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First Vice-Chairman: Claudio Grossman;
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Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo
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I. SUMMARY

1. On September 23, 1993, the Director of the Legal Protection Office (Oficina de Tutela Legal) of the Archdiocese of San Salvador, María Julia Hernández, and Tiberio Arnaldo Romero y Galdámez, the victim's brother (hereinafter "the petitioners"), presented a complaint to the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "IACHR") alleging that on March 24, 1980, agents of the Republic of El Salvador (hereinafter "the Salvadoran State," "the State," or "El Salvador") who were operating as part of death squads, extrajudicially executed Monsignor Oscar Arnulfo Romero y Galdámez, Metropolitan Archbishop of San Salvador (hereinafter "Monsignor Romero" or "the Archbishop of San Salvador").

2. The petitioners allege that the State violated the victim's rights to life, to a fair trial, and to judicial protection, as well as the obligation to respect and guarantee the human rights enshrined in the American Convention on Human Rights (hereinafter the "American Convention").

3. The State does not call into question the admissibility of the petition nor does it controvert the facts. It merely justifies the release of the persons implicated in the extrajudicial execution pursuant to the Law on General Amnesty for the Consolidation of Peace (hereinafter "the General Amnesty Law") as a "measure aimed at ensuring the existence of a new democratic State at peace as the only way to safeguard human rights."

4. After analyzing the petition, the Commission concludes in this report that the State is responsible for the violation of the following rights enshrined in the Convention: the right to life (Article 4); to a fair trial and effective judicial protection (Articles 8(1) and 25); and to know the

truth of what has happened. In addition, the IACHR concludes that the State did not abide by its obligation to respect the rights recognized in the American Convention and to guarantee their free and full exercise, pursuant to Article 1(1) of the Convention, nor its obligation to refrain from adopting provisions of domestic law that hamper the enjoyment of the rights set forth therein, pursuant to its Article 2. Consequently, the Commission recommends that the State carry out a complete, impartial, and effective judicial investigation, expeditiously, so as to identify, try, and punish all the perpetrators, both the direct perpetrators and the planners of the violations established, notwithstanding the amnesty decreed; that it make reparation for all the consequences of the violations set forth, including the payment of fair compensation; and that it bring its domestic legislation into line with the American Convention, so as to render null and void the General Amnesty Law approved by Decree N° 486 of 1993.

II. PROCESSING BEFORE THE COMMISSION

5. On May 15, 1995, the IACHR opened the case, assigning it number 11.481, and communicated the pertinent parts of the petition to the State, asking that it submit observations within 90 days. The State did not provide the information requested within the time period given. On February 13, 1996, the Commission reiterated its request with the warning that, if the information requested was not received within 30 days, it would consider whether it would be pertinent to apply the presumption provided for in Article 42 of its Regulations.[FN1] On April 2, 1997, the Commission reiterated for the third time its request for information, and the above-noted warning. On August 6, 1997, the Commission reiterated its request for the fourth time, and placed itself at the disposal of the parties to reach a friendly settlement, under the terms of Article 48(1)(f) of the American Convention and Article 45(1) of the Commission's Regulations.

[FN1] Article 42 of the IACHR Regulations provides:

The facts reported in the petition whose pertinent parts have been transmitted to the government of the State in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 34 paragraph 5, the government has not provided the pertinent information, as long as the other evidence does not lead to a different conclusion.

6. On November 25, 1997, the petitioners submitted their answer to the offer to seek a friendly settlement. They stated that due to the nature and gravity of the violations alleged, they would only agree to such a settlement if the Salvadoran State fully accepted its responsibility for the facts denounced and would commit to immediately taking legal and other measures, as necessary, to investigate and punish the persons responsible for this crime. On December 1, 1997, the Commission transmitted the pertinent parts of this response to the State, and gave it 30 days to submit its observations.

7. On February 11, 1998, the State submitted its observations on the initial petition, without referring to the proposal for friendly settlement, and asked the Commission to archive the case. On October 6, 1998, the petitioners asked that the Center for Justice and International Law (CEJIL, hereinafter included with "the petitioners") be included as co-petitioners. On December 14, 1998, the Commission transmitted the State's answer to the petitioners.

8. On March 31, 1999, the petitioners submitted their observations to the Salvadoran State's answer. The pertinent parts of that communication were transmitted to the State on April 14, 1999; to date it has yet to send its comments or observations to the IACHR. On October 4, 1999, the Commission held a hearing in this case, during its 104 Sessions. Report N° 138/99, adopted under Article 50 of the American Convention, was forwarded to the State on January 4, 2000. The State did not present information regarding compliance with the recommendations of that report, but it requested an extension of two days before the deadline expired. The IACHR decided not to grant the extension, on the grounds set forth in Chapter VI *infra*, and proceeded to adopt the instant report pursuant to Article 51 of the American Convention.

III. POSITIONS OF THE PARTIES

A. The petitioners

9. The petitioners allege that Monsignor Romero was extrajudicially executed by a death squad made up of State agents. They also allege that to date justice has not been done in his case, in respect of the violations of domestic law and the international commitments contracted by El Salvador. The petitioners express, *inter alia*:

The assassination of Monsignor Romero shook the conscience of the world, because of the very fundamental role which, as a Pastor of the Catholic Church, he was playing in seeking a solution to the grave problems besetting El Salvador at the time of his assassination, and, in addition, "for being the most important human rights defender El Salvador has had in its history." Monsignor Romero had stood out in his years as Archbishop of San Salvador, as the leading voice of public denunciation and to contain the repression striking out at the country at that time, carried out by the death squads in coordination with state agents, members of the army, etc. As that was precisely the role that Monsignor played, he came to be subject to serious persecution by the military forces and the authorities, which was also translated into attacks on his life by state agents in coordination with death squads, which operated with the acquiescence and complicity and collaboration of the State at that time.

