Investigation Commission, headed by Lieutenant Colonel Manuel Antonio Rivas Mejía.

64. Subsequently, the Minister of Defense of El Salvador established another investigative body, the Honor Commission, consisting of five officers and two civilians. On January 12, 1990, the Honor Commission presented its report to President Cristiani, implicating nine military personnel as responsible for the extra-judicial executions.

65. These nine soldiers were arrested and tried before the Fourth Criminal Court, presided over by Judge Ricardo Alberto Zamora (hereafter "Judge Zamora").

66. Judge Zamora instituted public proceedings against the accused on September 25, 1991.

67. Colonel Guillermo Alfredo Benavides, Director of the Military Academy, was accused of ordering the assassination of the priests. Lieutenant Yushy René Mendoza Vallecillos, an officer of the Military Academy, and Lieutenants José Ricardo Espinoza Guerra and Gonzalo Guevara Cerritos, officers of the Atlacatl Battalion, were accused of participating in the operation. Sgt. Antonio Ramírez Avalos Vargas, Sgt. Tomás Zarpate Castillo, Corporal Angel Pérez Vázquez and soldiers of the Atlacatl Battalion, Oscar Mariano Amaya Grimaldi and Jorge Alberto Sierra Ascencio, were accused of being the material authors of the assassinations.

68. Two days later, on September 27, 1991, the court rendered guilty verdicts solely against Colonel Benavides (who was found responsible for all the summary executions) and Lieutenant Mendoza (found responsible for murdering the child Celina Mariceth Ramos). The other defendants were acquitted of all charges of homicide.

69. In 1991, the State and the FMLN signed a set of historic accords in Mexico, calling among other things for creation of a Truth Commission with a mandate to investigate "the serious acts of violence that have occurred since 1980, whose impact on society urgently requires that the truth about them be made known to the public." On January 23, 1992, the final ruling in the case of the Jesuit murders was handed down.

70. Almost a month after this ruling was issued, on February 16, 1992, the El Salvador Peace Accord was signed in Chapultepec, Mexico, in which the work of the Truth Commission was linked to clarifying the record and preventing impunity. On March 15, 1993, the Truth Commission presented its report, which included the results of its investigation into the executions of the Jesuit priests and the two women. Colonel Benavides and Lieutenant Mendoza, who had been found guilty of the murders, were sentenced to prison terms of 30 years. In addition, the court convicted them of proposing and conspiring to commit acts of terrorism. The court also sentenced Lieutenants Espinoza and Guevara Cerritos to three years in prison for proposing and conspiring to commit acts of terrorism. Finally, the court convicted Lieutenant Colonel Hernández and Lieutenant Mendoza of cover-up. Their sentence was appealed by the defense on January 30, 1992, and was upheld by the Court of Appeals.

71. In its report, the Truth Commission identified agents of the State as the persons who had decided, planned and carried out the assassinations. With respect to the intellectual authors, the Commission noted that on November 15, 1989, in the presence and with the connivance of General Juan Rafael Bustillo and Colonels Juan Orlando Zepeda, Inocente Orlando Montano and Francisco Elena Fuentes, Col. René Emilio Ponce ordered Colonel Benavides to kill Father Ellacuría, and to leave no witnesses. None of the military officers identified in the report as the intellectual authors of the crime were tried before the Fourth Criminal Court. Moreover, the report determined that the execution operation was organized by the then Major Carlos Camilo Hernández Barahona and carried out by a group of soldiers from the Atlacatl Battalion, under the command of Lt. Ricardo Espinoza Guerra and Sub-Lt. Gonzalo Guevara Cerritos, accompanied by Lt. Yussy René Mendoza Vallecillos.

72. The report also revealed the cover-up operation that was carried out by other agents of the State, in an effort to conceal the identity of both the direct and indirect authors of the murders. In fact, the report noted that the Chief of the Criminal Acts Commission, Colonel Antonio Rivas Mejía and Colonel Iván López y López were aware of the facts surrounding the events, and took steps to conceal them. In addition, the Truth Commission found that a member of the Honor Commission, the lawyer Rodolfo Antonio Parker Soto, had altered the statements of witnesses in order to protect high-ranking officers.

73. On March 20, 1993, only five days after the Truth Commission Report was released, the Legislative Assembly of El Salvador issued its Amnesty Decree N° 486.[FN26] That decree was challenged as unconstitutional before the Supreme Court of Justice of El Salvador, which declared itself incompetent to review the constitutionality of the decree, on the grounds that the amnesty constituted an "eminently political" act.[FN27] The persons convicted of the crime of murder, Colonel Guillermo Alfredo Benavides and Lieutenant Yussy René Mendoza Vallecillos, were granted amnesty and were subsequently released on April 1, 1993.

[FN26] Decree 486, published in the Official Gazette N° 56, Volume 318, of March 22, 1993.

[FN27] Constitutional Affairs Chamber of the Supreme Court of Justice of El Salvador, May 20, 1993.

2. Controverted facts

74. The facts of the case that are disputed by the parties relate exclusively to the nature of its investigation by Salvadoran authorities. The petitioners maintain that the official investigation was designed to prevent the truth from being discovered, in order to protect high-ranking officers of the Armed Forces. For its part, the State, while it has not responded individually to each of the claims made by the petitioners, maintains in general that "this case has been duly processed, the guilty persons have been convicted, and for the first time in the country's history a high-ranking military officer has been sentenced." The State adds that "the government has always made it a policy to investigate such cases carefully and to take the pertinent legal action."

75. In order to clarify the points in dispute, the IACHR will first examine the investigation that was conducted by the Truth Commission into the case in question, and which resulted in the conclusions published in its March 15, 1993 report. As noted above, the Truth Commission was created as the result of a peace agreement between the State and the dissident armed group, FMLN. The members of that Commission were moreover selected by the Secretary General of United Nations, with the advice and consent of the State and the FMLN.[FN28] In view of the circumstances surrounding the creation of the Truth Commission, and the appointment of its members, as well as the rigorous methodology employed and strength of the evidence collected, the IACHR considers that the impartiality, soundness and good faith of the Truth Commission are not open to question.

[FN28] See Truth Commission Report, point V.A

76. With respect to the methodology employed in the investigation, it should be noted that the members of the Truth Commission "examined documents in El Salvador and other countries; interviewed numerous participants, witnesses, victims and relatives; requested information from Government bodies; consulted court dossiers; visited places where incidents had occurred; and requested copies of instructions and orders given." [FN29]

[FN29] Ibid, footnote N° 125, page 41.

77. As well, "in order to guarantee the reliability of the evidence it gathered, the Commission insisted on verifying, substantiating and reviewing all statements as to facts, checking them against a large number of sources whose veracity had already been established. It was decided that no single source or witness would be considered sufficiently reliable to establish the truth on any issue of fact needed for the Commission to arrive at a finding. It was also decided that secondary sources, for instance, reports from national or international governmental or private bodies and assertions by people without first-hand knowledge of the facts they reported, did not on their own constitute a sufficient basis for arriving at findings. However, these secondary sources were used, along with circumstantial evidence, to verify findings based on primary sources." [FN30]

[FN30] Ibid, pages 22-23.

78. Given the rigorous methodology used by the Truth Commission and the guarantee of its impartiality and good faith resulting from the manner in which its members were appointed (and in which the State itself participated), the IACHR considers that its investigation into this case is credible and as such must be taken into account, together with the alleged facts and other evidence submitted. Moreover, it should be noted that the State has not presented any allegations

or evidence that would cast doubt on the conclusions of the Truth Commission, which the State itself created.

a. The Truth Commission Report

79. For the Truth Commission, the extra-judicial execution of the Jesuit priests constitutes an illustrative case of "violence against opponents by agents of the State", which it sees as part of a pattern of violence that characterized the internal armed conflict in El Salvador.[FN31]

[FN31] Ibid., page 44.

80. Given the pertinence of the Truth Commission's investigation, the IACHR considers it important to transcribe, verbatim, the chapter of the report referring to the extra-judicial execution of the Jesuit priests, and the conclusions reached by the Commission:[FN32]

[FN32] Ibid., pages 42 to 51.

DESCRIPTION OF THE FACTS

In the early hours of 16 November 1989, a group of soldiers from the Atlacatl Battalion entered the campus of José Simeón Cañas Central American University (UCA) in San Salvador. They made their way to the Pastoral Centre, which was the residence of Jesuit priests Ignacio Ellacuría, Rector of the University; Ignacio Martín-Baró, Vice-Rector; Segundo Montes, Director of the Human Rights Institute; and Armando López, Joaquín López y López and Juan Ramón Moreno, all teachers at UCA.

The soldiers tried to force their way into the Pastoral Centre. When the priests realized what was happening, they let the soldiers in voluntarily. The soldiers searched the building and ordered the priests to go out into the back garden and lie face down on the ground.

The lieutenant in command, José Ricardo Espinoza Guerra, gave the order to kill the priests. Fathers Ellacuría, Martín-Baró and Montes were shot and killed by Private Oscar Mariano Amaya Grimaldi, Fathers López and Moreno by Deputy Sergeant Antonio Ramiro Avalos Vargas. Shortly afterwards, the soldiers, including Corporal Angel Pérez Vásquez, found Father Joaquín López y López inside the residence and killed him. Deputy Sergeant Tomás Zarpate Castillo shot Julia Elba Ramos, who was working in the residence, and her 16-year-old daughter, Celina Mariceth Ramos. Private José Alberto Sierra Ascencio shot them again, finishing them off.

The soldiers took a small suitcase belonging to the priests, with photographs, documents and \$5,000.

They fired a machine gun at the façade of the residence and launched rockets and grenades. Before leaving, they wrote on a piece of cardboard: "FMLN executed those who informed on it. Victory or death, FMLN."

Preceding events

A few hours earlier, on 15 November between 10 p.m. and 11 p.m., Colonel Guillermo Alfredo Benavides Moreno, Director of the Military College, met with the officers under his command. The officers present included Major Carlos Camilo Hernández Barahona, Captain José Fuentes Rodas, Lieutenants Mario Arévalo Meléndez, Nelson Alberto Barra Zamora, Francisco Mónico Gallardo Mata, José Vicente Hernández Ayala, Ramón Eduardo López Larios, René Roberto López Morales, Yushy René Mendoza Vallecillos, Edgar Santiago Martínez Marroquín and Second Lieutenant Juan de Jesús Guzmán Morales.

Colonel Benavides told them that he had just come from a meeting at the General Staff at which special measures had been adopted to combat FMLN offensive, which had begun on 11 November. Those present at the meeting had been informed that the situation was critical and it had been decided that artillery and armoured vehicles should be used.

Those present at the meeting had also been informed that all known subversive elements must be eliminated. Colonel Benavides said that he had received orders to eliminate Father Ignacio Ellacuría and to leave no witnesses.

Colonel Benavides asked any officers who objected to the order to raise their hands. No one did.

Major Hernández Barahona organized the operation. Troops from the Atlacatl Battalion were used, under the command of Lieutenant José Ricardo Espinoza Guerra. In order to overcome any reluctance on his part, it was arranged that Lieutenant Yushy René Mendoza Vallecillos, who had graduated from officer training school in the same class ("tanda") as him, would also participate.

After the meeting, Major Hernández Barahona met with Lieutenant Mendoza Vallecillos, Lieutenant Espinoza Guerra and Second Lieutenant Gonzalo Guevara Cerritos of the Atlacatl Battalion. In order to pin responsibility for the deaths on FMLN, they decided not to use regulation firearms and to leave no witnesses. After the murders, they would simulate an attack and leave a sign mentioning FMLN.

It was decided to use an AK-47 rifle belonging to Major Hernández Barahona, because the weapon had been captured from FMLN and was identifiable. The rifle was entrusted to Private Mariano Amaya Grimaldi, who knew how to use it.

In order to reach UCA, it was necessary to pass through the defence cordons of the military complex. Lieutenant Martínez Marroquín arranged for the Atlacatl soldiers to pass.

Lieutenants Espinoza Guerra and Mendoza Vallecillos and Second Lieutenant Guevara Cerritos left the Military College in two pick-up trucks with the soldiers from the Atlacatl Battalion. They

went to some empty buildings which are close to the UCA campus, where other soldiers of the Atlacatl Battalion were waiting. There, Lieutenant Espinoza indicated who would keep watch and who would enter the Jesuits' residence.

Background

Members of the armed forces used to call UCA a "refuge of subversives". Colonel Juan Orlando Zepeda, Vice-Minister for Defence, publicly accused UCA of being the centre of operations where FMLN terrorist strategy was planned. Colonel Inocente Montano, Vice-Minister for Public Security, stated publicly that the Jesuits were fully identified with subversive movements.

Father Ellacuría had played an important role in the search for a negotiated, peaceful solution to the armed conflict. Sectors of the armed forces identified the Jesuit priests with FMLN because of the priests' special concern for those sectors of Salvadorian society who were poorest and most affected by the war.

On two earlier occasions that same year, 1989, bombs had gone off at the University printing house.

The offensive

The offensive launched by FMLN on 11 November reached proportions that the armed forces had not expected and which alarmed them. The guerrillas gained control of various areas in and around San Salvador. They attacked the official and private residences of the President of the Republic and the residence of the President of the Legislative Assembly. They also attacked the barracks of the First, Third and Sixth Infantry Brigades and those of the National Police. On 12 November, the Government declared a state of emergency and imposed a 6 p.m. to 6 a.m. curfew.

At a meeting of the General Staff on 13 November, security commands were created to deal with the offensive. Each command was headed by an officer under the operational control of Colonel René Emilio Ponce, Chief of the Armed Forces Joint Staff. Colonel Benavides Moreno was designated to head the military complex security command, a zone which included the Military College, the Ministry of Defence, the Joint Staff, the National Intelligence Department (DNI), the Arce and Palermo districts (most of whose residents were members of the armed forces), the residence of the United States Ambassador and the UCA campus.

A national radio channel was also established, the pilot station being Radio Cuscatlán of the armed forces. Telephone calls to the station were broadcast in a "phone-in" in which callers levelled accusations at Father Ellacuría and went so far as to call for his death.

On 11 November, guerrillas blew up one of the main gates of the University and crossed the University campus. The next day, a military detachment was stationed to watch who went in and out of the University. From 13 November onwards no one was permitted onto the campus.

On 13 November, Colonel Ponce ordered Colonel Joaquín Arnaldo Cerna Flores, head of unit III of the General Staff, to arrange for a search of UCA premises. According to Colonel Ponce, he ordered the search because he had been informed that there were over 200 guerrillas inside the University.

Colonel Cerna Flores entrusted the search to Lieutenant José Ricardo Espinoza Guerra, who took some 100 men from the Atlacatl Battalion. Lieutenant Héctor Ulises Cuenca Ocampo of the National Intelligence Department (DNI) joined the troops at the entrance to UCA to assist with the search. Lieutenant Espinoza Guerra personally directed the search of the Jesuits' residence. They found no signs of any guerrilla presence, war matériel or propaganda.

On completing the search, Lieutenant Espinoza Guerra reported to Major Hernández Barahona. He then went to the General Staff where he reported to Colonel Cerna Flores.

At 6.30 p.m. on 15 November there was a meeting of the General Staff with military heads and commanders to adopt new measures to deal with the offensive. Colonel Ponce authorized the elimination of ringleaders, trade unionists and known leaders of FMLN and a decision was taken to step up bombing by the Air Force and to use artillery and armoured vehicles to dislodge FMLN from the areas it controlled.

The Minister of Defence, General Rafael Humberto Larios López, asked whether anyone objected. No hand was raised. It was agreed that President Cristiani would be consulted about the measures.

After the meeting, the officers stayed in the room talking in groups. One of these groups consisted of Colonel René Emilio Ponce, General Juan Rafael Bustillo, Colonel Francisco Elena Fuentes, Colonel Juan Orlando Zepeda and Colonel Inocente Orlando Montano. Colonel Ponce called over Colonel Guillermo Alfredo Benavides and, in front of the four other officers, ordered him to eliminate Father Ellacuría and to leave no witnesses. He also ordered him to use the unit from the Atlacatl Battalion which had carried out the search two days earlier.