10. The petitioners note that the Fourth Criminal Judge of San Salvador, Atilio Ramírez Amaya, initiated the corresponding proceedings (Proceeding N° 134-80), on March 24, 1980, the date of the assassination. They allege that both the investigation into the facts and the judicial proceedings were characterized by a great many irregularities and their total ineffectiveness. They argue that the investigation went in directions which, it was known beforehand, would lead nowhere in terms of identifying the persons responsible, and that the State failed to pursue the criminal proceedings diligently.

11. The petitioners also argue that two persons involved in the proceedings were victims of acts of harassment and terror: Judge Ramírez Amaya, and a witness, Mr. Napoleón González, who was alleged to have entered the chapel moments after the attack on the Archbishop of San Salvador, and to have witnessed the flight of the assassins. Judge Amaya was the victim of an attack, by firearms, on his residence, after which he decided to go into exile in the Republic of Costa Rica for his personal security. Mr. Napoleón González was allegedly kidnapped; his

whereabouts remain unknown to this day. According to the petitioners, he was the victim of a forced disappearance.

12. The petitioners allege the following irregularities, among others:

1. The Police went to the Chapel of the Hospital de la Divina Providencia to inspect the crime scene and to take the first photographs only nine days after the events. In addition, the police failed to collect material indicia of the crime at the place. 2. Even though the homicide occurred during a mass, in the presence of hundreds of persons, the Police did not make any effort to identify witnesses and obtain their statements.

3. The autopsy confirms that the projectile that caused the death was .22-caliber bullet, yet did not reach more precise conclusions. Nonetheless, this determination was never added to the case file. Nor were the X-rays of the thorax ever included in the case file. Finally, the Director General of the National Police stated that it was impossible to determine the caliber.

13. They also allege that on May 7, 1980, less than two months after the assassination, a search was carried out at a farm where 12 members of the military and 12 civilians were arrested; they were accused of conspiracy to overthrow the government by a coup d'etat. Among those detained was Major Roberto D'Aubuisson. During that raid documentation was seized that apparently was related to the execution of Monsignor Romero which, however, was not forwarded to the Judge in charge of the investigation. They argue that Major D'Aubuisson, supported by the Armed Forces, led a publicity campaign to accuse the guerrillas of homicide, so as to divert attention from his responsibilities.

14. The petitioners indicate that when several years had gone by without any advances in the investigation, the judicial case file was archived on December 12, 1984; the case was reactivated the next year. In January 1986, almost six years after the execution, President José Napoleón Duarte appointed a Commission to Investigate Criminal Acts (hereinafter "the Investigative Commission") to give impetus to the inquiry. At this stage, important elements were introduced into the proceedings: the so-called "Saravia Diary," which was seized during the search of the San Luis farm in 1980, and which is evidence of the death squad operations; and the testimony of Mr. Amado Antonio Garay Reyes, who was Captain Alvaro Saravia's driver at the time of the extrajudicial execution. In a statement made on November 10, 1987, Garay noted that he had transported the direct perpetrator of the assassination of the Archbishop of San Salvador and revealed the details of his execution. In addition, he identified Héctor Antonio Regalado as the direct perpetrator.

15. The petitioners note that on November 24, 1987, the provisional detention of Alvaro Saravia was ordered when he had already left the country and was residing in the United States. Héctor Antonio Regalado was not subpoenaed until four years after the fact, when it was materially impossible to guarantee his appearance. Nonetheless, this order was voided by the Supreme Court of Justice of El Salvador on the grounds that Garay's testimony did not merit full faith given the time elapsed since the underlying events.

16. In the context of the signing of the Peace Accords, the United Nations (hereinafter "the UN") appointed a Commission on the Truth for El Salvador (hereinafter "the Truth

Commission") that investigated several human rights violations, including the assassination of Monsignor Romero. In its final report (hereinafter "the Truth Commission Report"), submitted March 15, 1993, to the Secretary General of the United Nations and to the public, the Truth Commission identified the planners of and accomplices to the execution of the Archbishop of San Salvador.[FN2]

[FN2] United Nations, *From Madness to Hope: The 12-year war in El Salvador*, Report of the Commission on the Truth for El Salvador, March 15, 1993.

17. Five days after the report was published, on March 20, 1993, the Congress of El Salvador promulgated the General Amnesty Law by Decree N° 486. The petitioners allege that this law was aimed at impeding the judicial investigation of the crimes revealed by the Truth Commission.

18. On March 31, 1993, Judge Luis Antonio Villeda Figueroa dismissed the case against Alvaro Saravia, with prejudice, pursuant to the General Amnesty Law. The judge did not rule on Roberto D'Aubuisson, arguing that he was never an accused, and that his death had extinguished his criminal liability. According to the petitioners, this impeded a determination of the truth as well as any punishment for those responsible. The last procedural step in the execution of Monsignor Romero was closed in 1994.

19. In view of these facts, the petitioners allege that the State is responsible for violations of Articles 4, 8, 25, 1(1), and 2 of the American Convention, and they ask the IACHR to so declare, and to order reparations for the damage caused.

B. The State

20. The State did not controvert the factual or legal arguments of the petitioners. Instead, it merely requested the IACHR to archive the case, considering that the General Amnesty Law adopted after the publication of the Truth Commission Report was aimed at ensuring peace and preserving human rights. In particular, the State indicated that:

The historical signing of the Peace Agreements on January 16, 1992, put an end to the fratricidal conflict that took the lives of thousands of victims and affected and polarized Salvadoran society, thereby establishing the bases of peace, so as to seek the long-sought national reconciliation and reunion of the Salvadoran family.

Peace was achieved in El Salvador with endeavor and great sacrifice, and in the viable and effective course for trying to secure it, improve the human rights situation, and build democracy, necessary measures were agreed upon based on the new national consensus and the political will of those who signed the Peace Accords, which were aimed at stabilizing the conditions of the Nation's spirit, with a view to the much-sought reconciliation.

In due course, a series of violent events were revealed that had taken place throughout the bloody years of the armed conflict, and it was part of a mechanism agreed upon to highlight the major events of the conflict, and for the purpose of ensuring that history not repeat itself in El Salvador, by making known what had happened.

This mechanism, unprecedented in El Salvador, and with United Nations verification, reviewed a part of the violence of the armed conflict, and made clear the need to close a tragic chapter of our history and in so doing avoid opening wounds just recently beginning to heal, or, in the worst of cases, forestall a chain of acts of revenge that could have led to a new polarization of Salvadoran society.

The Truth Commission Report represented a very important and necessary step in the peace process in El Salvador. In this regard, the Procuraduría para la Defensa de los Derechos Humanos (Office of the Human Rights Ombudsman), an institution created by the Peace Accords, in a public message of March 27, 1993, concluded with a "call to the Government of the Republic, to the different political sectors, the Armed Forces, and the institutions of the Republic, so that the conclusions and recommendations of the Truth Commission Report may be processed from an ethical and historical perspective, as a necessary option for affirming peace, as an essential step towards effective reconciliation and as part of a common search for a democratic society," adding that "the measures adopted in relation to its provisions should preserve one of the most important accomplishments of peace processes: the vocation for and commitment to conciliation, national consensus-building and engagement of all the political and social forces."

In El Salvador the truth was made known, it was not covered up, and the measures taken afterwards were aimed at ensuring the existence of a democratic state at peace as the only way to preserve human rights. The "Law on General Amnesty for the Consolidation of Peace" had precisely these aims.

...

Evidence of the success of the effort in El Salvador on behalf of national reconciliation is plain to see.

IV. ANALYSIS ON JURISDICTION AND ADMISSIBILITY

A. Jurisdiction

21. The IACHR has jurisdiction to examine the petition submitted by the petitioners, who have standing to appear, pursuant to Article 44 of the American Convention, in their capacity as natural persons and non-governmental organizations. The facts alleged occurred under the jurisdiction of El Salvador when the obligation to respect and guarantee the rights established in the American Convention was already in force for El Salvador.[FN3] The Commission shall now determine whether the instant case is admissible in light of the requirements established at Articles 46 and 47 of the American Convention.

[FN3] El Salvador ratified the American Convention on Human Rights on June 23, 1978.

B. Admissibility

1. Exhaustion of domestic remedies and time requirement for submission

22. The IACHR notes that on March 31, 1993, Judge Luis Antonio Villeda Figueroa applied the General Amnesty Law for the purpose of dismissing, with prejudice, charges against Captain Alvaro Saravia, the only one of the accused against whom an order for provisional detention had been issued. That judicial decision went for consultation to the First Criminal Chamber of the First Section, Central; pursuant to its judgment of May 13, 1993, this court declared its judgment *res judicata* as the legal time had lapsed without the Office of the Public Prosecutor having pursued any remedy.[FN4] Furthermore, on May 20, 1993, the Supreme Court of Justice of El Salvador declared inadmissible the motion of unconstitutionality, which was filed to challenge the General Amnesty Law.[FN5]

[FN4] Certification granted by Mr. Wilfredo Hernández Calderón, Secretary of the First Criminal Chamber of the First Section, Central, San Salvador, Official note no. 304. File N° 85, May 25, 1993.

[FN5] Resolution of May 20, 1993, Constitutional Chamber, Supreme Court of Justice of El Salvador.

23. The Inter-American Court of Human Rights has noted that:

The rule of prior exhaustion of domestic remedies allows the State to resolve the problem under its internal law before being confronted with an international proceeding. This is particularly true in the international jurisdiction of human rights, because the latter reinforces or complements the domestic jurisdiction (American Convention, Preamble).[FN6]

[FN6] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Judgment of July 29, 1988, para. 61. That judgment, as well as all of the documents of the Inter-American Court cited herein, can be obtained at the web site <http://corteidh.nu.or.cr/ci/>.

24. Generally accepted rules of international law require both that the domestic remedies exist formally and that they be suitable for addressing the infringement of a legal right and effective, i.e. capable of producing the result for which they were designed.[FN7] The international protection of human rights referred to at Article 46(1) of the American Convention is grounded "on the need to protect the victim from the arbitrary exercise of governmental authority."[FN8] Therefore, the requirement of exhaustion of domestic judicial remedies cannot

be reduced to mechanically going through formal legal procedures; this implies that in each case one must analyze the reasonable possibility of obtaining the remedy sought.[FN9]

[FN7] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, supra, paras. 62-66; Case of Fairén Garbi and Solís Corrales, Preliminary Objections, Judgment of March 15, 1989, paras. 86-90; Case of Godínez Cruz, Judgment of January 20, 1989, paras. 65-69.

[FN8] Inter-American Court of Human Rights, Case of Godínez Cruz, Judgment of June 26, 1987, para. 95.

[FN9] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, supra, para. 72; Case of Fairén Garbi and Solís Corrales, supra, para. 97; Case of Godínez Cruz, supra, para. 75.

25. The above-noted judicial decrees dismissing charges, adopted under the General Amnesty Law, have had the effect of deciding the instant case in the domestic jurisdiction. Once this domestic means of settling the matter posed is exhausted in the internal jurisdiction of El Salvador, the mechanisms of international protection established in the American Convention are triggered.

26. Furthermore, the State has not called into question whether the requirement of exhausting domestic remedies provided for in Article 46(1)(a) of the American Convention has been met, nor the six-month rule of Article 46(1)(b). The Inter-American Court has stated that an objection on grounds of failure to exhaust domestic remedies must be raised expressly in the initial stages of procedure.[FN10] The IACHR considers that the State has tacitly waived its right to raise these objections[FN11] and that, therefore, the petition meets the requirements established in Article 46(1)(a) and 46(1)(b).