From 12 to 2:30 a.m. the next day, 16 November, President Cristiani met with the High Command. According to his statement, the President approved a new arrangement for using armoured units of the cavalry regiment and artillery pieces; at no time during this meeting was anything said about UCA.

The cover-up

During the early hours of the morning of 16 November, Major Carlos Camilo Hernández Barahona and Lieutenant José Vicente Hernández Ayala went in person to Colonel Ponce's office to report on everything that had happened at UCA. They reported that they had a small suitcase with photographs, documents and money which the soldiers had stolen from the Jesuits a few hours earlier. Colonel Ponce ordered it destroyed because it was evidence of the armed forces' responsibility. They destroyed the suitcase at the Military College.

On returning to his unit, Lieutenant Espinoza Guerra informed the Commander of the Atlacatl Battalion, Lieutenant Colonel Oscar Alberto León Linares, of what had happened.

President Cristiani entrusted the investigation of the crime to the Commission for the Investigation of Criminal Acts (CIHD).

Colonel Benavides told Lieutenant Colonel Manuel Antonio Rivas Mejía, Head of CIHD, what had happened and asked him for help. Mejía recommended that the barrels of the weapons which had been used be destroyed and replaced with others in order to prevent them from being identified during ballistic tests. This was later done with the assistance of Lieutenant Colonel Oscar Alberto León Linares.

Lieutenant Colonel Rivas Mejía also advised Colonel Benavides to make sure that no record remained of those entering and leaving the Military College that would make it possible to identify the culprits. Subsequently, Colonel Benavides and Major Hernández Barahona ordered that all Military College arrival and departure logs for that year and the previous year be burned.

Shortly after the investigation began, Colonel René Emilio Ponce arranged for Colonel Nelson Iván López y López, head of unit I of the General Staff, who had also been in charge of the General Staff Tactical Operations Centre during the entire night of 15 to 16 November, to join CIHD in order to assist in the investigation of the case.

In November, CIHD heard two witnesses, Deputy Sergeant Germán Orellana Vázquez and police officer Victor Manuel Orellana Hernández, who testified that they had seen soldiers of the Atlacatl Battalion near UCA that night; they later changed their statements.

Another witness also retracted her initial statement. Lucía Barrera de Cerna, an employee at the University, said that she had seen, from a building adjacent to the Jesuits' residence, soldiers in camouflage and berets. In the United States, where she went for protection, she was questioned by the Federal Bureau of Investigation (FBI) and retracted her earlier statement. Lieutenant Colonel Rivas Mejía, Head of CIHD, was present when she was questioned. Subsequently, she confirmed her original statement.

CIHD did not take a statement from Colonel Benavides, even though the incident had occurred within his command zone. According to the court dossier, the first statement Benavides made was on 11 January 1990 to the Special Honour Commission.

On 2 January 1990, a month and a half after the murders, Major Eric Warren Buckland, an officer of the United States Army and an adviser to the armed forces of El Salvador, reported to his superior, Lieutenant Colonel William Hunter, a conversation he had some days previously with Colonel Carlos Armando Avilés Buitrago. During that conversation, Avilés Buitrago had told him that he had learnt, through Colonel López y López, that Benavides had arranged the murders and that a unit from the Atlacatl Battalion had carried them out. He also said that Benavides had asked Lieutenant Colonel Rivas Mejía for help.

Lieutenant Colonel William Hunter informed the Chief of the United States Military Mission, Colonel Milton Menjívar, who arranged a meeting in Colonel Ponce's office where Buckland and Avilés were brought face to face. Avilés denied having given Buckland such information.

A few days after Buckland's statements were reported, the Minister of Defence established a Special Honour Commission, consisting of five officers and two civilians, to investigate the murders.

On learning what CIHD had found out, the Honour Commission questioned some 30 members of the Atlacatl Battalion, including Lieutenant Espinoza Guerra and Second Lieutenant Guevara Cerritos, and a number of officers of the Military College, including Colonel Benavides and Lieutenant Mendoza Vallecillos.

Lieutenants Espinoza and Mendoza and Second Lieutenant Guevara, as well as the soldiers who had participated in the murders, confessed their crime in extrajudicial statements to the Honour Commission.

A civilian member of the Commission, Rodolfo Antonio Parker Soto, legal adviser to the General Staff, altered their statements in order to delete any reference to the existence of orders from above. He also deleted the references to some officers, including the one to Major Carlos Camilo Hernández Barahona.

On 12 January, the Commission submitted its report to President Cristiani. The report identified nine people as being responsible for the murders, four officers and five soldiers; they were arrested and later brought to trial. Subsequently, newly promoted Lieutenant Colonel Carlos Camilo Hernández Barahona was included in the trial.

The pre-trial proceedings took nearly two years. During this time, Colonel (now General) René Emilio Ponce, Colonel (now General) Juan Orlando Zepeda, Colonel Inocente Orlando Montano and Colonel (now General) Gilberto Rubio Rubio pressured lower-ranking officers not to mention orders from above in their testimony to the court.

Finally, the trial by jury took place on 26, 27 and 28 September 1991 in the building of the Supreme Court of Justice. The identity of the five members of the jury was kept secret. The accused and the charges were as follows:

Colonel Guillermo Alfredo Benavides Moreno, Lieutenant José Ricardo Espinoza Guerra and Second Lieutenant Gonzalo Guevara Cerritos: accused of murder, acts of terrorism, acts preparatory to terrorism and instigation and conspiracy to commit acts of terrorism.

Lieutenant Yushy René Mendoza Vallecillos: accused of murder, acts of terrorism, acts preparatory to terrorism, instigation and conspiracy to commit acts of terrorism and of being an accessory.

Deputy Sergeant Antonio Ramiro Avalos Vargas, Deputy Sergeant Tomás Zarpate Castillo, Corporal Angel Pérez Vásquez and Private Oscar Mariano Amaya Grimaldi: accused of murder, acts of terrorism and acts preparatory to terrorism.

Private Jorge Alberto Sierra Ascencio: tried in absentia for murder. Lieutenant Colonel Carlos Camilo Hernández Barahona: accused of being an accessory.

The jury had to decide only with respect to the charges of murder and acts of terrorism. The other charges were left to the judge to decide.

Only Colonel Guillermo Alfredo Benavides Moreno and Lieutenant Yushy René Mendoza Vallecillos were found guilty of murder. The judge gave them the maximum sentence, 30 years in prison, which they are currently serving. The judge also found Colonel Benavides and Lieutenant Mendoza guilty of instigation and conspiracy to commit acts of terrorism. Lieutenants Espinoza and Guevara Cerritos were sentenced to three years for instigation and conspiracy to commit acts of terrorism. Lieutenant Colonel Hernández was also sentenced by the judge to three years for being an accessory and Mendoza Vallecillos was also convicted on that charge. Espinoza, Guevara and Hernández were released and continued in active service in the armed forces.

81. Having analyzed the facts, the Truth Commission stated its conclusions in the following terms:

There is substantial evidence^[FN33] that on the night of 15 November 1989, then Colonel René Emilio Ponce, in the presence of and in collusion with General Juan Rafael Bustillo, then Colonel Juan Orlando Zepeda, Colonel Inocente Orlando Montano and Colonel Francisco Elena Fuentes, gave Colonel Guillermo Alfredo Benavides the order to kill Father Ignacio Ellacuría and to leave no witnesses. For that purpose, Colonel Benavides was given the use of a unit from the Atlacatl Battalion, which two days previously had been sent to search the priest's residence.

There is evidence that, subsequently, all these officers and others, knowing what had happened, took steps to conceal the truth. There is sufficient evidence that General Gilberto Rubio Rubio, knowing what had happened, took steps to conceal the truth.

There is full evidence that:

That same night of 15 November, Colonel Guillermo Alfredo Benavides informed the officers at the Military College of the order he had been given for the murder. When he asked whether anyone had any objection, they all remained silent.

The operation was organized by then Major Carlos Camilo Hernández Barahona and carried out by a group of soldiers from the Atlacatl Battalion under the command of Lieutenant José Ricardo Espinoza Guerra and Second Lieutenant Gonzalo Guevara Cerritos, accompanied by Lieutenant Yushy René Mendoza Vallecillos.

There is substantial evidence that:

Colonel Oscar Alberto León Linares, Commander of the Atlacatl Battalion, knew of the murder and concealed incriminating evidence.

Colonel Manuel Antonio Rivas Mejía of the Commission for the Investigation of Criminal Acts (CIHD) learnt the facts and concealed the truth and also recommended to Colonel Benavides measures for the destruction of incriminating evidence.

Colonel Nelson Iván López y López, who was assigned to assist in the CIHD investigation, learnt what had happened and concealed the truth.

There is full evidence that Rodolfo Antonio Parker Soto, a member of the Special Honour Commission, altered statements in order to conceal the responsibility of senior officers for the murder.

[FN33] The Truth Commission defined substantial evidence as “very solid evidence to support the Commission’s finding.” Ibidem, par. 24.

82. The above extracts of the report show that senior officers of the official entities in charge of the investigation concealed the identity of the intellectual authors, as well as of most of the material authors, of the extra-judicial executions.

83. In effect, the report concludes that Colonel Antonio Rivas Mejía, Chief of the Investigation Commission, the agency that was initially in charge of the investigation, "knew the facts of the case and concealed the truth" and "recommended to Colonel Benavides that he take steps to destroy incriminating evidence"[FN34]. As well, Col. Nelson Iván López y López, of the Investigation Commission, also concealed the truth of the events[FN35]. With respect to this officer, it is important to note that he was assigned to the Investigation Commission by Colonel René Emilio Ponce, to whom the Truth Commission attributes the decision, together with other officers, to arrange the extra-judicial executions and to order Colonel Benavides to carry them out.[FN36] With respect to the Special Honor Commission, one of its members, the lawyer Rodolfo Antonio Parker Soto, " altered statements in order to conceal the involvement of high-ranking officers in the assassinations."[FN37]

[FN34] Ibid., Conclusions 4.b) page 50.

[FN35] Ibid.

[FN36] Ibid., page 48.

[FN37] Ibid., Conclusions 5, page 50.

84. With respect to the material authors of the crime, the report states: “The only persons found guilty of murder were Colonel Guillermo Alfredo Benavides Moreno and Lieutenant Yushy René Mendoza Vallecillos”, who were officers of the Military Academy. In other words,

none of the members of the Atlacatl Battalion, whose involvement was expressly recognized by the Truth Commission, were convicted of the murder, despite the fact that Lt. Espinoza, Lt. Guevara Cerritos and the other four members of the battalion confessed their crimes in their extra-judicial statements.

85. The Truth Commission's report states in this respect that there is substantial evidence to show that Col. René Emilio Ponce gave Col. Benavides "the order to kill Father Ellacuría and to leave no witnesses" and that "to this end he was to use a unit of the Atlacatl Battalion". The report then states, among other things, that there is full evidence that subsequently all of these officers, and others who were aware of the events, took steps to conceal them. The report adds that there is substantial proof that Col. Oscar Alberto León Linares, Commander of the Atlacatl Battalion, knew of the murders and concealed incriminating evidence.

86. The circumstances as documented show that senior officials in charge of the investigation set themselves the objective of preventing a complete, impartial and effective investigation, and of covering up the involvement of specific perpetrators. In fact, given that the officials mentioned in the preceding paragraphs knew the truth and concealed it, there is no doubt that the investigation was designed to conceal the full truth in order to prevent the prosecution and punishment of all the authors of the extra-judicial executions.

b. Other evidence reinforcing the conclusions of the Truth Commission

i. Former prosecutors Henry Campos and Sidney Blanco

87. For greater certainty, the IACHR has also considered the public statements made by Henry Campos and Sidney Blanco, former prosecutors assigned to the investigation of the case. Those former State officials declared in a televised interview that there was no desire on the part of official agencies to conduct a real investigation.[FN38] In that interview, they announced that they were resigning their positions, because the Public Prosecutor had consistently placed obstacles in their efforts to undertake a serious and full investigation of the extra-judicial executions.

[FN38] See Interview with Henry Campos and Sidney Blanco, former prosecutors, in the Jesuit murders case, January 22, 1991, Channel 12. Transcription submitted by the petitioners and not disputed by the State.

88. In this respect, the former prosecutors declared that the Public Prosecutor had prohibited them from attending the questioning of certain witnesses and from cross-examining them. The Public Prosecutor also prevented them from taking routine steps to shed light on the crime.

89. The former prosecutors declared that the first Public Prosecutor in charge of the case showed no interest in it and took no part in the proceedings. The new Public Prosecutor, for his part, placed severe restrictions on the prosecutors working on the case to prevent them from

fulfilling their duty, and this led them to resign. The former officials related that they suffered considerable pressure to abandon their pursuit of the case.

90. Former prosecutor Blanco stated moreover that "any person who takes the trouble to examine the record will arrive at the very logical conclusion that in this case, Col. Benavides could not have acted alone, and that he must have had the support of other, high-ranking officers in order to take such an important decision." The former officials explained that the involvement of senior military officers in the murders is clear from the decision to carry out the initial house search, and from the failure of the Armed Forces to respond immediately when shooting erupted.

ii. Corroboratory reports on the investigation and prosecution of the murder of the Jesuits

91. It should be noted that several academic, professional and non-governmental entities submitted reports on the investigations and on the trials relating to this case. Those reports offer conclusions consistent with those of the Truth Commission.[FN39]

[FN39] See Report of the San Francisco Observer Delegation to the Jesuit Murder Trial in El Salvador. Submitted to the Bar Association of San Francisco, October 9, 1991, by Linda P. Drucker, Esq. Heller, Ehrman, White & McAuliffe, Naomi Roth Arriaza; The Jesuit Murder Affair at the Universidad Centroamericana of San Salvador, November 16, 1989, A Critical Summary of the Trial, 1991.09.25-28, François Crépeau, Professor, 1991.10.15; Una muerte anunciada, ["A death Foretold"], Marta Doggett, Coleccion Testigos de la Historia, volume 8.

92. One such report was prepared by the International Human Rights Law Institute of De Paul University, Chicago, which was invited by the president of the Supreme Court of El Salvador to send an observer to the Jesuit murders trial.[FN40] The report notes that the State did not conduct a serious investigation into the possible involvement of high-ranking military officers. On the contrary, it finds that the military conducted a series of cover-up operations intended to conceal the identity of those responsible. As well, the report finds that the investigation conducted by the Investigation Commission and the Honor Commission lacked all credibility. In particular, it declares that neither of these entities has been able to justify the manner of identifying the nine officers who were tried.

[FN40] See Report of Observers on the Trial in El Salvador of Military Personnel accused of murdering six Jesuit priests, a cook and her daughter, January 13, 1992, De Paul University, International Human Rights Law Institute, College of Law, Chicago, USA. -----

iii. The Investigation Commission

93. The judicial summary, to which are added the extra-judicial reports of the Investigation Commission, the body that was originally responsible for the investigation, provides sufficient evidence to show that that Commission failed to carry out a full and timely investigation, and

that essential evidence disappeared, or was even destroyed. This allowed the military to organize a far-reaching cover-up operation. A graphic example is the destruction of the log books of the Military Academy, since when Judge Zamora asked for them, it was found that they had been incinerated in December 1989.

94. With respect to the incineration of the entry and exit records, Lt. Yussy René Mendoza declared before the Fourth Criminal Court of San Salvador that he had burned the log books of the Military Academy, dating back to the beginning of 1989, under orders from his superiors. The officer responsible for these records, Juan René Arana Aguilar, declared on June 4, 1990, that at some point during the first two weeks of December, Major Carlos Camilo Hernández had ordered him to produce all the records since 1989, because they were to be burned. Arana said that Lt. Mendoza had come to retrieve the records but that, although he knew that the records had been burned, he did not know who had done it.