[FN10] Inter-American Court, Case of Castillo Páez, Preliminary Objections, Judgment of January 30, 1996, Series C. N° 24, para. 41.

[FN11] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Preliminary Objections, paragraph 88. See, also, IACHR, Annual Report 1998, Report N° 27/97 (Case 11.697 - Ramón Mauricio García Prieto Giral), El Salvador, para. 35. That document, like all the reports of the IACHR cited herein, may be obtained at the web site <http://www.cidh.oas.org/>

2. Duplication of procedures

27. The Commission considers that the record does not suggest that the issue raised in this case is pending before any other international forum. Therefore, it is satisfied that the requirement established by Article 46(1)(c) of the American Convention has been met.

3. Characterization of the facts alleged

28. The petitioners' claims refer to facts which, if true, could constitute violations of Articles 1(1), 2, 4, 8(1), and 25 of the American Convention. Accordingly, the Commission considers that the conditions set forth in Article 47(b) of the American Convention are satisfied.

C. Conclusions on jurisdiction and admissibility

29. Based on the considerations of fact and law set forth, the Commission concludes that it has jurisdiction over this case, and that the requirements of admissibility set forth at Articles 46 and 47 of the American Convention have been satisfied.

V. ANALYSIS ON THE MERITS

A. Context

30. Before analyzing the merits of the complaint, reference must be made to the context of violence El Salvador was experiencing at the time of the events, the role Monsignor Romero played during that period, and the impact of his death. The following considerations are based essentially on the conclusions of the Truth Commission Report.

1. The situation in El Salvador at the time of the events

31. The period when Monsignor Romero was extrajudicially executed was marked in El Salvador by a serious internal armed conflict. During this conflict, State agents committed grave violations of the human rights of innocent civilians and non-combatants.[FN12] The Truth Commission investigated the acts of violence that occurred in El Salvador from January 1980 to July 1991.[FN13] In effect, it divided its study into four periods: 1980-1983; 1983-1987; 1987-1989; and 1989-1991. The first period was characterized by the Truth Commission as the period in which the violence was institutionalized.[FN14] Early 1980, when the Archbishop of San Salvador was extrajudicially executed, was described as a period when the political conflict between civilians and conservative military sectors sharpened, in the context of growing effervescence and social mobilization.[FN15]

[FN12] See, in general, IACHR, Annual Report 1980-1981, OEA/Ser.L/V/II.54, Doc. 9 rev. 1, October 16, 1981, pp. 111-112; Annual Report 1981-1982, OEA/Ser.L/V/II.57, Doc. 6 rev. 1, September 20, 1982, pp. 120-122; UN, Report of the Economic and Social Council "Situación de los derechos humanos en El Salvador," A/36/608, October 28, 1981; and "Situación de los derechos humanos y las libertades fundamentales en El Salvador," A/37/611, November 22, 1982.

[FN13] Truth Commission Report, "Introduction" page 10.

[FN14] Idem, "The institutionalization of violence", page 27.

[FN15] The Truth Commission notes that the anti-government violence was expressed in actions such as occupying radio stations, bombing newspapers (La Prensa Gráfica and El Diario de Hoy), kidnappings, executions, and attacks on military targets, in particular by the Fuerzas Populares de Liberación (FPL) and the Ejército Revolucionario del Pueblo (ERP). Report, p. 28.

32. The Truth Commission Report describes the period in the following terms:

Violence was a fire which swept over the fields of El Salvador: it burst into villages, cut off roads and destroyed highways and bridges, energy sources and transmission lines; it reached the cities and entered families, sacred areas and educational centres; it struck at justice and filled the public administration with victims; and it singled out as an enemy anyone who was not on the list of friends. Violence turned everything to death and destruction, for such is the senselessness of that breach of the calm plenitude which accompanies the rule of law, the essential nature of violence being suddenly or gradually to alter the certainty which the law nurtures in human beings when this change does not take place through the normal mechanisms of the rule of law. The victims were Salvadorians and foreigners of all backgrounds and all social and economic classes, for in its blind cruelty violence leaves everyone equally defenceless.

The main characteristics of this period were that violence became systematic and terror and distrust reigned among the civilian population....

On 3 January 1980, the three civilian members of the Junta resigned, along with 10 of the 11 cabinet ministers. The Junta was again in crisis...The process of political polarization triggered an unprecedented increase in death squad activities.

On 6 February, United States Ambassador Frank Devine informed the State Department that ...the extreme right was arming itself and preparing for a confrontation in which it clearly expected to ally itself with the military.

On 22 February, PDC [Christian Democratic Party] leader and Chief State Counsel Mario Zamora was murdered at his home a few days after the Frente Amplio Nacional (FAN), headed by former National Guard Major Roberto D'Aubuisson, had accused him publicly of being a member of subversive groups.

On 24 March, Monsignor Oscar Arnulfo Romero was shot dead by a sniper as he celebrated mass in the Chapel of the Hospital de la Divina Providencia. This crime further polarized Salvadoran society and became a milestone, symbolizing the point at which human rights violations reached their peak and presaging the all-out war between the Government and the guerrillas that was to come. During the funeral, a bomb went off outside San Salvador Cathedral. The panic-stricken crowd, estimated at 50,000 people, was machine-gunned, leaving an estimated 27 to 40 people dead and more than 200 wounded.

On 7 May 1980, Major Roberto D'Aubuisson was arrested on a farm, along with a group of civilians and soldiers. In the raid, a significant quantity of weapons and documents were found implicating the group in the organization and financing of death squads allegedly involved in Archbishop Romero's murder. The arrests triggered a wave of terrorist threats and institutional pressures which culminated in D'Aubuisson's release. This strengthened the most conservative sector in the Government and was a clear example of the passivity and inertia of the judiciary in this period.[FN16]

[FN16] Idem, "Introduction" page 10; and "1980-1983: The institutionalization of violence", page 28.