95. The Investigation Commission, in its report of March 29, 1990 to the Fourth Criminal Court (N° 017OUE/990) merely stated that the Director of the "Captain General Barrios" Military Academy had ordered an investigation into the whereabouts of the "records of news, entries and exits of chiefs and officers and other personnel" kept in the guardhouse during November 1989, and that it had been established that:

Those books were burned: Mr. Juan René Arana Aguilar, who at that time was acting in charge of the general registry of the institution, on a date that he does not recall, but that was between December 1 and 16, 1989, testified that he received a verbal order from the Subdirector, the then Major Carlos Camilo Hernández, to find the books for 1989, and to advise him when they were ready, because they were going to be burned; that at approximately 9 p.m. he reported that he had carried out the order; that subsequently, at midnight, Lt. Mendoza and four cavalry cadets, whose identity he could no longer recall, came to the registry and took away the books, saying they were going to burn them; he remembered this because he was sleeping in the registry office on that day.[FN41]

[FN41] Office of the Criminal Investigations Commission 017/UE/990, of May 23, 1990, signed by Lt. Col. Manuel Antonio Rivas Mejía, Chief of the Executive Unit.

96. The IACHR considers that these acts were intended to conceal the role of the material and the intellectual authors of the Jesuit murders, since those records would have shown who had entered and left the Military Academy on the day of the murders, and the days previous thereto. In this respect, it must be noted that the orders to conduct, first, the search and then the murder of the Jesuits were issued from the Military Academy, which was the command headquarters for the security zone created on November 13 by the Estado Mayor. The records in question would have provided key evidence for determining the guilt of all the authors of this crime.

97. Moreover, the Investigation Commission made no attempt at any time to answer the key question as to who ordered the murders. Lieutenant Colonel Manuel Antonio Rivas Mejía, chief of the Executive Unit of the Investigation Commission at the time of the crimes, declared

explicitly before the Court that there was no investigation of the Estado Mayor of the Armed Forces, "since that institution is responsible for the entire country, while the security commando was responsible solely for the Military Complex, and since those responsible for the murders had been identified, it was not necessary to undertake such an investigation".[FN42]

[FN42] Testimony of Lt. Col. Manuel Antonio Rivas Mejía, Fourth Criminal Court, October 19, 1990, folio 2477 of the summary.

98. The investigation was flawed from the outset, since the Investigation Commission's detectives failed even to cordon off the scene of the crime to prevent evidence from being tampered with. According to the Investigation Commission's reports, two of its detectives arrived at the scene of the crime at 9.10 on the morning of November 16, some seven hours after the murders had been committed. They began to take photographs and to collect physical evidence: projectiles, bullet casings, fingerprints etc. They also began to prepare plans and to question possible witnesses.[FN43] Other potentially important evidence found at the scene of the crime was simply ignored by the Investigation Commission's agents.

[FN43] Agents of the Investigation Commission's Forensic Technical University (UTF) also went to the scene, as did members of the National Police Explosives Unit, the Third Justice of the Peace of San Salvador and his secretary, a forensic pathologist, the Second Criminal Judge of Santa Tecla and his secretary, and an official of the Public Prosecutor's Office.

99. The Investigation Commission received the first information implicating the Atlacatl Battalion on November 17, 1989, during interviews with police officers stationed at the Torre Democracia ["Democracy Tower"], located at the junction of the Autopista Sur ["Southern Expressway"] with Avenue Albert Einstein. Sub-Sergeant Germán Orellana Vásquez, of the national police battalion, and agent Victor Manuel Orellana Hernández, who were both on duty from midnight until 7 a.m. on November 16, told the Investigation Commission that they saw armored cars and soldiers of the Atlacatl Battalion pass by. They also said that, around 2:00 in the morning, they heard shooting and explosions, both distant and close by.

100. On December 5, 1989, two lieutenants of Military Detachment N° 7 that took part in the operation revealed that there were troops of their unit in the abandoned buildings that were used by the Atlacatl Battalion as a meeting point before launching its action on November 16, 1989.

101. Despite this, not a single member of the patrol from Military Detachment N° 7 admitted having seen soldiers of the Atlacatl Battalion that night, or having heard any vehicles go by. In light of the statements by men of that battalion[FN44], and given the circumstances of that night, which included a curfew lasting 12 hours, it is simply impossible to believe that these soldiers and vehicles were neither seen nor heard, since they were in exactly the same place.

[FN44] See extra-judicial statements of the accused, February 13 and 14, 1990. See also the statement of Sub-Sgt. Eduardo Cordova Monge, Fourth Criminal Judge, of January 18, 1990, folio 1352 of the summary.

102. In his testimony as a military expert, on May 27, 1991, the Argentine Colonel José Luis García said:

Every unit is assigned a geographic sector to defend within the zone, and the only people who are allowed to move about within the zone are those who know the password or who are recognized as safe and law-abiding citizens, so as to avoid letting the enemy infiltrate the facilities without being noticed. The conduct of military operations within a security zone is very tightly controlled. Any movement not ordered or authorized by the senior command will immediately produce a combat situation, since the troops stationed in the zone would consider such soldiers to be enemy troops.

103. The statements of Colonel García can only reinforce those taken earlier by the Investigation Commission. Police officer Juan Antonio Navarro Artiga told the Investigation Commission that any troops moving about would have to report by radio to the soldiers in the zone, or risk being shot. From the beginning of the curfew, at 6:00 in the afternoon, according to Navarro, there were standing orders to shoot at any unidentified vehicle.[FN45]

[FN45] Statement of Juan Antonio Navarro Artiga, December 6, 1989, folio 105 of the summary.

104. Corporal Angel Pérez Vásquez, who later confessed to having killed Father López y López, told the Investigation Commission that "with respect to the murder of the six Jesuit priests, the first he knew of it was some two weeks after leaving the Military Academy, when he read about it in a newspaper ". Private Juan Antonio González Torres actually maintained that he had heard nothing about the death of the Jesuits until the date he gave his testimony, on 28 December.

105. Declarations of this kind, intended to conceal rather than reveal the truth, were the rule, not only from the first witnesses, but from the hundreds of members of the Salvadoran Armed Forces on active duty, who were not ashamed to commit perjury before the Court.

106. On December 22, 1989, Father Tojeira delivered new evidence to the Investigation Commission, including the handwritten sign implicating the FMLN, which was left at the pedestrian entrance to the UCA, and some bullet casings, an empty beer can found at the scene of the murders, and two cigarette butts. The Investigation Commission immediately ordered the appropriate laboratory analysis and requested handwriting tests of all commandos in the Atlacatl Battalion. On January 14, 1990, the handwriting analysis showed that the words "We have executed the dirty informers. Victory or death...FLMN" could have been written by Sub-Lieutenant Guevara Cerritos or by Sub-Sergeant Avalos Vargas. Some witnesses later declared that they had seen Sub-Lieutenant Guevara Cerritos writing something on the sign.

107. The first communication between the Investigation Commission and Colonel Benavides to appear in the record is dated January 3, 1990, when Lieutenant Colonel Rivas asked whether any of his men had used flares in the vicinity of UCA between 6 p.m. on November 15, 1989, and 7 a.m. the following day.

108. Despite the great volume of evidence recognized by this body to that date, the results were very thin. Nothing positive was obtained from any of the fingerprints taken[FN46], the handwriting analysis was inconclusive, and the ballistic tests provided no useful information. The British police (Scotland Yard) criticized the manner in which the Investigation Commission handled the tests, because it created confusion and made it impossible to tell where each object had been found.[FN47] Worse, the Investigation Commission never completed the ballistic tests, nor was it ever able to link any of the accused to the crime on the basis of such tests.

[FN46] Scotland Yard made the following comments with respect to the collection of fingerprints from the corpses:

They were taken from the bodies in situ. Scotland Yard sees no justification for doing it at that time, since all this can do is help to contaminate the scene of the crime and the personnel who are carrying out the examination. If the bodies have already been identified in front of the officials conducting the investigation, the only thing that has to be done is to photograph them and label them carefully". Report of Scotland Yard, submitted to the Fourth Criminal Court on March 22, 1991, paragraph 117, p. 30.

[FN47] Scotland Yard sent a team of three men to El Salvador in January 1990. A portion of their observations and conclusions was sent to Judge Zamora in February 1991. The report was included in the summary in May 1991, too late for those observations and suggestions to be of any use during the process.

109. On January 3, experts of the Investigation Commission had determined that some of the ammunition casings found at the scene corresponded to bullets fired from the M-16 rifle assigned to private Victor Antonio Delgado Pérez, of the Atlacatl Battalion commando unit. Fifty-three casings found in the walls of the Centro Monseñor Romero came from his M-16. Yet there remained 73 casings to be compared with samples taken from commandos of the Atlacatl Battalion.[FN48]

[FN48] In a statement to the Investigation Commission on January 15, 1990, Delgado Pérez admitted having entered the UCA on the night of November 15, 1989, but he said he had remained in the covered parking lot and that he fired into the air when he heard others doing so. In his court statement, on January 25 1990, he denied having ever left the Military Academy on November 15. When the Judge attempted to summon him again to clarify these contradictions, and his possible role in the crimes, the newly appointed chief of the general staff, Colonel Rubio, replied in a telegram dated September 7, 1990, that Delgado Pérez had been discharged from the Army on April 30, 1990. General Ponce later explained, on June 18, 1991, that Delgado Pérez

had been dishonorably discharged as a deserter, because he did not return from a 72-hour leave. The Army, as far as is known, made no effort at all to determine his whereabouts.

110. On January 4, the ballistics experts reported that they had identified a second M-16, belonging to Private Neftali Ruiz Ramírez[FN49], as having fired 41 casings at the north side of the Centro Monseñor Romero.

[FN49] In his statement of January 14, 1990, Private Ruiz Ramírez insisted that he was on patrol with commandos who were not at the UCA on the night of murders. He said he thought it "strange that his gun should be involved in the events under investigation. He supposed that, upon going to fight in Zacamil, he had inadvertently exchanged guns with one of his comrades, and he did not know who owned the one he had now". The Investigation Commission immediately asked the Atlacatl commander, Lieutenant Colonel León Linares, to tell it to whom the M-16 gun with serial number 5447811 had been issued. On January 15, Lieutenant Colonel León Linares reported that that rifle was assigned to Private Nelson Mauricio Morales Portillo of the Fourth Infantry Brigade of the Atlacatl Battalion, who had deserted on January 2, 1990. In his court statement of March 19, 1990, Private Ruiz Ramírez denied having left the Military Academy that night and declared that on November 16, in the Colonia Zacamil, he had exchanged guns with Sierra Ascencio (the soldier, also a deserter, accused of murdering the two women, who was tried and sentenced in absentia). On September 7, 1990, in a second court statement, Ruiz Ramírez contradicted himself and declared that he did not know if his rifle belonged to Sierra Ascencio or not. Ruiz Ramírez did not stand trial.

111. It is important to note that the two soldiers to whom the rifles belonged were never tried. It is inexplicable, moreover, that the Investigation Commission did not question Col. Benavides until January 1990, in light of the fact that he was commander of the military security zone in which the UCA was located, and that there had been shooting and explosions at the university that night, attributed to the FMLN. Only one of Col. Benavides' subordinates, Capt. García Oliva (who was named by Col. Ponce as the officer in charge of the troops stationed to the South and Southwest of the University) was questioned. Nor is there any indication that the Investigation Commission took any statement from the then Director of the Military Academy, Major Camilo Hernández, to determine what had happened that night. Major Hernández, now promoted to Lieutenant Colonel, was subsequently tried for "cover-up", accused of destroying evidence, and was sentenced to three years in prison.

112. Although every indication pointed to military involvement, the official posture of the Army and of the civilian authorities during November and December 1989 was to place the blame on the FMLN. An anonymous letter from "junior officers" accused Col. Hernández, then director of the Treasury Police, of complicity in the murders: he denied that accusation on December 9, 1989, in a sworn statement given to the Investigation Commission. He concluded his statement by saying that "terrorist delinquents" commit this kind of crime in order to discredit the Armed Forces, by making people believe that it is the Army that has committed them.

3. The investigation by the Honor Commission

113. In early January 1990, officials of the United States Embassy provided the Salvadoran High Command with information linking Col. Benavides to the crime.[FN50] This revelation led to the appointment by President Cristiani of a Special Honor Commission, the predominant role of which was to minimize damage to the Army and to restrict the scope of the investigation. It was during these two weeks that the names of the nine accused were given, but the process by which they were identified has never been clarified. It was also during this period that seven of the nine accused confessed their involvement in the crimes before the Investigation Commission. Their extra-judicial confessions remain the best and most complete record of the events in question. Until that moment, no one had been accused of the crime.

[FN50] The American Major, Eric Buckland provided this information.

114. From the beginning, the objectives and activities of the Honor Commission were shrouded in mystery. The names of its members were not released, even to the judge hearing the case, until March 1990. On March 21, President Cristiani responded to a request from Judge Zamora, of March 5, with a copy of a letter from General Larios in which those names appear. The Honor Commission was made up of an officer from each rank, from general to captain, and two civilian lawyers.

115. The members of the Honor Commission also said explicitly that Lt. Col. Rivas Mejía gave the names of the nine accused to them, as chief of the Investigation Commission. Inexplicably, both the Investigation Commission and the Honor Commission said that it was the other body that provided the names.

116. The Investigation Commission made no further effort to continue the investigation, despite its legal obligation to do so. The IACHR considers that, as of that moment, there was an agreement to limit the investigation to these persons alone. The members of the Honor Commission deny having identified the names of the accused on the basis of their own investigation, and they describe their task as that of simply "exhorting" the suspects to tell the truth. Nowhere is it made clear how it was determined who should be accused, or who made that decision, or why this information was not made public.

117. The report of the Honor Commission, which consists of seven pages and two annexes, sheds no light at all on the internal working mechanisms of the Commission, or on how it arrived at the conclusions found in the summary. Broadly speaking, the document indicates the reasons that led to creation of the Honor Commission, explains that the Investigation Commission had determined the "possible involvement of elements of the Armed Forces" and adds that "this Commission was appointed to support the investigation into the case". It relates succinctly the names of the soldiers and of the persons killed by them. In its conclusions, the report declares that "the events involved the responsibility" of the nine accused, and "recommends" that "they be turned over to the competent civilian tribunals". The description of the events that is given in the

report coincides with that to be found in the summary. The report makes no reference as to how members of the Honor Commission were able to obtain that information.[FN51]

[FN51] The extra-judicial statements of the seven accused who confessed their involvement in the murder operation were taken "officially" on January 13 and 14, 1990. Other soldiers of the Atlacatl Battalion and the assistant to Lt. Mendoza gave their statements on January 14 and 15.

118. In light of the foregoing, the IACHR concludes that the Investigation Commission, the authority responsible for investigating the case, failed to fulfill its task properly, since it did not immediately undertake procedures that are normal in the case of such a crime. The Investigation Commission allowed evidence to disappear, and even to be intentionally destroyed, and it gave the suspects plenty of time to formulate alibis and to succeed in their efforts at cover-up. While this attitude changed following the report of the Honor Commission, all the facts suggest that an effort was made to restrict the investigation to the nine suspects identified in that report. From that time on, the Investigation Commission deepened its investigation, but only with respect to the nine persons who were finally tried, and it made no attempt to discover those responsible for masterminding the operation within the higher ranks of the Armed Forces.

v. The operation of November 15 and the lack of reaction from the Estado Mayor

119. The operation of November 15, which resulted in the murder of the Jesuit priests and Mrs. Ramos and her daughter, was carried out in the most heavily patrolled sector of the city, and lasted approximately half an hour. During the attack, high-powered weapons were used against the Monseñor Romero Theology Center. Commandos of the Atlacatl Battalion used their M-16 rifles, anti-tank rockets and grenades, and even started a fire. Such was the intensity of the heat generated by the assault that several nearby window panes were broken.

120. The soldiers stationed in the vicinity of the UCA, and the officers who were inside the Estado Mayor headquarters, testified that they heard an enormous amount of shooting at the University. Some even said that they were concerned that there might be an attack against the Military Complex itself. Nevertheless, according to the summary, no one made the slightest effort to investigate what was happening or to respond to the shooting. This suggests that they were well aware of the origin of the explosions, and the reason for them; had it been otherwise, they would have reacted to such a tremendous noise.

121. The noise produced during the shooting of the Jesuits (machine-gun fire and automatic assault rifles, grenade explosions and rockets) could be heard perfectly well from the Estado Mayor headquarters. "On hearing these explosions, there was extreme concern at headquarters", recalls Col. Carlos Armando Avilés. "For the first time, they feared an attack on the vital nerve center of the Armed Forces, the Estado Mayor and the Ministry of Defense"[FN52]. Another officer who was present that night, the head of the Counter-Intelligence Department, Major René Guillermo Contreras Barrera, "heard heavy explosions and detonations near the Estado Mayor and he judged them to be coming from the direction of the UCA."

[FN52] Statement of Col. Carlos Armando Salvador Avilés Buitrago, Fourth Criminal Court, October 31, 1990. Folio 2643 of the summary.

vi. The policy of cover-up and its beneficiaries: the Atlacatl Battalion

122. The institutional policy of cover-up was intended to create a protective shield of impunity around the intellectual authors, as well as those material authors who had not been individually named by the Honor Commission.

123. Thus, for example, several witnesses whose testimony appears in the summary noted that troops of the Atlacatl Battalion were stationed in the vicinity of the UCA at the approximate time of the killings. Nevertheless, the head of the Estado Mayor, Col. Ponce, made no mention of the Atlacatl Battalion when he reported to the court, for the first time, that troops were deployed in the area. Moreover, several soldiers who mentioned the presence of the Atlacatl Battalion later changed their statements and said that they had seen no such thing in the zone. This suggests an attempt to conceal the presence of the Atlacatl Battalion.

vii. The policy of cover-up for the Estado Mayor

124. The policy of cover-up was also carried out, and very effectively, with respect to officers of the High Command who took the decision to conduct the operation.

125. It is important to recall that on November 15, 1989, from 8 o'clock in the morning of that day until 8 o'clock on the morning of the following day, the command of the Joint Operations Center of the Armed Forces (COCFA)[FN53], at the Estado Mayor, was in the hands of Col. Nelson Iván López y López, chief of C-1 of the Estado Mayor. Lt. Raul Antonio Mejía Chávez, of C-2 (intelligence), Major Oscar Joaquín Martínez of C-3 (operations)[FN54], an officer of the Air Force and a radio technician were also on duty.[FN55] The chief of C-3, Col. Joaquín Arnoldo Cerna Flores, was at headquarters until about one or two o'clock in the morning, as was stated in Court on September 21, 1990. Members of the High Command were at headquarters until two in the morning, when the killers were already within the UCA premises.[FN56]

[FN53] The acronym COCFA stands for “Centro de Operaciones Conjuntas de la Fuerza Armada”, i.e. the command post of the Estado Mayor.

[FN54] General Ponce provided these names in June, 1991, when it was already too late to use them in the judicial investigation. In his earlier statements to the Court, over a period of nearly two years, General Ponce had never mentioned this important piece of information. Col. López y López, who gave testimony before Judge Zamora on September 14, 1990, also failed to make any such mention.

[FN55] Testimony of Major René Guillermo Contreras Barrera, Fourth Criminal Court, November 1, 1990, folio 2647 of the summary.

[FN56] Expanded testimony by sworn deposition of Col. René Emilio Ponce, Fourth Criminal Court, December 23, 1990, folio 2519 of the summary.

126. Moreover, it must be recalled that the operation of November 15, 1989, took place during the curfew decreed on November 11, and within the special security zone that included the vicinity of the UCA, a few blocks from which were the headquarters of the Estado Mayor, the Ministry of Defense, the Military Academy, the National Intelligence Directorate (DNI), the San Benito battalion of the national police, and two military residential quarters, Colonia Arce and Colonia Palermo.

127. The IACHR considers that, if the High Command had not consented to the operation, the security forces would have reacted and would have gone to the scene of the crime. Yet this did not occur, and the brutal killings were committed with impunity in the midst of loud shooting and bombs that shattered the silence imposed by the curfew.

128. One of the persons who attended the meeting of November 15, 1989, declared to the "San Francisco Examiner", a U.S. newspaper, that this meeting "was the most tense and desperate meeting of the highest commanders in the country since the war against the leftist insurgents had begun 10 years earlier"[FN57]. It is difficult to believe that a military operation that was conducted on that very day, only a few blocks from the High Command, and that involved so much movement of troops and so much noise from shooting and explosions, could have gone unnoticed by the High Command, especially when several of its members had remained at headquarters until the early hours of the morning of November 16.

[FN57] San Francisco Examiner, February 5, 1990. For further details on the November 15 meeting, see Boston Sunday Globe, February 4, 1990; Christian Science Monitor, February 7, 1990; Baltimore Sun, February 4, 1990; Miami Herald, February 5, 1990.

129. The nature of the operation itself, the meeting held by the High Command on November 15, the date of the murders, the decision to name Benavides two days earlier as chief of the new security zone, and the hierarchical structure of the Armed Forces, all suggest that the decision could not have been taken in isolation by Col. Benavides alone. On the contrary there is much circumstantial evidence to indicate that Col. Benavides was acting as part of a broader military conspiracy, as was recognized in the report of the Truth Commission.

130. In this respect, it is interesting to note the formal statement given on January 11, 1990, by retired Col. Sigifredo Ochoa Pérez, who was considered in his day to be one of the most effective field commanders in El Salvador[FN58]. Ochoa declared to the newspaper "El Diario de Hoy" that he hoped the investigation would not be limited to the lower ranks of the military, because someone higher up had to have given the order. According to the news service "Agence France Presse", Ochoa said: "This action involved officers of much more senior rank, and even if a general or colonel is involved, the guilty parties must be punished".[FN59] On May 18, 1990, at the request of the Public Prosecutor, Col. Ochoa gave a written statement in answer to the questions posed by Judge Zamora.[FN60]

[FN58] See Washington Post, Jan 6, 1983; New York Times, Jan 13, 1983; and Financial Times, 13 February 1985.

[FN59] Paris, AFP, in Spanish, 2112 GMT, January 12, 1990.

[FN60] The newspaper Ciudad de Mexico, May 8, 1990. Because he was a member of parliament, Ochoa was entitled to respond to questioning in writing.

131. During an interview on the American television program "60 Minutes", aired on April 22, 1990, Col. Ochoa made his accusation more explicitly. According to him, a smaller group of officers got together after the full general staff meeting on the night of November 15. Ochoa declared that during that meeting Col. Benavides received the express order to kill the Jesuits:

A group of commanders stayed behind. Each of them was responsible for one of the zones of San Salvador. They gave an order to kill leftists, and this is what Benavides did. I say again, Benavides was obeying orders, it was not his decision.[FN61]

[FN61] "60 Minutes". When he was asked if he thought it possible that Col. Benavides had decided on the murders on his own, Col. Ochoa replied: "No, sincerely, I do not think so. Knowing him, he is a man who would never do or even think of doing something as serious as killing the Jesuits. Benavides was carrying out orders. He did not act alone."

132. Col. Ochoa's statement was promptly seconded by a group of junior officers, calling themselves "Domingo Monterrosa lives". On May 3, 1990, these officers published a five-page communiqué addressing several issues, including the case of the Jesuits. The anonymous group said "the Ochoa case deserves to be looked into more closely. His position is supported by many of us junior officers, as well as some of our superiors, and he has stated something that many of us are unable to express because we would be severely punished." [FN62] The junior officers went on to ask: "What happened during the meeting that was held between 3 and 5 o'clock in the afternoon in Col. Zepeda's office, involving not only Col. Benavides but other, lower-ranking officers? The High Command knows all about this." [FN63] There has never been any serious attempt to investigate the truth of these allegations. The High Command rejected the "open letter from junior officers", calling it simply "FMLN propaganda." [FN64]

[FN62] Open letter from the Junior Officers' Movement "Domingo Monterrosa Lives", to the President of the Republic and Commander in Chief of the Armed Forces; to our chiefs in the High Command; to members of the legislative assembly and ministers of the government; to the national and international press and to the Salvadoran people, May 3, 1990, published in the newspaper Diario Latino of May 4, 1990.

[FN63] Col. Juan Orlando Zepeda, a prominent member of the group known as La Tandonia, was Vice Minister of Defense. In April 1989, Col. Zepeda had said that an attack by urban commandos of the FMLN had been planned at the UCA.

[FN64] Canal Doce [Channel Twelve] Television, May 4, 1990, taken from FBIS, May 4, 1990; Canal Doce Television, May 22 1990, taken from FBIS, May 29, 1990.

133. Col. Ochoa's statements are relevant when it is recalled that he was a high-ranking retired military officer in El Salvador, and he based his testimony, as he said in his declaration, on the procedures that determine how decisions are taken in traditional military actions. In his statement, Ochoa said: "The number of people involved (in the deaths) and the way the action was carried out point to a pre-conceived plan".

134. The United Nations Special Representative to El Salvador, José Antonio Pastor Ridruejo, also noted in his report of 1991:

The special representative, however, shares with many sectors of public opinion, locally and internationally, and particularly with non-governmental humanitarian organizations at the local and international level, some serious doubts about the possible intellectual authors of the murders. We must ask, in effect, if a decision with such serious consequences of every kind as that of ending the life of the Jesuit Fathers could have been taken alone by Col. Benavides who, it would appear from many sources, was known for his profound sense of discipline and his perfect obedience to orders. In short, although the outcome of the trial in the Jesuit murders case constitutes an important milestone in the recent history of Salvadoran criminal justice, the steps taken appear to have been insufficient. In the view of the special representative, the judicial investigation should have continued until it was absolutely clear whether there were intellectual authors behind the crime, and until any such persons were prosecuted and punished" (emphasis added).[FN65]

[FN65] "The Human Rights Situation in El Salvador", Doc. UN A/46/529. October 11, 1991, p. 22.

viii. The sham proceedings, the verdict of the jury and the sentence

135. With respect to the actual carrying out of the murders, it should be noted that eight of those accused gave clear confessions, with full details, about their participation in the operation of November 16, 1989, in the following terms: Sub-Sgt. Ramiro Avalos Vargas killed Fathers Armando López and Juan Ramón Moreno; Private Oscar Amaya Garibaldi killed Fathers Ignacio Ellacuría, Ignacio Martín-Baró and Segundo Montes; Sub-Sgt. Tomás Zarpate Castillo fired at Elba and Celina Mariceth Ramos, until he thought they were dead; the two females were finally killed by Private Jorge Sierra Ascencio; Corporal Angel Pérez Vásquez killed Father Joaquín López y López; Lt. Yushy Mendoza and Lt. José Ricardo Espinoza directed the operation, backed up by Sub. Lt. Gonzalo Guevara Cerritos. All of these men belonged to the Atlacatl Battalion, except for Lt. Mendoza, who belonged to the Military Academy.

136. The extra-judicial statements referred to were truthful, consistent, detailed and fully concurrent with other elements of judgment available with respect to the crime, as required in

Article 496 of the Code of Criminal Procedure of El Salvador. They were also consistent with other confessions and declarations, ballistic tests, the weapons employed and the results of the autopsies. Moreover, they were not extracted through violence or intimidation and they were legally validated before the court, pursuant to the provisions of Article 496 of the Code of Criminal Procedures, as confirmed by the testimony of two eyewitnesses given to Judge Zamora.

137. The Fourth Criminal Court in plenary, moreover, confirmed the truthfulness of these statements by the First Criminal Chamber of San Salvador and by the country's Supreme Court of Justice. Despite this, no member of the Atlacatl Battalion was punished.

138. The jury verdict led to the absurd result where seven of the accused, those belonging to the Atlacatl Battalion, were acquitted and the only two men found guilty (Col. Benavides and Lt. Mendoza) belonged to the Military Academy. Of the two lieutenants who led the operation, Mendoza, from the Military Academy, and Espinoza, from Atlacatl, only the first was convicted, although the bullets that killed Celina Mariceth Ramos did not come from the weapon registered to him.

139. Both Lt. Mendoza, who was convicted of murder and the members of the Atlacatl Battalion displayed in their behavior a singular and dangerous lack of regard for human life. Moreover, the order to kill did not come suddenly in the heat of combat, but was given after cold-blooded premeditation. Those who received it had several hours to think it over, to appreciate its manifestly illegal nature, and to contemplate the consequences of their actions.

140. Nor did the judicial decision result in conviction of the intellectual authors of the crime, which means that in this case the policy of cover-up was fully effective. It was only after signature of the peace accords and the creation of the Truth Commission that there was any serious investigation of the role played by the High Command and the Atlacatl Battalion. It was on the basis of this investigation that that Commission, in its report of March 15, 1993, concluded that the order to kill Father Ellacuría, and to leave no witnesses, had been given to Col. Benavides on the night of November 15, 1989, by then-Col. René Emilio Ponce, in the presence and with the collusion of General Juan Rafael Bustillo, then-Col. Juan Orlando Zepeda, Col. Inocente Orlando Montano and Col. Francisco Elena Fuentes. That Commission also concluded that Col. Ponce had arranged that for this operation "a unit of the Atlacatl Battalion was to be used, which he had sent two days previously to conduct a search of the priests' residence".[FN66] Furthermore, according to that Commission's findings, Colonel Oscar Alberto León Linares, Commander of the Atlacatl Battalion was aware of the murders and concealed incriminating evidence. Colonel Nelson Iván López y López, assigned to assist in the work of the Investigation Commission, and Colonel Manuel Antonio Rivas Mejía, Chief of that Commission (and who also "recommended to Col. Benavides that he destroy any incriminating evidence") also knew the truth and concealed it. None of these officers was duly investigated, prosecuted and punished.

[FN66] Report of the Truth Commission, *supra*, note 18, page 44.

141. In light of the foregoing, the IACHR concludes that the investigation undertaken by the Salvadoran State with respect to the extra-judicial execution of the victims in this case was not conducted seriously or in good faith, but was rather intended to protect some of the material authors and all of the intellectual authors of the crime.

142. Despite the fact that these proceedings led to the conviction of four officers of the Salvadoran Armed Forces[FN67], the facts and elements of the case, which are public and well-known, reinforced by those that came to light during processing of the case before the IACHR, make it clear that the process that resulted in those convictions was neither impartial nor objective, in the terms demanded by the American Convention. In effect, the actions were coordinated and orchestrated to give the appearance of regularity, and to make it seem that justice was being done. But in reality, the Honor Commission, composed for the most part of military officers, and the Investigation Commission, presided by another officer, Lt. Col. Antonio Rivas Mejía, colluded to limit and negotiate accusations, in other words, to put together a convenient "package of charges" intended to provide cover for the senior military command. With this package, nine soldiers who had been pre-selected by the Honor Commission were prosecuted; only four of them were convicted, and of those only two for the crime of murder. The judicial power, for its part, allowed itself to be used in a sham process that constituted a denial of justice. On the other hand, the other public powers, the Legislature and the Executive, conspired to grant amnesty to those who had been convicted, and to prevent any future investigation from ever imposing penalties for these horrible crimes against human rights. All of this affected the integrity of the proceedings and implied the manipulation of justice, as well as the obvious abuse and misuse of power, as a result of which these crimes have to this date gone completely unpunished.

[FN67] Col. Guillermo Alfredo Benavides was sentenced to 30 years in prison for the crime of murdering the priests and Elba Julia Ramos, as well as for the crime of proposing and conspiring to commit acts of terrorism. Lt. Yushy René Mendoza was sentenced to 30 years in prison for the crime of murdering the child Celina Mariceth Ramos, as well as for the crimes of proposing and conspiring to commit acts of terrorism, and concealing a crime. Lieutenant Colonel Camilo Hernández was sentenced to three years in prison for the crime of cover-up. The Commission wishes to note that this last officer was not among the nine soldiers held responsible by the Honor Commission, but was included in the proceedings at a subsequent date.

B. Considerations of law

143. In light of the facts established above, the IACHR will now examine the violation of the human rights of the victims in this case, attributable to the Salvadoran State.

1. The right to life

144. In accordance with Article 4(1) of the American Convention, "every person has the right to have his life respected. No one shall be arbitrarily deprived his life." It should be noted that

this fundamental right cannot be suspended under any circumstance, in accordance with Article 27 of the Convention.

145. As noted above, it has been amply proven that in the early morning of November 16, 1989, agents of the State belonging to the Salvadoran Armed Forces summarily executed six Jesuit priests and two women in the residential complex of the UCA in San Salvador.