2. Monsignor Romero's role during this period

33. Monsignor Romero, who was of Salvadoran nationality, was appointed Metropolitan Archbishop of San Salvador on February 3, 1977. In the homilies he gave immediately prior to his extrajudicial execution, the Archbishop of San Salvador echoed the acts of violence and violations of human rights revealed by the work of the Office of Legal Assistance of the Archdiocese. As a result, he became a well-known critic of the violence and injustice and was perceived as a dangerous enemy in certain civilian and military circles. Representatives of the Government and the Armed Forces considered his role to be favorable to the subversive movement. The press referred to him in unequivocally hostile terms, such as "... a demagogic and violent Archbishop ... (who) from the Cathedral promotes the embrace of terrorism..."[FN17] and they counseled "it will be well-advised for the Armed Forces to begin to oil their rifles." [FN18]

[FN17] El Diario de Hoy, San Salvador, February 11, 1980, p. 53.

[FN18] El Diario de Hoy, San Salvador, February 23, 1980, p. 34.

34. In his homily of February 17, 1980, Monsignor Romero objected to United States military assistance to El Salvador in these terms:

Neither the [Government] Junta nor the Christian-Democrats govern the country. The political power is in the hands of the Armed Forces. They use their power unscrupulously. They only know how to repress the people and defend the interests of the Salvadoran oligarchy.[FN19]

[FN19] Homily of February 17, 1980.

35. The assassination of the Archbishop of San Salvador caused a grave moral, spiritual, and psychological impact on Salvadoran society, and was the prelude to an internal armed conflict that submerged the country in 12 years of violence that caused thousands of deaths.[FN20] On March 23, 1980, in what would be his last Sunday homily, Monsignor Romero stated: "In the name of God, in the name of this long-suffering people whose ever more tumultuous cries go up to the Heavens, I call on you, I beg you, I order you to stop the repression."

[FN20] See Truth Commission Report, "Cases and Patterns of Violence".

3. The role of the Truth Commission

36. The peace negotiations under the auspices of the United Nations culminated on January 16, 1992, with the signing of a Peace Agreement by the Government and the dissident armed group the Frente Farabundo Martí para la Liberación Nacional (hereinafter "FMLN"), in Chapultepec, Mexico.[FN21] In the course of the negotiations, which extended over three years, it was agreed to create the Truth Commission, whose mandate would be to investigate the "serious acts of violence" that occurred in El Salvador from 1980 to 1991, "and whose impact on society urgently requires that public should know the truth." [FN22]

[FN21] In the El Salvador Peace Agreement signed at Chapultepec it was also stipulated that the work of the Truth Commission would be linked to the clarification and overcoming of impunity. That agreement provides at section 5:

The parties recognize the need to clarify and put an end to any indication of impunity on the part of officers of the armed forces, particularly in cases where respect for human rights is jeopardized. To that end, the Parties refer this issue to Commission on the Truth for consideration and resolution.

[FN22] Article IV of the April 27, 1991, Mexico Agreement and Article 2 of the Annex thereto.

37. The agreement to create the Commission, signed April 27, 1991, established that the Truth Commission would be made up of "three individuals appointed by the Secretary-General of the United Nations after consultation with the Parties." [FN23] The Secretary-General of the United Nations designated Belisario Betancur (former President of Colombia), Reinaldo Figueredo Planchart (former Foreign Minister of Venezuela) and Thomas Buergenthal (former President of the Inter-American Court of Human Rights). The Truth Commission was created with a mandate to present a final report with conclusions and recommendations, which was to be remitted to the parties and the Secretary-General of the United Nations. [FN24]

[FN23] Article 1 of the Appendix to the April 27, 1991, Mexico Agreement.

[FN24] Id., Articles 11 and 12.

38. The Truth Commission Report, published March 15, 1993, was described in the following terms by former President of the Inter-American Court of Human Rights Pedro Nikken:

It is a chilling Report which, beyond the individual cases in respect of which the facts are clarified, reveals how violence and state terrorism were used mercilessly against civil society. At times directly, with acts attributable to-active-duty military personnel, at times through the sinister death squads, organized by civilians under the protection of the army and persons responsible for thousands of disappearances and assassinations.... The Report clarifies facts that had already been denounced and never seriously investigated. Two, in particular, shook the conscience of the world: the assassination of Archbishop Romero, committed by a death squad

under the command of the founder of the ARENA party, and the assassination of the Jesuit fathers and their domestic employees, ordered by the military high command.[FN25]

[FN25] Pedro Nikken, *El manejo del pasado y la cuestión de la impunidad en la solución de los conflictos armados de El Salvador y Guatemala*, published in "Liber Amicorum - Héctor Fix-Zamudio," Volume I, Secretariat of the Inter-American Court of Human Rights, San José, Costa Rica, 1998, p. 149. Nikken was designated the United Nations independent expert on El Salvador by Resolution 1992/62 of March 3, 1992, of the UN Commission on Human Rights, and submitted his report in 1993 (See UN, E/CN.4/1993/11, February 15, 1993). With respect to the extrajudicial execution of the Jesuit priests and two domestic employees, committed in November 1989, see IACHR, Annual Report 1999, Report N° 136/99, December 22, 1999.

39. The Truth Commission Report is the result of a review of documents in El Salvador and in other countries; several interviews of participants, witnesses, victims, and relatives; analysis of information received from government bodies, including copies of instructions and orders issued; review of judicial files; and visits to the places where the events occurred.[FN26]

[FN26] Truth Commission Report, "Cases and Patterns of Violence" footnote 125, p. 43.