146. The evidence used to establish the responsibility of those agents in the crime of murder include, among other relevant items, the report of the Truth Commission and the judgment of the Fourth Criminal Court of January 23, 1992. The rest of the evidence consists of the various items of proof found in the file of the case in the IACHR.

147. The judgment of January 23, 1992, summarizes the evidence against each of the accused. The principal evidence against seven of them--Lieutenants Mendoza and Espinoza, Sub. Lt. Guevara Cerritos, Sub-Sergeants Avalos and Zarpate, Corp. Pérez Vázquez and Private Amaya Grimaldi--consists of their own extra-judicial confessions, given at the General Directorate of the National Police. As noted above, these confessions were legally validated by two eyewitnesses, and by the Fourth Criminal Court in plenary, the First Criminal Chamber of San Salvador, and the Supreme Court of Justice.

148. Tomás Zarpate Castillo admitted that he had shot the two women and, believing that they were dead because they made no sound, he took his retreat.[FN68] The confessions referred to contain compelling evidence. Sub-Sgt. Antonio Ramiro Avalos Vargas confessed that he and Amaya Grimaldi had forced five of the Jesuit priests to lie face-down on the ground and that, after Lt. Espinoza said "when are you going to get on with it?", he turned to Amaya Grimaldi and said "let's get on with it". Immediately Amaya Grimaldi, using the AK- 47 rifle given to him by the lieutenant of the Military Academy, began to shoot at the two priests in front of him, while Avalos Vargas, with his M-16, proceeded to shoot two other priests in the head and body. He next went into the residence, where in one of the dwellings he found two women lying on the floor, shot and moaning in each other's arms, and he ordered private Sierra Ascencio to finish them off; the private thereupon fired a volley of 10 bullets with his M-16 rifle into the bodies of the two women until they ceased to moan.[FN69] Amaya Grimaldi, for his part, admitted that when Avalos Vargas started to shoot the priests who were lying closest to him on the grass, he began to shoot at the two who were closer to him, with his M-16; they then repeatedly shot all five of the priests who were lying on the grass. At that moment, he heard the voice of Lt. Espinoza, giving the following order to Private Cotta Hernández: "Get them inside, even if you have to drag them".[FN70]

[FN68] Extra-judicial statement of the accused Yushy René Mendoza Vallecillos, given at the Directorate of the National Police on January 13, 1990. Judgment of the Fourth Criminal Court of January 23, 1992, folios 5724-5726 of the Court record.

[FN69] Extra-judicial statement of the accused Tomás Zarpate Castillo, given at the Directorate of the National Police on January 13, 1990. Judgment of the Fourth Criminal Court of January 23, 1992, folios 5730-5731 of the Court record.

[FN70] Extra-judicial statement of the accused Oscar Mariano Amaya Grimaldi, given at the Directorate of the National Police on January 14, 1990. Judgment of the Fourth Criminal Court of January 23, 1992, folios 5732-5734 of the Court record.

149. Corporal Angel Pérez Vásquez admitted that he killed Father López y López, who had already been wounded by another soldier. According to the Corporal's testimony, upon entering the second floor the University, where there are several dwelling chambers, he saw a tall man in a white robe (Father López y López) leaving the corridor. One of the soldiers shot at the priest, who fell to the floor. When Corporal Pérez Vásquez went to search the rest of the dwelling, he felt the wounded priest grab him by the feet. He turned around and shot the priest four times.[FN71]

[FN71] Extra-judicial statement of the accused Angel Pérez Vásquez, given at the Directorate of the National Police on January 14, 1990. Judgment of the Fourth Criminal Court of January 23, 1992 folios 5731-5732 of the Court record.

150. Although Lieutenants Mendoza and Espinoza and Sub-Lieutenant Guevara Cerritos were less truthful in their testimony, and denied responsibility, the three admitted having participated in the operation on the orders of Col. Benavides.

151. Lt. Mendoza declared, among other things, that on November 15, 1989, at 11 p.m. or midnight approximately, he received an order to appear before Col. Benavides at the office of the director of the Military Academy. There, Mendoza met Col. Benavides and two other officers, one of whom he recognized as Lieutenant Espinoza, a member of his promotion class. He did not recognize the other officer, but soon heard him being called Lieutenant Cerritos. According to his testimony, Col. Benavides said: "Look, Mendoza, you are to go with Espinoza on a mission, he already knows what it is", to which Mendoza replied "very well, Colonel.[FN72] He subsequently took part in the operation.

[FN72] Extra-judicial statement of the accused Yusshy René Mendoza Vallecillos, given at the Directorate of the National Police on January 13, 1990. Judgment of the Fourth Criminal Court of January 23, 1992, folios 5724-5725 of the Court record.

152. Lieutenant Espinoza declared that Col. Benavides had said to him: "This is a case where it's either them or us; we're going to start with the ringleaders; we have the University inside our sector, and that's where Ellacuría is". He then turned to Espinoza and said: "You scouted the place; now you have to get rid of him, and I don't want any witnesses, Lieutenant Mendoza is going to go with you in charge of the operation, so there will be no problems". Espinoza told Benavides that this was a serious problem, and the Colonel replied: "Don't worry about it, you have my full support".[FN73]

[FN73] Extra-judicial statement of the accused José Ricardo Espinoza Guerra, given at the Directorate of the National Police on January 13, 1990. Judgment of the Fourth Criminal Court of January 23, 1992, folios 5722-5724 of the Court record.

153. Sub-Lieutenant Guevara Cerritos, for his part, admitted having received orders from Col. Benavides, along with two lieutenants, to carry out the operation at the UCA. He testified that Col. Benavides told them: "Well, gentlemen, we're going to play this for all or nothing, it's either them or us - these people have been the brains behind this war for a long time". According to Guevara Cerritos, Benavides went on: "Here we have Lieutenant Mendoza, and since he is a comrade of Lieutenant Espinoza and has more seniority, he is the one who will lead the operation. Espinoza's soldiers already know where the Jesuits are sleeping, and I do not want any witnesses". Guevara Cerritos also admitted that he and Espinoza subsequently called together the patrol leaders who were there, and told them the orders that they had received from Col. Benavides.[FN74]

[FN74] Extra-judicial statement of the accused Gonzalo Guevara Cerritos, given at the Directorate of the National Police on January 13, 1990. Judgment of the Fourth Criminal Court of January 23, 1992, folios 5726-5727 of the Court record.

154. With respect to Col. Benavides, it has been proven that on November 16, 1989, he was the commander of the Security Commando zone that was created on November 13, and in which the UCA was located; that on the day of the events, the Atlacatl rapid-response commando unit, to which the other accused except for Lieutenant Mendoza belonged, was under the operational control of the security commando; that Col. Benavides, Lieutenants Mendoza and Espinoza and Sub-Lieutenant Guevara Cerritos held a meeting in the office of the Military Academy director, on the night of November 15, at which the execution of the Jesuit priests living in the UCA was decided; that there is a "formal command structure" in the Salvadoran Armed Forces, by virtue of which the commander of any garrison, detachment, etc., has the power to issue orders to any subordinates who are under his operational command, without the need to consult his immediate superiors first; that "the superior officer takes responsibility for all orders given" (Article 9 of the Army Ordinances in effect at that time); that Col. Zepeda declared in his testimony that since he was commander of the zone where the crime was committed, Col. Benavides must take full responsibility for it; that in his testimony, given in the form of a sworn statement, Col. Ponce declared that the rapid response unit of the Atlacatl Battalion, from the time it was constituted to reinforce the mission of the security commando, was under the operational command of that commando, and therefore of its commander, Col. Benavides; that orders in the Armed Forces must be given within the rules laid down by law, and that "any member of the institution who gives an order contrary to law is personally responsible for its results and consequently liable to the corresponding penalty"; that in light of the ballistic evidence, it was proven that the bullet casings found at the scene of the crime belonged to an M-60 machine gun and an AK-47 rifle, weapons that, as noted in the Court record, were under the responsibility of Col. Benavides who,

in his capacity as director of the Military Academy, was the only person who could authorize their use.[FN75]

[FN75] Judgment of the Fourth Criminal Court of January 23, 1992, folio 5720-5722 of the Court record.

155. With respect to the senior officers who gave the orders or planned the extra-judicial executions, it should be noted that none of the high-ranking officers admitted in his testimony that there was any question of consent, acquiescence, higher orders or even political orders.[FN76] Nevertheless, the evidence in the possession of the IACHR, including the report of the Truth Commission, shows that Col. Benavides was not acting on his own when he ordered the murders at the UCA.

[FN76] All denied that there was any discussion of the UCA or the Jesuits during the meeting of the High Command on November 15, 1989.

156. Col. Benavides reported, for operational purposes, to Col. Ponce, and the security commando was directly under the Estado Mayor. It was Ponce who, according to the Truth Commission's report, gave Col. Benavides the order to kill Father Ellacuría, without leaving any witnesses. To this end, he arranged for the use of a unit of the Atlacatl Battalion which he had sent, two days earlier, to conduct a search of the priests' residence. Ponce gave this order to Benavides on the night of November 15, 1989, in the presence of and with the collusion of General Juan Rafael Bustillo, Col. Juan Orlando Zepeda, Col. Inocente Orlando Montano and Col. Francisco Elena Fuentes.

157. The IACHR considers that the facts here described are clearly imputable to the State, since the State is internationally responsible for any actions of its agents in violation of the American Convention. In this respect, the Inter-American Court of Human Rights has ruled:

Whenever a State organ, official or public entity violates one of those rights, this constitutes a failure of the duty to respect the rights and freedoms set forth in this Article (Article 1(1)).

This conclusion is independent of whether the organ or official has contravened provisions of internal law or over stepped the limits of his authority: Under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law.

Thus, in principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State.[FN77]

[FN77] I-A Court, Velásquez Rodríguez case, Judgment of July 29, 1988, Series C N° 5, para. 169-172. See also I-A Court, Godinez Cruz case, Judgment of January 20, 1989, Series C N° 5 (1989), the Neira Alegria and Others case, Judgment of January 19, 1995, Series C N° 20 (1995) para. 63.

158. The IACHR considers that the international responsibility of the State also arises from international humanitarian law, since the Jesuit priests who were killed were not legitimate military targets, but members of the civilian population who should not have been the object of attack.

159. In interpreting and applying the rules of international humanitarian law[FN78], the IACHR has been guided by the decisions of the International Criminal Court in judging persons responsible for serious violations of international humanitarian law that were committed in the territory of the former Yugoslavia since 1991. Specifically, in its decision on the Tadic case, the Appeals Chamber of that Court ruled that United Nations resolutions 2444 (respect of human rights in armed conflicts)[FN79] and 2675 (basic principles for the protection of civilians in armed conflicts)[FN80] were "declaratory of the principles of customary international law with respect to the protection of civilian populations and property in armed conflicts of any kind." [FN81]

[FN78] The American Convention contains no rules defining or distinguishing civilians from combatants or other military targets, nor does it specify when a civilian may be legally attacked or when civilian victims may be regarded as legitimate casualties of military operations. The Commission is obliged therefore to apply standards of definition and rules of humanitarian law as sources of guidance in resolving this and other kinds of complaints alleging violations of the American Convention in situations of combat. To do otherwise would imply denying the exercise of its jurisdiction in many cases that refer to indiscriminate attacks on the part of agents of the State, resulting in significant numbers of civilian victims. Such a result would evidently be absurd, in light of the objectives and basic purposes both of the American Convention and of the treaties on humanitarian law. See Report N° 55/97 (Case 11.137 - Juan Carlos Abella), Argentina, Annual Report of the IACHR 1997, OEA/Ser,L/V/II.98, para. 161. [FN79] UN GAOR, 3rd Comm., 23rd Session, UN Doc A/C.3/SR.1634 (1968).

[FN80] UN GAOR, 23rd Session, Sup. N° 28 UN Doc A/8028 (1970).

[FN81] Prosecution vs. Dusko Tadic, N° IT-94-1-AR72, para. 112 (October 2, 1995).

160. These resolutions prohibit, among other things, attacks against the civilian population, and they require the parties to an armed conflict to distinguish at all times between members of the civilian population and persons who are actively participating in the hostilities, and to direct their attacks solely against the latter, and by inference, against other legitimate military targets. In order to protect civilians from the effects of hostilities, other principles of customary law require the attacking party to take precautions to avoid or minimize the loss of life among civilians, or damage to their property, inherent or collateral to attacks against legitimate military targets.

161. The immunity of civilians against direct attack is also found in certain conventions. Specifically, common Article 3 of the Geneva Conventions of 1949[FN82] expressly prohibits, under all circumstances, "violence to life and person, in particular murder of all kinds" of those who are taking no active part in the hostilities.

[FN82] El Salvador ratified the Geneva Conventions of 1949 on June 17, 1953.

162. Moreover, Article 3 of the Second Additional Protocol to the Geneva Conventions of 1949,[FN83] elaborates and strengthens the basic rules of common Article 3, and codifies the principle of civilian immunity as follows:

2. The civilian population as such, and civilian taken individually, must not be the object of attack. Acts or threats of violence, intended to instill terror among the civilian population, are prohibited.
3. Civilians must enjoy the protection guaranteed by this Section, unless, and during such time as, they are active participants in the hostilities.

[FN83] El Salvador ratified the Additional Protocol to the Geneva Conventions of 1949 on the Protection of Victims of Domestic armed Conflicts (Protocol I) on November 23, 1978.

163. In situations of internal armed conflict, the civilian population includes those civilians not engaged in any action intended to damage enemy personnel or property. [FN84]

[FN84] New Rules for Victims of Armed Conflicts: Commentary on the two 1997 Additional Protocols to the 1949 Geneva Conventions (1982), page 672.

164. As has been demonstrated, during this phase of the Salvadoran armed conflict, agents of the State identified the Jesuit priests with subversion.

165. Father Ellacuría was publicly accused of being the "creator of the theory and concept of guerrilla rebellion". The Armed Forces published a statement in which they accused him of supporting the guerrillas' use of car bombs in the last months of 1988. Col. Juan Zepeda of the First Infantry Brigade declared that the UCA was "a refuge for terrorist leaders, from which they plan their strategy of attacks against Salvadoran citizens". The Vice Minister of Public Safety, Col. Inocente Montano, said publicly that the Jesuits were totally identified with subversion. On November 11, 1989, the date on which the FMLN military offensive began, the radio station of the Armed Forces called for violence against members of the church, and against Father Ellacuría, whom it accused of having poisoned the minds of the youth of El Salvador. During the trial, one of the witnesses testified that Col. Benavides, on giving the order to commit the

murders, said with respect to the Jesuits: "these people have been the brains behind the guerrilla war for a long time." [FN85] For its part, the Truth Commission, in its report, termed the murder of the Jesuits "an act of violence against opponents on the part of agents of the State".

[FN85] The Sub-Lieutenant of the Atlacatl Battalion Commandos Unit, Gonzalo Guevara Cerritos, prosecuted for the murder of the Jesuits, stated that Col. Benavides pronounced these words when he gave the order to carry them out. See "Interlocutory order for provisional detention", Fourth Criminal Court, January 18, 1990, 3.45 p.m.

166. In this respect, the IACHR wishes to note that in any case, mere sympathy for the cause of one of the parties is not tantamount, nor can it be equated, to engaging in acts of violence that constitute a real and immediate threat to the adversary. [FN86] Therefore, even if statements about the victims' alleged sympathy for the armed dissidents were true, the Army members had no right to treat the victims in this case as legitimate targets of attack.

[FN86] Ibid., page 303.

167. As early as 1978, in its report on the Human Rights Situation in El Salvador, the IACHR reported that authorities of the Catholic Church in El Salvador had informed it that the government, as well as organizations enjoying official favor, were systematically and seriously harassing monks, priests and lay persons in the pursuit of their activities as part of the church's social action program. The church authorities moreover had reported that, as a result of activities of the church in general, and of the bishops in particular, they were being publicly attacked for presumed links to terrorism and subversion.

168. The foregoing led the IACHR to conclude in its Report on the Human Rights Situation in El Salvador that these persons "had been the object of systematic persecution on the part of the authorities and of organizations enjoying official favor". In that report, the IACHR recommended that the Salvadoran State should take "all steps necessary to prevent continued persecution of members of the Catholic Church in the legitimate exercise of their pastoral mission". [FN87]

[FN87] Report on the Human Rights Situation in El Salvador, OEA/Ser.L/V/II.46 doc 23 rev. 1, 17 November 1978, page 119, para. 152, para. 8, page 153, para. 6.

169. On the basis of considerations of fact and law as set out above, the IACHR concludes that agents of the Salvadoran State violated the right to life enshrined in Article 4 the American Convention, and the principles codified in common Article 3 of the Geneva Conventions, to the prejudice of the Jesuits priests Ignacio Ellacuría, Ignacio Martín-Baró, Segundo Montes,

Armando López, Joaquín López y López and Juan Ramón Moreno, and Mrs. Julia Elba Ramos, who was employed as a cook, and her daughter Celina Mariceth Ramos, a minor.

2. The duty to investigate and punish (Article 1(1) of the American Convention)

170. The Inter-American Court has established that the obligation undertaken by states to guarantee the free and full exercise of the rights recognized in the American Convention, in its Article 1(1), must be understood in the following terms:

...the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention, and moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.[FN88]

[FN88] I-A Court, Velásquez Rodríguez case, Judgment of 29 July 1988, *supra*, note 77, para. 166. See also Report N° 1/99, Parada Cea, El Salvador, *supra* note 18, para. 129.

171. The Court has also declared that:

The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.[FN89]

If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction.[FN90]

[FN89] *Ibid.*, para. 174. See also I-A Court, Godinez Cruz case, Judgment of 20 January 1989, *supra* para. 184.

[FN90] *Ibid.*, Velásquez Rodríguez case, *supra* note 77, para. 176 and Godinez Cruz case, para. 187. See also Report N° 1/99, Parada Cea vs. El Salvador, *supra* note 18, para. 129.

172. With respect to the manner in which the obligation to investigate must be fulfilled, the Inter-American Court has specified that:

The duty to investigate...must be undertaken in a serious manner and not as a mere formality,

preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.[FN91]

[FN91] Ibid., Velásquez Rodríguez case, para. 177. See also Report N° 1/99, Parada Cea (El Salvador), supra note 18, para. 136.

173. In considering whether the State has fulfilled its international obligation to investigate seriously with the means at its disposal the violation of human rights alleged in the present case, the IACHR will examine the investigation conducted in light of the criteria established in the "principles governing the effective prevention and investigation of extralegal, arbitrary or summary executions", which were adopted by the Economic and Social Council of the United Nations in resolution 1989/65.[FN92]

[FN92] IACHR Annual Report 1995, Case N° 10.580, Ecuador, OEA Ser.L/V/II.91 Doc. 7 rev. 3, 3 April 1996, para. 32-34; Report N° 55/97 (Case 11.137, Juan Carlos Abella et al) Argentina, 18 November 1997, OEA/Ser. L/V/II.97 doc 36, paras 423 to 424; Annual Report 1998, Report N° 65/99 (Case 10.228 – Víctor Hernández Vásquez), El Salvador, paras 63 ff.

174. According to these principles, the investigation of cases of this nature must be aimed at determining the cause, manner and time of death, the person responsible and the procedure or practice which might have led to the events. As well, there must be a proper autopsy performed, all material and documentary evidence must be gathered and analyzed, and statements must be taken from witnesses. The investigation will distinguish between death from natural causes, death by accident, suicide and homicide.

175. These principles have been supplemented by the adoption of the "Manual on the effective prevention and investigation of extralegal, arbitrary or summary executions",[FN93] according to which the principal objective of an investigation is "to discover the truth surrounding the events that led to the suspicious death of the victim", which states that the principal objective of an investigation is to "ascertain the truth about events leading to the suspicious death of a victim". The Manual provides that the persons conducting the investigation must take the following minimum steps:

- (a) Identify the victim;
- (b) Recover and preserve probative elements related to the death in order to assist in any future trial of the persons responsible;
- (c) Identify any possible witnesses and obtain statements from them concerning the death;
- (d) Determine the cause, manner, place and time of death, as well as any modality or practice that might have led to the death;
- (e) Distinguish between natural death, accidental death, suicide and homicide;

- (f) Identify and apprehend the person or persons who might have participated in the execution;
- (g) Bring the perpetrator or perpetrators suspected of having committed a crime to a competent court established by the law.

[FN93] United Nations document ST/CSDHA/12. See also IACHR Report 65/99 supra.

176. In order to guarantee that an exhaustive and impartial investigation of an extralegal, arbitrary or summary execution will be carried out, the manual provides that "one of the most important aspects of [the investigation] is the gathering and analysis of the evidence". Consequently, "the persons responsible for the investigation of a presumed extrajudicial execution must also have access to the place in which the corpse was discovered, as well as to the place in which the death might have occurred". According to the standards established in the Manual, the procedure for gathering evidence must fulfil certain criteria, some of which are listed below:

- (a) The area surrounding the corpse must be secured. Access to the area must be permitted only to investigators and their staff;
- (b) Color photographs of the victim must be taken, since, in comparison with black and white photos, color photographs may reveal in greater detail the nature and circumstances of the death of the victim;
- (c) Both the interior and exterior of the place must be photographed, as well as any physical evidence;
- (d) A record must be made of the position of the corpse and of the condition of the clothing;
- (e) A note should be taken of the following factors which serve to determine the time of death:

- * temperature of the body (warm, cool, cold);
- * position of corpse and degree of discoloration;
- * rigidity of corpse; and
- * state of decomposition.

- (f) All evidence of the existence of weapons, such as firearms, projectiles, bullets and shells or cartridges, must be collected and preserved. Where appropriate, efforts must be made to find the residue from shots fired and/or to detect metal fragments.[FN94]

[FN94] IACHR, Annual Report 1998, Report N° 65/99 (Case N° 10.228 - Victor Hernández Vásquez, El Salvador), para. 65.

177. According to the investigation conducted by the Truth Commission, the statements of the former prosecutors for the case, and the body of evidence that the IACHR has in the file, the investigation conducted as part of the judicial process does not satisfy the minimum standards

recognized in the "manual for the effective prevention and investigation of extralegal, arbitrary or summary executions".

178. In effect, with respect to the recovery and conservation of evidence related to the deaths, the Truth Commission found in its report that the Chief of the Criminal Investigation Commission, Lieutenant Manuel Antonio Rivas Mejía, recommended to Col. Benavides that he destroy the barrels of the weapons used and replace them with others to avoid identification during ballistic tests. Col. Benavides carried out this destruction, with the assistance of Lieutenant Colonel Oscar Alberto León Linares. The report also established that Rivas Mejía recommended to Benavides that he destroy the entry and exit records for the Military Academy, which might have allowed the guilty persons to be identified. As was mentioned above, Benavides and Major Hernández Barahona subsequently ordered all logbooks of the Military Academy to be burned, both for the current year and the previous one.[FN95]

[FN95] See Truth Commission Report, supra note 18, page 44.

179. With respect to identifying witnesses and taking statements from them, the Truth Commission concluded in its report that the Criminal Investigation Commission took no statement from Col. Benavides, despite the fact that the events had occurred in the zone that was under his command. It was also mentioned supra that a member of the Commission, Rodolfo Antonio Parker Soto, altered witness testimony in an attempt to suppress any mention of orders from above. As well, he eliminated references to certain officers, including those relating to Major Carlos Camilo Hernández Barahona. During the investigation phase, Colonels René Emilio Ponce, Juan Orlando Zepeda, Inocente Orlando Montano and Gilberto Rubio Rubio brought pressure on lower-ranking officers not to mention any orders from above in their testimony before the Court. Three witnesses retracted their first statements that had linked agents of the armed forces to the crime.[FN96]

[FN96] Ibid.

180. In addition, the former prosecutors for the case indicated that the Public Prosecutor had prohibited them from attending the questioning of certain witnesses and from cross-examining others.

181. With respect to identifying and apprehending the persons who had participated in the execution, the evidence examined leads as a whole to the conclusion that entities of the State responsible for the investigation did not identify or apprehend all the material and intellectual authors of the crime. On the contrary, as noted earlier, the investigation was characterized by acts of cover-up and the deliberate omission of measures that might have identified all the persons responsible.

182. In this respect, the IACHR considers it proven that neither the Investigation Commission nor the Honor Commission undertook an effective investigation of all the persons, military or civilian, involved in the events of November 16, 1989, especially the high-ranking military officers who gave the orders or planned the extra-judicial executions. Both of those organs, moreover, conspired to put together a "package of charges" and, without any grounds for this decision, to limit it to the eight soldiers who participated in the operation, and the one higher-ranking officer who gave the order to kill the Jesuit priests. Col. Benavides gave the order to execute the priests as part of a pre-conceived plan that involved officers of the High Command of the Salvadoran Armed Forces, whose role was concealed both by the Investigation Commission and by the Honor Commission.

183. It is important to note that, as soon as the package of charges had been concocted, the Investigation Commission reported to the judge that Col. Benavides was under arrest at the headquarters of the National Guard; that the other seven accused were being held at National Police headquarters, and that the ninth accused, Private Jorge Alberto Sierra Ascencio, had deserted in December 1989. The Investigation Commission also provided the court with several pieces of physical evidence (the M-60 machine gun, two M-16 rifles, and an AK-47 rifle) although these weapons, in fact, remained in the hands of that Commission. Satisfied with the success of their efforts, both the Honor Commission and the Investigation Commission abandoned the case, and considered their work completed.

184. The cover-up continued throughout the criminal proceedings, in which military witnesses uttered contradictions and failed to tell the truth, in order to cloak their superiors with a mantle of impunity. As the Truth Commission has determined, this behavior reflected the fact that senior officers brought pressure on lower-ranking soldiers to make no mention during their judicial testimony of any orders they had received from above.

185. With respect to subjecting the perpetrator or perpetrators suspected of having committed the executions to a competent tribunal established by law, it is clear that this step was not taken, because the investigation was partial and incomplete.

186. As a consequence of the foregoing, the State also failed to fulfill its obligation to take the necessary steps to impose the penalties provided by law on all those responsible for the extra-judicial executions. In effect, the investigation, which was conducted with a view to protecting certain authors of the violation of human rights, prevented all those authors from being judicially identified and, in consequence, prevented the corresponding penalties from being applied.

187. In light of the Truth Commission's report and the other evidence in hand, the IACHR concludes that the investigation of the extra-judicial executions that was carried out by the Salvadoran State through the Investigation Commission and the Honor Commission was not undertaken seriously or in good faith, and was designed to protect some of the material authors and those who took the decision to execute the victims. Moreover, while the judicial investigation conducted by the Fourth Criminal Court was credible and attempted to discover the truth, the policy of cover-up and pressure adopted by higher ranking officers against those of lower rank to protect the intellectual authors and some of the material authors meant that the judicial investigation was completely ineffective. In fact, and especially as a result of this cover-

up campaign, the results were limited to the "package of charges" agreed between the Investigation Commission and the Honor Commission.

188. By reason of the foregoing, and on the basis of the evidence examined and the conclusions indicated, the IACHR finds that the State has failed to fulfill its obligation to investigate seriously and in good faith the violation of the human rights recognized by the American Convention, to identify those responsible for the violation, and to punish them according to law, as stipulated in Article 1.1 of the Convention.

3. The right to judicial guarantees and effective judicial protection (Articles 8(1) and 25 of the American Convention)

189. Article 8(1) of the American Convention provides 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".

190. With respect to this Article, the Inter-American Court has ruled that

It must be interpreted broadly, in a manner consistent with both the letter and the spirit of this rule, and it must be appreciated in accordance with Article 29 of the American Convention, according to which no provision thereof may be interpreted to the exclusion of other rights and guarantees inherent in the human being or that derive from the form of democratic and representative government.[FN97]

[FN97] I-A Court, Blake case, judgment of 24 January 1998, Serie C N° 36, para. 96.

191. Consistent with this interpretive criterion, the Court has ruled that Article 8(1) includes the right to judicial guarantees on the part of the victim's relatives[FN98]. Those judicial guarantees consist of an effective investigation, prosecution of those responsible for the crimes, imposition of the appropriate punishment and compensation for damage and injuries suffered by the relatives.[FN99]

[FN98] Ibid., para. 97.

[FN99] Ibid.

192. For its part, Article 25(1) of the American Convention states that

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent Court or tribunal for protection against acts that violate his fundamental rights

recognized by the constitution or laws of the State concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

193. In interpreting this provision, the Inter-American Court has ruled that, according to the American Convention:

States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8 (1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdictions (Art. 1).[FN100]

[FN100] I-A Court, Velásquez Rodríguez case, Preliminary Exceptions, supra note 16, para. 91.

194. The Court has also ruled that Article 25(1) of the American Convention includes the principle, recognized in the international law of human rights, that the procedural means or instruments designed to guarantee those rights must be effective.[FN101] According to the Court, the lack of effective domestic remedies places the victim of a human rights violation in a defenseless position, and justifies the invoking of international protection.[FN102]

[FN101] I-A Court, Judicial Guarantees in States of Emergency, Advisory Opinion OC-9/97 of 6 October 1987, Series A N° 9, para. 24.

[FN102] I-A Court, Fairen Garbi and Solís Corrales case, Preliminary Exceptions, Judgment of 26 June 1987, Series C N° 2 (1987), para. 92.

195. In the case under examination, given that the alleged violations constitute a crime, the State had the duty to undertake an effective investigation to identify all the authors of the violation, to prosecute them and apply to them the corresponding legal penalties, and to undertake and pursue criminal proceedings to their ultimate conclusion.

196. Nevertheless, if this obligatory investigation by the State is to be effective, it must be undertaken in good faith, and in a diligent, exhaustive and impartial manner, and it must be designed to explore all possible investigative avenues that will allow the authors of the crime to be identified, and subsequently prosecuted and punished. As has been shown in the preceding analysis, in the case under examination the State did not take the necessary measures to prosecute all those involved nor did it act with the dispatch and good faith required to ensure just prosecution of the accused. Consequently, the IACHR concludes that El Salvador has violated to the prejudice of the victim's relatives the right to judicial guarantees established in Article 8.1 of the American Convention, and the right to legal protection as enshrined in Article 25 of the Convention.

4. The compatibility of the General Amnesty Law with the American Convention

a. General considerations

197. The States parties to the American Convention have assumed the obligation to respect and guarantee to persons subject to their jurisdiction the rights and freedoms protected in that Convention, and to adjust their legislation in order to ensure the effective enjoyment and exercise of those rights and freedoms (Articles 1(1) and 2 of the Convention).

198. Some states, in seeking mechanisms of national pacification and reconciliation, have issued amnesty laws that leave the victims of serious human rights violations unprotected, since they deprive them of the right to seek justice.

199. The compatibility of amnesty laws with the American Convention has been examined by the Commission on several opportunities in the context of its decisions on individual cases.[FN103] The laws examined in these cases extended impunity to serious violations of human rights committed against persons subject to the jurisdiction of the State party in question.

[FN103] Reports N° 28/92 (Argentina) and N° 29/92 (Uruguay), Annual Report of the IACHR (1992-93), OEA/Ser.L/V/II.83 Doc. 14, 12 March 1993; Reports N° 36/96 (Chile) and N° 34/96 (Chile), Annual Report of the IACHR (1996), OEA/Ser.L/V/II.95 Doc. 7, 14 March 1997; OEA/Ser.L/V/II.98, Doc. 6 rev., 13 April 1998; Report N° 25/98 (Chile), Annual Report of the IACHR (1997); Report N° 1/99 (El Salvador), Parada Cea and others, supra note 18.

200. The IACHR has repeatedly stated that the application of amnesty laws that prevent access to justice in cases of serious human rights violations renders ineffective the obligation of states parties to respect the rights and freedoms recognized in the Convention and to guarantee their full and free exercise to all persons subject to their jurisdiction, without discrimination of any kind, as established in Article 1(1) of the American Convention.[FN104] In fact, such laws remove the most effective measure for enforcing human rights, i.e., the prosecution and punishment of the violators.[FN105]

[FN104] Ibid., Reports N° 36/96 (Chile), para. 78 and N° 34/96, para. 76. See also Reports N° 28/92 (Argentina), para. 41 and N° 29/92 (Uruguay) para. 51; Annual Report of the IACHR (1997), OEA/Ser.L/V/II.98 Doc. 6 rev., 13 April 1998.