40. In order to guarantee the reliability of the evidence collected, the Truth Commission insisted on verifying, confirming, and re-examining all the statements as to the facts, which were compared to a large number of sources whose veracity had already been established. The Commission determined that no source, no witness, by itself, would be considered sufficiently reliable to establish the truth as to any factual issue considered in reaching its conclusions. It also decided that the secondary sources--for example, the reports by national or international entities, whether governmental or private, and the statements of persons who lack sufficient first-hand knowledge of the facts related by them--by themselves, did not constitute a sufficient basis for reaching conclusions. Nonetheless, these secondary sources were used by the Truth Commission, with some circumstantial evidence, to verify conclusions that arose from primary sources.[FN27]

[FN27] *Id.*, p. 24.

41. The IACHR notes the seriousness of the methodology used by the Truth Commission, as well as the guarantee of impartiality and good faith derived from its composition, in which the State itself had a say. Furthermore, according to the agreement by which it was created, the Truth Commission was a national entity. In consideration of the foregoing, the IACHR considers that the results of the Truth Commission's investigation into this case merits faith, and, as such, shall consider it in relation to the facts alleged and items that have been introduced into

evidence in this case. It should be noted that the State has not called into question the conclusions of the Truth Commission.

B. Facts not controverted

42. A considerable part of the petitioners' allegations coincide with the facts established in the public reports of several organizations, and, in particular, with the conclusions of the Truth Commission Report on the extrajudicial execution of the Archbishop of San Salvador. As noted, the Salvadoran State did not controvert this version of the facts, nor the conclusions of that Report. The only communication presented by the State to the IACHR in relation to the merits of the case recognizes the importance of the Truth Commission's Report in the peace process and in determining the truth. The State indicated, in this regard:

The Truth Commission Report represented a step both important and necessary for the Salvadoran peace process.... In El Salvador the truth was known, not covered up.

43. As seen in this report, the Salvadoran State has not controverted the facts alleged by the petitioners. In effect, as observed in the summary of the processing of the instant case, the IACHR more than once alerted the Salvadoran State that, in view of its procedural silence, it could apply the presumption that the facts alleged are true. The State, duly notified, did not respond to those communications. Bearing in mind the foregoing, and the expressions of approbation by the State of the Truth Commission's report, the IACHR considers as proven the facts regarding this case that are described below.

44. In February 1980, the Archbishop of San Salvador received a series of death threats,[FN28] to the point that he preferred that those who worked with him not accompany him on his outings, so as to keep them from unnecessary risk.[FN29] In March, the threats began to materialize. On Monday, March 10, 1980, the day after officiating a mass for the deceased Mario Zamora, a briefcase with a bomb was found behind the pulpit.[FN30]

[FN28] Monsignor Romero and several of those who worked with him met in late February 1980 with Héctor Dada, one of the new members of the Second Government Junta of El Salvador. Dada mentioned the death of the high-level Christian-Democratic Party leader Mario Zamora, on February 23 of that year, and said that he was aware of death threats against himself and the Archbishop, among others. (Interview with Fr. Rafael Urrutia). Monsignor Romero received news of equally serious threats from the Papal Nuncio in San José, Costa Rica, Monsignor Lajos Kada. (Diary of Monsignor Romero). Later, on Saturday, March 22, and Sunday, March 23, the women religious who staffed the Hospital de la Divina Providencia, where the Archbishop lived, received anonymous phone calls threatening to kill him.

[FN29] Interviews with Roberto Cuéllar and Fr. Rafael Urrutia. During the first week of March, Monsignor Romero met with the Ambassador of the United States in El Salvador, Robert White, who he informed of the threats against him. Although the Archbishop did not mention specific details, he seemed to be aware of the imminence of the situation, saying: "I only hope that when they kill me they don't kill many of us." Interview with Robert White.

[FN30] Statement to the Commission to Investigate Criminal Acts by Fr. Fabián Conrado Amaya Torres. Judicial case inquiring into the death of Monsignor Oscar Arnulfo Romero, Case N° 134/80, Fourth Criminal Court, folios 592 ff. According to the police report made on March 10, 1980, and forwarded to the Court on March 14, 1986, the bomb was made of 72 sticks of commercial-grade dynamite that could be activated by a dual timing device and radio transmission, sufficient to kill several of those who were officiating at the altar, and who were situated in the first rows of the church. "... in addition, it is an artifact that has never been used by subversives who have always operated in our midst, unless it is true that they have new technical personnel, it is known that 2 of Japanese nationality have come ... of the electrical detonators used, there are no stocks in our country." Judicial file, folios 494 ff. Neither the authorities of the Catholic Church nor the Office of Legal Assistance of the Archdiocese received any official communication on the results of the police investigation, and all indications are that no further investigations were undertaken. Interview with Roberto Cuéllar. Interview with Monsignor Ricardo Urioste.

45. On March 24, 1980, 24 hours after having called on the Salvadoran military to cease the repression, and while celebrating mass in the Chapel of the Hospital de la Divina Providencia, Monsignor Romero was assassinated before numerous witnesses by a member of a death squad.[FN31] He was hit by a single projectile, which caused his death after a profuse hemorrhage.

[FN31] The mass, celebrated at six o'clock in the afternoon, was scheduled in memory of the mother of a friend of Monsignor Romero's, Jorge Pinto (h), owner of the opposition newspaper "El Independiente." The mass had been announced in "La Prensa Gráfica" and "El Diario de Hoy" of March 24, 1980. Judicial file, folios 42-43.

46. The investigation to determine the responsibility for the assassination of the Archbishop was deficient and ineffective. The gathering of the material indicia of the crime at the Chapel of the Hospital de la Divina Providencia by the National Police was handled ineffectively. Further, the Fourth Criminal Judge, Atilio Ramírez Amaya, ruled that an autopsy be performed at the Policlínica Salvadoreña; three pieces of shrapnel from the projectile were removed; the projectile that had fragmented in the Archbishop's body caused the fatal internal hemorrhaging.[FN32] The Judge considered, in principle, that the projectile used could only be a .22-caliber bullet or one like it.[FN33] The National Police confirmed that the projectile was a .22-caliber bullet, based on the weight of the pieces of shrapnel, without reaching any more precise conclusions.[FN34] On March 27, 1980, after surviving an attack at his home, Judge Ramírez Amaya submitted his resignation and left the country.[FN35]

[FN32] Judicial file, folio 4.