[FN105] Ibid., Reports 28/92 (Argentina) and 29/92 (Uruguay).

201. In its Report on the Human Rights Situation in El Salvador, the IACHR referred specifically to the General Amnesty Law (decree number 486 of 1993) that concerns us here. On March 26, 1993, within the time limit that President Cristiani was allowed to veto the recently approved amnesty law, the IACHR wrote to the Salvadoran State, in part, as follows:

The Legislative Assembly's passage of a General Amnesty Law on March 20, immediately after publication of the Report of the Truth Commission, could compromise effective implementation of the Truth Commission's recommendations and eventually lead to a failure to comply with the international obligations undertaken by the Government of El Salvador when it signed the Peace Agreements.

The Commission would like to call Your Excellency's attention to the fact that the political agreements concluded among the parties in no way relieve the State of the obligations and responsibilities it has undertaken by virtue of its ratification of the American Convention on Human Rights and other international instruments on the same subject.

Under Article 27 of the Vienna Convention on the Law of Treaties, a State cannot unilaterally invoke provisions of its domestic law as justification for its failure to perform the legal obligations imposed by an international treaty. Finally, Article 144 paragraph 2 of the Constitution of El Salvador states that "the law shall not modify or derogate that agreed upon in a treaty in effect in El Salvador. In the event of a conflict between the treaty and the law, the treaty will prevail."

The Inter-American Commission on Human Rights would also like to remind Your Excellency's Government that El Salvador's ratification of the American Convention on Human Rights made it a State Party and as such it has, as the Inter-American Court of Human Rights stated, "(...) a legal duty (...) to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation." In reference to Article 1 of the Convention, the Court added that "if the State apparatus acts in such a way that the violation goes unpunished (...) the State has failed to comply with its duties to ensure the free and full exercise of those rights to the persons within its jurisdiction".

202. In that report, moreover, the IACHR reminded the Salvadoran State that in 1992 it had approved report 26/92 on Case 10,287, "The Las Hojas Massacre", in which it had made several concrete recommendations to the State in connection with this issue.[FN106]

[FN106] Report on the Human Rights Situation in El Salvador (1994), OEA/Ser.L/V/II.85,Doc. 28 rev., 11 February 1994, pp. 78-79. In this case, the Commission was referring to the amnesty law (decree N° 805) that was approved by the El Salvador legislative assembly on October 27, 1987. As with decree 486 of 1993, that law had granted an "absolute and automatic amnesty" to the authors and accomplices of political crimes or common crimes related to political crimes, or common crimes involving at least 20 persons, committed on or before October 22, 1987. As the Commission stated on that occasion, this law had the effect of "legally removing the possibility of any effective investigation and prosecution of those responsible, or any adequate compensation for the victims and their relatives flowing from civil liability for the crimes committed". (Annual Report of the Inter-American Commission on Human Rights, 1992-1993, OEA/Ser.L/V/II.83, Doc 14, 12 March 1993, Report N° 26/92, Case 10.287 "Las Hojas" (El Salvador), page 11).

203. For its part, the Inter-American Court has said that "states cannot invoke existing provisions of international law as an excuse for failing to comply with their international obligations, as has been done in the case of the amnesty law which, in this Court's opinion, impedes the investigation and obstructs access to justice. For these reasons, the argument that it is impossible to comply with the duty to investigate the facts that gave rise to the present case must be rejected. Consequently, the State has the duty to investigate the human rights violations, to prosecute those responsible and to prevent impunity". The Court has defined impunity as "the overall failure to pursue the investigation, prosecution, capture, trial and conviction of persons responsible for violating the rights protected by the American Convention", and it has declared that:

The State has the obligation to combat such a situation by all the legal means at its disposal, since impunity encourages the chronic repetition of human rights violations, and leaves victims and their relatives totally defenseless" (Case of Paniagua Morales et al, supra 57, para. 173).[FN107]

[FN107] I-A Court, Loayza Tamayo case, Reparations Judgment, paras. 168 and 170.

204. The doctrine and practice of the IACHR in the question of amnesty is consistent with the conclusions of the study on impunity recently prepared by Louis Joinet, United Nations Special Rapporteur on Impunity.[FN108] In his study, presented to the Human Rights Committee of the United Nations on October 2, 1997, Joinet recommended the adoption of 42 principles designed to protect and promote human rights through actions to combat impunity.[FN109]

[FN108] The Administration of Justice and the Human Rights of Detainees, "Question of the impunity of perpetrators of human rights violations (civil and political)" (E/CN.4 Sub.2/1997/20/Rev.1). This report was prepared by Louis Joinet, pursuant to resolution 1996/119 of the Subcommittee on Prevention of Discrimination and Protection of Minorities, of the United Nations Human Rights Committee. See also report 1/99 (El Salvador), Parada Cea, supra note 18, para. 109..

[FN109] Ibid., Question of human rights violations...Pages 13-15. Ibid., IACHR Report 1/99, para. 109.

205. Principle N° 20 refers to the duty of states with respect to the administration of justice. In this respect, Joinet says that impunity arises from the fact that states do not fulfill their obligation to investigate these violations and to adopt, particularly when it comes to the administration of justice, measures to guarantee that those responsible are charged, tried and punished. It arises also from the fact that states do not take the steps necessary to provide victims with effective remedies, to compensate them for the damage they have suffered and to prevent the repetition of such violations.[FN110]

[FN110] Ibid., IACHR Report 1/99, para. 110.

206. It is important to note, as the United Nations Secretary-General did in transmitting the Report of the Truth Commission to the Security Council, that that report "contains a set of recommendations that are binding on the Parties" (the Government of El Salvador and the FMLN).[FN111] One of the recommendations made by the Truth Commission was to punish those responsible for the grave acts investigated in that report, and to ensure material and moral reparations to the victims and their families.[FN112]

[FN111] Ibid., letter dated March 29, 1993, from Secretary General Boutros Boutros-Ghali to the Secretary of the UN Security Council.

[FN112] Truth Commission Report, pages 189, 196 and 197.

207. Notwithstanding the foregoing, the Legislative Assembly of El Salvador approved the General Amnesty Law, by means of Decree N° 486 (hereafter the "Amnesty Decree"), on March 20 1993. It was published in the Diario Oficial, N° 56, volume 318, on March 22, 1993, i.e., only five days after the Truth Commission had issued its report. That decree granted a "full, absolute and unconditional amnesty to all those who participated in any way in the commission, prior to January 1, 1992, of political crimes or common crimes linked to political crimes or common crimes in which the number of persons involved is no less than twenty." [FN113]

[FN113] Decree 486, Article 1, supra note 26. See also Report 1/99 Parada Cea (El Salvador), supra note 18, para. 111.

208. The effects of the amnesty decree are established in its Article 4, which provides that by virtue of this law, persons already convicted and being held must be released and all pending cases dismissed; "in the case of individuals against whom no court proceedings have been undertaken, the present decree shall mean that if at any time proceedings are instituted against them for the crimes covered by this amnesty, they may move to extinguish criminal action and request definitive dismissal". This article also establishes that the amnesty extinguishes all civil liability.

209. This law was adopted in order to prevent the punishment or prosecution of serious human rights violations committed prior to January 1, 1992, including those examined by the Truth Commission, to which the present case relates. The effect of the amnesty extended to crimes such as summary execution, torture and forced disappearance practiced by agents of the State. Some of the crimes covered by this decree have been considered so serious by the international community that they have led to the adoption of special Conventions on the matter, and the inclusion of specific measures to avoid impunity, including the invoking of universal jurisdiction and suspension of the statute of limitations.[FN114]

[FN114] See Article 11 of the American Convention to Prevent and Punish Torture, and Article V of the Inter-American Convention on the Forced Disappearance of Persons; Article 8 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment.

b. Violations of the American Convention by the General Amnesty Law

1. The duty to adopt domestic legislative measures (Article 2 of the American Convention)

210. Article 2 of the American Convention establishes the obligation of states parties to adopt "such legislative or other measures as may be necessary" to give effect to the rights and freedoms enshrined in the Convention. This provision includes a negative obligation, whereby states are also obliged to refrain from issuing laws that eliminate, restrict or nullify the rights and freedoms enshrined in the Convention, or that render them ineffective.

211. In this respect, the Inter-American Court has established the following, in its Advisory Opinion OC-13/93 of 16 July 1993:

A State may violate an international treaty and, specifically, the Convention, in many ways. It may do so in the latter case, for example, by failing to establish the norms required by Article 2. Likewise, it may adopt provisions which do not conform to its obligations under the Convention. Whether those norms have been adopted in conformity with the internal juridical order makes no difference for these purposes.[FN115]

[FN115] I-A Court, Advisory Opinion OC 13/93 of 16 July 1993, Ser. A N° 13 (1993), para. 26.

212. Similarly, the Court has ruled that:

The general duty under Article 2 of the American Convention on Human Rights implies the adoption of measures of two kinds. On one hand, the suppression of rules and practices of any nature that imply a violation of the guarantees provided in the Convention. On the other hand, the issuance of rules and the development of practices conducive to the effective observance of those guarantees.[FN116]

[FN116] I-A Court, Castillo Petruzzi et al case, judgment of 30 May 1999, para. 207.

213. With respect to the competence of the IACHR to establish that a law is incompatible with the American Convention, the Court has ruled that:

There should be no doubt that the Commission has in that regard the same powers it would have if confronted with any other type of violation and could express itself in the same way as in other cases. Said in another way, that it is a question of "domestic legislation" which has been "adopted pursuant to the provisions of the Constitution," is meaningless if, by means of that legislation, any of the rights or freedoms protected have been violated. The powers of the Commission in this sense are not restricted in any way by the means by which the Convention is violated.[FN117]

At the international level, what is important to determine is whether a law violates the international obligations assumed by the State by virtue of a treaty. This the Commission can and should do upon examining the communications and petitions submitted to it concerning violations of human rights and freedoms protected by the Convention.[FN118]

[FN117] I-A Court, Advisory Opinion OC-13/93 supra note 113, para. 27.

[FN118] Ibid., para. 30.

214. The IACHR considers, as expressed in its Report 1/99 (Case 10,480 - Lucio Parada Cea), El Salvador, that Decree 486 of 1993 is incompatible with the treaty obligations of that State[FN119], since it renders ineffective the right to justice established in Articles 1(1), 8(1) and 25 of the American Convention, and the general obligation assumed by El Salvador to respect and guarantee the rights established in the Convention (Article 1(1)).

[FN119] IACHR Report 1/99. In that case, the Commission concluded that, on the basis of the application of the amnesty law (Decree 486), which is the same as that applied to the present case, the State had violated, to the prejudice of the victims and their families, the right to judicial guarantees (Article 8 of the Convention), the right to effective judicial protection (Article 25 of the Convention), the obligation to investigate (Article 1(1) of the Convention) and the right to know the truth (Articles 1(1), 8, 25 and 13). The IACHR consequently recommended to the State that it conduct an exhaustive, prompt, complete and impartial judicial investigation of the deeds denounced, and that it prosecute and punish all persons responsible, despite the amnesty. Moreover, the Commission recommended reparations for the consequences of the human rights violation, and the payment of fair compensation to the victims.

215. In effect, the amnesty decree provides that all persons who have been convicted must be released immediately, and that those against whom proceedings are underway, or who were in any way involved in serious violations of human rights, may not be investigated, prosecuted or punished, nor sued in the civil courts, all of which surrounds these grave human rights violations with impunity. Consequently, that law legally removes the right to justice established by Articles 1(1), 8(1) and 25 of the American Convention, since it makes impossible any effective investigation of human rights violations, or the prosecution and punishment of all those persons involved and the reparation of damages caused. Therefore, as the IACHR expressed with respect

to this decree, "it disregards the legitimate rights of the victims' next-of-kin to reparation. Such a measure will do nothing to further reconciliation."[FN120]

[FN120] IACHR, Report on the Human Rights Situation in El Salvador (1994), page 82.

216. Consequently, the Commission reiterates, on the basis of the preceding considerations, that in light of the circumstances, purposes and effects of the General Amnesty Law approved by the Legislative Assembly of El Salvador by means of Decree 486 of 1993, that act violated the international obligations assumed by the State upon ratifying the American Convention, because it makes possible a "reciprocal amnesty" (without first acknowledging responsibility), despite the recommendations of the Truth Commission; because it applies to crimes against humanity, and because it eliminates any possibility of obtaining adequate reparations, including financial compensation, for the damages caused.[FN121]

[FN121] See *Ibid.*, page 82.

217. The IACHR therefore concludes that the State has violated Article 2 of the American Convention, taken in concordance with Article 1(1) of the Convention.[FN122]

[FN122] See IACHR, Annual Report 1996, Hector Marcial Garay Hermosilla et al (Chile), OES/Ser.L/V/II/95, para. 53; and Annual Report 1997, Report N° 25/98 (Chile), 7 April 1998, paras. 72 and 84, OES/Ser.L/V/II-98 doc 6 rev., 13 April 1998.

ii. The right to justice and the obligation to investigate, prosecute and punish (Articles 1(1), 8(1) and 25 of the American Convention)

218. Application of the amnesty decree to the case under study resulted in the release of the only persons who were convicted for the extra-judicial executions. Moreover, it made it impossible to prosecute and punish those persons identified in the report of the Truth Commission as the intellectual authors of the extra-judicial executions.

219. In this respect, it must be recalled that the Truth Commission found that the decision to execute Father Ellacuría, leaving no witnesses alive, was taken by Col. René Emilio Ponce, Gen. Juan Rafael Bustillo, Col. Juan Orlando Zepeda, Col. Inocente Orlando Montano and Col. Francisco Elena, none of whom was prosecuted. Moreover, Col. Oscar Alberto León Linares, commander of the Atlacatl Battalion, who according to the Truth Commission knew of the murders and concealed incriminating evidence, also escaped prosecution. In this respect, the IACHR declared in 1994, in its Report on the Human Rights Situation in El Salvador:

The lack of progress made in important investigations, such as the inquiries into the Jesuits murdered on November 16, 1989, and the failure to comply with the Commission's recommendations on individual cases, show that there are still obstacles in the way of ascertaining the identity of those responsible for such serious human rights violations and bringing them to justice.[FN123]

[FN123] See IACHR, Report on the Human Rights Situation in El Salvador (1994), page 5.

220. Under these conditions, application of the amnesty decree to the present case ensured impunity for some of the material and intellectual authors and violated the duty of the State to investigate, prosecute and punish them, pursuant to Articles 1(1), 8 and 25 of the American Convention.

iii. The right to know the truth

221. The right to know the truth with respect to the facts that gave rise to the serious human rights violations that occurred in El Salvador, and the right to know the identity of those who took part in them, constitutes an obligation that the State must satisfy with respect to the victims' relatives and society in general. This obligation arises essentially from the provisions of Articles 1(1), 8(1), 25 and 13 of the American Convention.[FN124]

[FN124] IACHR Report 1/99, para. 147.

222. As the IACHR has noted, Article 1(1) of the American Convention establishes that the States parties are obliged to respect the rights enshrined in the Convention, and to guarantee their full and free exercise. This obligation implies, according to the Inter-American Court, real obligations on the part of the State to provide effective guarantees for such rights.[FN125] As a consequence of this obligation, the Salvadoran State has the juridical duty to take all reasonable steps to prevent violations of human rights, to investigate with the means at its disposal any violations committed under its jurisdiction, to identify those responsible, to impose on them the pertinent punishment, and to ensure adequate compensation to the victims.[FN126]

[FN125] The Court added:

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

Velásquez Rodríguez case, Judgment of 29 July 1988, para. 166, Godinez Cruz case, Judgment of 20 January 1990, supra note 77, para. 175. See also Report 1/99 Parada Cea (El Salvador), supra note 18 para. 148.

[FN126] Ibid., Velásquez Rodríguez case, para. 174. Ibid., Godinez Cruz case, para. 184. See also IACHR Annual Report 1998, Report N° 1/99 Parada Cea (El Salvador) *ibid.*, para. 148. See also IACHR Annual Report 1997, supra note 64, page 540, para. 70; IACHR Annual Report 1992-1993, supra note 101; Report N° 25/96 (Chile) and Reports N° 28/92 (Argentina), supra note 101, pages 42-53, and N° 29/92 (Uruguay), supra note 102, pages 162-174.

223. The interpretations of the Inter-American Court in the Castillo Paez case[FN127] and other cases relating to the generic obligations of Article 1(1) of the Convention point to the conclusion that "the right to know the truth" arises as a basic and indispensable consequence for every State party to that instrument, since lack of knowledge of the facts relating to human rights violations means, in practice, that there is no system of protection capable of guaranteeing the identification and eventual punishment of those responsible.[FN128]

[FN127] I-A Court, Castillo Paez case, Judgment of 3 November 1997, para. 86.

[FN128] IACHR Report 1/99, para. 149.

224. The right to know the truth is a collective right that ensures society access to information that is essential for the workings of democratic systems, and it is also a private right for relatives of the victims, which affords a form of compensation, in particular, in cases where amnesty laws are adopted. Article 13 of the American Convention protects the right of access to information.

225. The right to know the truth is also related to Article 25 of the American Convention, which establishes the right to simple and prompt recourse for the protection of the rights enshrined therein. The existence of obstacles, *de facto* or *de jure* (such as the amnesty law) to access to information relating to the facts and circumstances surrounding the violation of a fundamental right constitutes an open violation of the right established in that article and negates remedies available under domestic jurisdiction for the judicial protection of the fundamental rights established in the Convention, the Constitution and domestic laws.[FN129]

[FN129] *Ibid.*, para. 150.

226. The right to information applies not only to the relatives of the victims directly affected by a human rights violation, but also to society in general.[FN130] As the IACHR has said with respect to the amnesty established by decree 486 of 1993:

Regardless of the problem of eventual responsibilities, which in any case must always be individual and must be established by due process through a pre-existing tribunal imposing punishment consistent with the law existing at the time the crime was committed, every society

has the inalienable right to know the truth about what has occurred, as well as the reasons and circumstances in which those crimes came to be committed, so as to avoid a repetition of such events in the future. In turn, no one can prevent the victims' relatives from learning what has happened to their loved ones. Access to the truth pre-supposes that freedom of expression must be unrestricted...[FN131]

[FN130] Amnesty International, Peace-keeping and Human Rights, AI Doc. IOR 40/01/94 (1994), Part III.5 "Ensuring peace with justice." International Commission of Jurists, "Written communication presented to the Subcommittee on Prevention of Discrimination and Protection of Minorities", 441st session, E/CN.4/Sub.2/191/NGO/9. See also IACHR Report N° 1/99, para. 152.

[FN131] IACHR, Annual Report 1985-1986, OEA/Ser.L/V/II.68, Doc. 8 rev.1, page 205.

227. The United Nations Human Rights Committee has established, on several occasions, and specifically with respect to the violation of the right to life, that the immediate relatives of the victim have the right to be compensated for such violations because, among other things, they are left with no knowledge of the circumstances of the death or of those responsible for the crime[FN132]. In this respect, the Committee has further insisted that the duty to compensate for damages cannot be satisfied merely by offering money to the victim's family. The uncertainty in which those people find themselves must first be cleared up, i.e., the truth must be made known, fully and publicly.[FN133]

[FN132] UNCHR, Case N° 1 107/1981, Elena Quinteros Almeida and María del Carmen Almeida de Quinteros vs. Uruguay, Cases N° 146/1983 and 148-154/1983, Johan Khemraadi Baboeram et al. vs. Suriname, Case 161/1983, Joaquín David Herrera Rubio vs. Colombia, Case 181/1984, A and H Sanjuan Arévalo vs. Colombia.

[FN133] Theo Van Boven, Special Rapporteur, United Nations Human Rights Committee, "Study of the right of restitution, indemnification and rehabilitation of the victims of flagrant violations of human rights and fundamental freedoms", Economic and Social Council, Subcommittee on Prevention of Discrimination and Protection of Minorities, 451st session, Item 4 of the provisional agenda, E/CN.4/Sub.2/1993/8, 2 July 1993. Other special rapporteurs familiar with this issue have supported this position. See L. Joinet, "Question of Impunity of perpetrators of violations of human rights (civil and political rights)", Final Report, pursuant to Subcommittee Resolution 1995/35. UN ESCOR, Human Rights Committee, 48th Session, Provisional Agenda Item N° 10, UN Doc. E/CN.4/Sub.2/1996/18 (1996).

228. An important part of the right to compensation for human rights violations, in terms of providing satisfaction and ensuring that there is no repetition,[FN134] is the right of any person, and of society in general, to know the full, complete and public truth about the events that have occurred, the specific circumstances surrounding them, and those who participated in them. Society's right to know all about its past must be seen not only as a means of ensuring compensation and clarification of the facts, but as a means of preventing future violations.

[FN134] The United Nations Special Rapporteur, Theo Van Boven, distinguishes within the right to reparations four different procedures for giving effect to those rights: restitution, indemnification, rehabilitation and satisfaction and guarantees of no recurrence. Theo Van Boven, *ibid.*, Ch. IX, Draft Principles and Basic Guidelines, General Principles, Forms of Reparation, pages 64 and 65.

229. The IACHR considers that, despite the important contribution that the Truth Commission made in establishing the facts surrounding the most serious violations, and in promoting national reconciliation, the role that it played, although highly relevant, cannot be considered as a suitable substitute for proper judicial procedures as a method for arriving at the truth. The value of truth commissions is that they are created, not with the presumption that there will be no trials, but to constitute a step towards knowing the truth and, ultimately, making justice prevail.[FN135]

[FN135] Mendez, Juan, *Derecho a la verdad frente a graves violaciones a los derechos humanos* (The right to know the truth in the face of serious human rights violations), p. 537. (unofficial translation).

230. Nor can the institution of a Truth Commission be accepted as a substitute for the State's obligation, which cannot be delegated, to investigate violations committed within its jurisdiction, and to identify those responsible, punish them, and ensure adequate compensation for the victim (Article 1.1 of the American Convention),[FN136] all within the overriding need to combat impunity.

[FN136] I-A Court, Velásquez Rodríguez case, Judgment of 29 July 1988, *supra* note 77, para. 174.

231. The Truth Commission for El Salvador made clear that its actions were not of a judicial nature.[FN137] In other words, that Commission did not have the attributes of a court or tribunal, and the judicial function was expressly reserved to the Salvadoran Courts.[FN138] Consequently, that Commission lacked competence to mete out punishment or to order the payment of compensation for the facts investigated and established.

[FN137] See Truth Commission Report, Introduction, where it is noted that the parties stressed that the activities of the Commission were not jurisdictional. In other words, the parties not only did not establish it as a Court or tribunal, but they made it very clear that the Truth Commission was not to function as if it were a jurisdictional institution.

[FN138] See Annex to the Mexico Accords, 27 April 1991, *supra* note 24, which created the Truth Commission in order to clarify "promptly" the most important acts of violence "by means

of a procedure that will be both reliable and expeditious, and that can produce results over the short term, without detracting from the obligations incumbent upon the Salvadoran tribunals to decide those cases and to apply the appropriate penalties to those responsible".

232. By virtue of the foregoing, the IACHR concludes that application of the amnesty decree eliminated the possibility of undertaking any further judicial investigations through the courts to establish the truth and it denied the right of the victims, their relatives and society as a whole to know the truth.

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

233. On October 13, 1998, the Commission transmitted to the State its report N° 107/99, pursuant to Article 50 of the American Convention, giving it a period of 30 days to take the steps necessary to comply with the recommendations contained therein. The State did not report the measures taken to comply with those recommendations within the established time limit, but limited itself to requesting, through note N° 624/99 of November 11, 1999, that that time limit should be extended to the full three months referred to in Article 51 of the American Convention and Article 47(2) of the IACHR Regulations.

234. The Commission refused to grant that extension because it could find no grounds to justify it, bearing in mind that 10 years had already elapsed since the processing of the case began.

235. In light of the foregoing, and the provisions of Article 51 (1 and 2) of the American Convention, the IACHR here reiterates the conclusions and recommendations presented to the Salvadoran State in its report N° 107/99.

VII. CONCLUSIONS

236. On the basis of the arguments of fact and law and the evidence in its possession with respect to the case under examination, the IACHR concludes in this report that:

237. The Salvadoran State, through agents of the Armed Forces who perpetrated the extrajudicial executions described herein[FN139], has violated the right to life enshrined in Article 4 of the American Convention, together with the principles recognized in common Article 3 of the Geneva Conventions of 1949, to the prejudice of the Jesuit priests Ignacio Ellacuría, Ignacio Martín-Baró, Segundo Montes, Armando López, Joaquín López y López and Juan Ramón Moreno; and of Mrs. Julia Elba Ramos and her daughter Celina Mariceth Ramos, a minor.

[FN139] From the State documents indicated in this report, and from the report of the Truth Commission, as well as from other evidence presented in this report, at least the following persons were identified: Col. René Emilio Ponce (Chief of Personnel of the Salvadoran Armed Forces), Gen. Juan Rafael Bustillo, Col. Juan Orlando Zepeda, Col. Inocente Orlando Montano,

Col. Francisco Elena Fuentes, Col. Oscar Alberto León Linares, Col. Guillermo Alfredo Benavides Moreno (Commander of the Atlacatl Battalion), Lt. Col. Camilo Hernández, Lt. José Ricardo Espinoza Guerra, Sub-Lt. Gonzalo Guevara Cerritos (both of the Atlacatl Battalion), Lt. Yussly Mendoza Vallecillos (of the Military Academy), Sgt. Antonio Ramiro Avalos Vargas, Corp. Angel Pérez Vásquez, Sgt. Tomás Zarpate Castillo, Private José Alberto Sierra, Private Oscar Mariano Amaya Grimaldi, and Private Jorge Alberto Sierra Ascencio.

238. The Salvadoran State, by virtue of the improper actions of its organs responsible for investigation (including an ad hoc body composed of military officers), prosecution and the administration of justice, has failed in its obligation to conduct a diligent and effective investigation into the violations that occurred, and in its obligation to prosecute and punish those responsible by means of impartial and effective procedures such as the American Convention demands. All of these factors affected the integrity of the process and implied a manipulation of justice, with the evident abuse and misuse of power. The result is that these crimes have gone unpunished to this day, and justice has been denied. The State has also violated, to the prejudice of the victims, the right to judicial guarantees and to effective judicial protection established in Articles 1(1), 8(1) and 25 of the American Convention.

239. The only persons found guilty by the Salvadoran courts were granted amnesty shortly thereafter by means of the General Amnesty Law. The intellectual authors who have been identified to date, i.e. those who gave the order to kill the Jesuit priests, Mrs. Ramos and her daughter, belonging to the High Command of the Salvadoran Armed Forces, were never investigated, prosecuted or punished. As a consequence of its approval of the amnesty law, the Salvadoran State has violated Article 2 the American Convention. Moreover, by applying it to the present case, the State has violated the right to justice and has failed in its obligation to investigate, prosecute and make reparations, as established in Articles 1(1), 8 and 25 of the American Convention, to the prejudice of the victims' relatives and of members of the religious and academic community to which the victims belonged.

240. The Salvadoran State has violated the right to know the truth to the prejudice of the victims' relatives, the members of the religious and academic community to which the victims belonged, and Salvadoran society as a whole.

VIII. RECOMMENDATIONS

241. On the basis of the analysis and conclusions contained in this report, the Inter-American Commission on Human Rights recommends that the Salvadoran State:

1. Conduct a full, impartial and effective investigation in an expeditious manner, consistent with international standards in order to identify, prosecute and punish all the material and intellectual authors of the violations determined, without reference to the amnesty that was decreed.

2. Make full reparations for the consequences of those violations, including the payment of fair compensation.

3. Adjust its domestic legislation to the American Convention and thereby render null and void the General Amnesty Law.

IX. PUBLICATION

242. On November 22, 1999, the IACHR transmitted report N° 127/99, the text of which is presented above, to the Salvadoran State and to the petitioners, pursuant to the provisions of Article 51(2) of the American Convention, and granted a period of one month to the State to fulfill the preceding recommendations. On December 20, 1999, the State sent the IACHR a communication in which it reiterated several considerations that it had expressed during processing of the case before this Commission relating to the origin of the General Amnesty Law, the peace process and the current political reality in El Salvador, and its interpretation of the constitutional provisions and of international law.

243. In referring to the recommendations formulated by the IACHR in report N° 127/99, the State declared:

Throughout the entire investigative process, and the trial in which it culminated, due process has been observed and respected, consistent with the laws of El Salvador, and the verdict of innocence and guilt was issued by a Tribunal of Conscience which was composed of representatives of the people, wherein the jury was not obliged to justify its decision or to consider any factors other than its own convictions. That trial produced the effect of RES JUDICATA for those who were acquitted or convicted (upper case used in the original).

Unfortunately, the Truth Commission limited itself to establishing considerations only on the role of other persons in these actions, but by its very nature it did not say which were the investigation sources that led them to this conclusion, and that would have provided a basis for taking action against those indicated, which means that the only alternative open to the judicial power was to call upon the members of the Truth Commission to say who had given them the reports, which was contrary to the restricted nature of that Commission, and could as well have violated the international immunities or privileges of its members (sic).

With respect to the second and third recommendations, giving effect to them would imply the repeal of the amnesty law, and that would violate the precept of non-retroactivity of the law, enshrined in the national Constitution, besides which the amnesty decree is based in law and responded, as noted earlier, to the need to provide the civilian population with a form of national reconciliation, in order to support an enduring peace.

244. The communication received from the State sets out a series of arguments to support the statements quoted in the above paragraph. Among other things, the State refers to the constitutional powers of the Legislative Assembly of El Salvador to grant amnesty; Article 4 the American Convention; and Article 6(5) of protocol II of the 1949 Geneva Convention. It adds that the promulgation of the amnesty law "constituted a necessary measure for overcoming the state of violence and acute confrontation experienced by Salvadorans during the armed conflict, and for reconciling and reuniting them within the Salvadoran family." In the opinion of the State,

"the obligation to repeal the amnesty law under the pretext of discovering the truth is not a part of international law and the international law of human rights". Finally, it declares that the repeal of the law "would bring with it the negative effects that its promulgation sought to avoid."

245. According to Article 51.2 of the American Convention, it falls to the Commission, at this stage of the proceedings, to evaluate the measures taken by the State to comply with the recommendations and to remedy the violations established. The IACHR notes that the State has not adopted the actions necessary to comply with the recommendations in this report. Moreover, the information supplied by the State does not reveal any new facts nor does it contribute any elements that, had they been supplied in a proper and timely manner, would have modified the analysis and conclusions in this report. In effect, the Salvadoran State did not avail itself of its right to present observations on Report N° 107/99 on the substance of the case, nor did it respond to Report N° 127/99 adopted pursuant to Article 51 of the American Convention. In any case, the arguments of fact and of law submitted by the parties during the processing of the case have been sufficiently analyzed by the IACHR in chapter V of this report.

246. By virtue of the above considerations, and the provisions of Article 51(3) of the American Convention and Article 48 of the IACHR Regulations, the Commission decides to reiterate the conclusions and recommendations contained, respectively, in chapters VII and VIII above; to publish this report; and to include in its Annual Report to the General Assembly of the OAS. The IACHR, pursuant to the provisions contained in the instruments governing its mandate, will continue to monitor the steps taken by the Salvadoran State with respect to the recommendations referred to, until they have been fully carried out by that State.

Given and signed by the Inter-American Commission on Human Rights on December 22, 1999.
(Signed) Robert K. Goldman, Chairman; Hélio Bicudo, First Vice-Chairman; Claudio Grossman, Second Vice-Chairman; Commissioners: Alvaro Tirado Mejia and Carlos Ayala Corao.