[FN33] Interview with Judge Atilio Ramírez Amaya.

[FN34] Neither this report nor the X-rays appear in the judicial file. Truth Commission Report, note 391, p. 128.

[FN35] Id. See also, UN, "Human rights situation in El Salvador," 1981, *supra*.

47. On May 7, 1980, in a search of the "San Luis" farm in Santa Tecla, 12 military officers and 12 civilians were arrested, among them Major Roberto D'Aubuisson;[FN36] they were indicted for conspiring to overthrow the government.[FN37] Several documents were seized in the search,[FN38] including a diary belonging to Captain Alvaro Rafael Saravia and two lists of names of members of the Armed Forces of El Salvador.[FN39]

[FN36] Majors Roberto D'Aubuisson, Jorge Adalberto Cruz Reyes, Roberto Mauricio Staben; Captains Alvaro Rafael Saravia, José Alfredo Jiménez, Víctor Hugo Vega Valencia, Eduardo Ernesto Alfonso Avila; Lieutenants Federico Chacón, Miguel Francisco Bennet Escobar, Rodolfo Isidro López Sibrián, Carlos Hernán Morales Estupinián, Jaime René Alvarado y Alvarado; Messrs. Antonio Cornejo Jr., Ricardo Valdivieso, Roberto Muyschondt, Fernando Sagrera, Amado Antonio Garay, Nelson Enrique Morales, Andrés Antonio Córdova López, Herbert Romeo Escobar, Fredy Salomón Chávez Guevara, Marco Antonio Quintanilla, José Joaquín Larios, and Julián García Jiménez. Report of May 12, 1980, by Major José Francisco Samayoa, in which he placed the detainees at the disposition of the military investigative judge.

[FN37] A third document, entitled "Cuadro General de la Organización de la Lucha Anti-Marxista en El Salvador" ("General Situation of the Organization of the Anti-Marxist Struggle in El Salvador") set forth the guidelines and objectives of the group that was at the "San Luis" farm. That group set as its goal taking power in El Salvador, to which end it prepared a political plan of tasks for "direct action," called "combat network activities," including "individual attacks." Acta de incautación (Report on Evidence Seized), May 12, 1980.

[FN38] Among the documents seized in that search was a "List of accusations made by a South American informant against Monsignor Oscar Arnulfo Romero, Archbishop of San Salvador. He is willing to provide photographic and written evidence within 15 days." May 12, 1980 report cited above.

[FN39] Id., Exhibit N° 7.

48. The "Saravia Diary" provides several data relevant to the assassination of the Archbishop of San Salvador. It contains references to purchases and deliveries of several arms and munitions; according to the ballistic report ordered by Judge Ramírez Amaya, several were of the sort used in the assassination.[FN40] Certain names of persons against whom there were indicia of participation in the planning, execution, or cover-up of the assassination appear repeatedly.[FN41] There are also references to Amado Garay, the driver who transported the assassin, as well as the gasoline receipts for the red vehicle put at the disposal of Captain Saravia, from which the assassination was carried out.

[FN40] The agenda includes notations of "ammunition for 223," a type of .22-caliber bullet, and "2 Bushmaster" and "5 AR-15," both of which fire both .22 and .223 caliber rifles.

[FN41] For example, "Amado" refers to Amado Garay; "Avila" to "el pelón" Avila; "Eduardo Av." and "Eduardo A." refer to Captain Eduardo Avila. "Negro," "Nando Sagrera," and "Nando

S." refer to Fernando Sagrera. "Saravia" refers to Captain Alvaro Rafael Saravia. The participation of all of them will be described infra.

49. Even though this information was available, none of the documents seized at the "San Luis" farm was made available by the authorities to the Fourth Criminal Court. Years later the court had access to a copy of the diary, but the judicial initiatives to locate the original were to no avail.

50. Several efforts were made to cover up the responsibility for the assassination. In March 1984, Roberto D'Aubuisson participated in a television broadcast during the presidential election campaign, in which he presented a confession taped by an alleged FMLN commander. On the tape, the alleged commander called "Pedro Lobo" confessed to having been an accomplice in the assassination of Monsignor Romero. Almost immediately, "Pedro Lobo" was identified as a common prisoner who was locked up from 1979 to 1981,[FN42] who confessed that he had been offered US\$ 50,000 to publicly take credit for the assassination.[FN43] Even after this incident, D'Aubuisson continued insisting the guerrillas had assassinated the Archbishop of San Salvador.[FN44] In October 1992 the Armed Forces accused the FMLN of being responsible for the assassination of the Archbishop in statements to the Truth Commission, yet provided no evidence in this regard.

[FN42] Mr. Rey Prendes, leader of the Christian Democratic Party, speaking to the press days after the presentation of the video, denounced the "Commander Pedro Lobo" simulation and revealed his true identity and history. Judicial file, folios 152 ff.

[FN43] In August 1985, the Office of the Public Prosecutor submitted the statement of Roberto Adalberto Salazar Collier ("Pedro Lobo") to the Fourth Criminal Court; on that occasion he alleged the same thing but did not mention D'Aubuisson's name. One of the alleged sponsors submitted a written statement in February 1986, in which he denied the accusations. Judicial file, folios 152 ff. and folio 241. The official notes of Judge Zamora in which he asked the television stations to provide him with a videotape of Salazar Collier's statements were answered in the negative. The Office of the Public Prosecutor insisted that the television stations indicate who had provided and taken back the video, but the Judge denied the request. Judicial file folios 189, 200, 210, 212.

[FN44] Major D'Aubuisson cited a book entitled "La conspiración del silencio," by Manuel de Armas, in which it is said that Cuban agents committed the crime. La Prensa Gráfica, "Hace revelaciones Mayor D'Aubuisson," Friday, September 6, 1985, p. 2. El Diario de Hoy, Friday, September 6, 1985, p. 3.

51. In 1986, the Commission to Investigate Criminal Acts (hereinafter "the Investigative Commission") began its inquiry into the assassination of Monsignor Romero.[FN45] In November 1987, Amado Antonio Garay, one of the persons arrested at the "San Luis" farm, revealed that on March 24, 1980, Captain Alvaro Saravia ordered him to drive a red Volkswagen to the Hospital de la Divina Providencia in Colonia Miramonte. Once there, he parked the vehicle in front of the Chapel and its passenger, a bearded man unknown to him, ordered him to

duck down as if he were making a repair. He heard a shot, turned around, and saw the subject, who "was holding a rifle with both hands and aiming to the right out the right-hand rear window of the vehicle ... and at that moment perceived a smell of gunpowder ... the bearded individual immediately told him, with a calm voice, 'go slowly, take it easy,'" after which they left.[FN46] Garay drove the individual to where Captain Saravia was, and the individual told Captain Saravia, "mission accomplished." Three days later, Garay drove Captain Saravia to a house where Major D'Aubuisson was. There Saravia said: "we already did what we had planned in terms of the death of Monsignor Arnulfo Romero." [FN47]

[FN45] Judicial file, folio 389.

[FN46] Statement by Amado Antonio Garay to the Investigative Commission, November 19, 1987. Judicial file folio 274.

[FN47] Id.

52. The Office of the Public Prosecutor presented Garay as a witness before Judge Ricardo Alberto Zamora Pérez on November 20, 1987. Based on the description of the gunman provided by Garay,[FN48] and on the reports on visits to the places mentioned by the witness,[FN49] the Judge ordered the arrest of Captain Saravia on November 24, 1987.[FN50] He also sent an official note to the Central Elections Council to have it issue to the Court a certification as to D'Aubuisson's status as a Deputy in the Legislative Assembly.[FN51] Captain Saravia filed a writ of habeas corpus. In December 1988, the Supreme Court of Justice of El Salvador held that "said testimony [of Garay] does not merit full faith ... the witness made his statement seven years, seven months, and twenty-four days after the event on which he is testifying, which makes his testimony less than fully credible." In addition, he considered that the Public Prosecutor lacked the authority to seek Captain Saravia's extradition from the United States of America, where he was at the time.[FN52]

[FN48] Garay pointed to an old photo of Dr. Héctor Antonio Regalado, with a beard painted on, as that which was most like that of the description he had given to identify the gunman. Regalado was responsible for the security of Captain Saravia and later for D'Aubuisson's security. Later, he was the Chief of Security of the Legislative Assembly, when D'Aubuisson was President of the Assembly. Regalado denied being the perpetrator of the shot and the Truth Commission did not find any persuasive evidence of his participation in the assassination. Id., folio 270.

[FN49] Id.

[FN50] Id., folios 269 and 285.

[FN51] Judicial file, folio 299.

[FN52] Public letter from Dr. Héctor Antonio Regalado, March 13, 1989.

53. In its Report, the Truth Commission established that:

Former Major Roberto D'Aubuisson, former Captain Alvaro Saravia and Fernando Sagrera[FN53] were present on 24 March 1980 at the home of Alejandro Cáceres in San Salvador. Captain Eduardo Avila arrived and told them that Archbishop Romero would be celebrating a mass that day. Captain Avila said that this would be a good opportunity to assassinate the Archbishop. D'Aubuisson ordered that this be done and put Saravia in charge of the operation. When it was pointed out that a sniper would be needed, Captain Avila said he would contact one through Mario Molina. Amado Garay was assigned to drive the assassin to the Chapel.

[FN53] Mr. Sagrera denied to the Truth Commission that he participated in any way.

The parking lot of the Camino Real Hotel was the assembly point before proceeding to the Chapel. There, the bearded gunman, carrying the murder weapon, got into a red, four-door Volkswagen driven by Garay. At least two vehicles drove from the Camino Real Hotel to the scene of the crime. Outside the main entrance to the Chapel, the assassin fired a single bullet from a vehicle, killing Archbishop Romero. D'Aubuisson ordered that 1,000 colones be handed over to Walter Antonio "Musa" Alvarez, who received the payment in question, as did the bearded assassin. Alvarez was abducted in September 1981 and found dead not long afterwards.[FN54]

[FN54] Truth Commission Report, pages 130-131.

54. The Truth Commission concluded as follows:

1. There is full evidence that:

(a) Former Major Roberto D'Aubuisson gave the order to assassinate the Archbishop and gave precise instructions to members of his security service, acting as a "death squad", to organize and supervise the assassination

(b) Capts. Alvaro Saravia and Eduardo Avila played an active role in the planning and perpetration of the assassination, as did Fernando Sagrera and Mario Molina.

(c) Amado Antonio Garay, the driver of former Captain Saravia, was assigned to drive the gunman to the Chapel. Mr. Garay was a direct witness when, from a red, four-door Volkswagen, the gunman fired a single high velocity .22 bullet to kill the Archbishop.

2. There is sufficient evidence that Walter Antonio "Musa" Alvarez, together with former Captain Saravia, was involved in paying the "fees" of the actual assassin.

3. There is sufficient evidence that the failed assassination attempt against Judge Atilio Ramírez Amaya was a deliberate attempt to deter investigation of the cause.

4. There is full evidence that the Supreme Court played an active role in preventing the extradition of former Captain Saravia from the United States and his subsequent imprisonment in

El Salvador. In so doing, it ensured, inter alia, impunity for those who planned the assassination.[FN55]

[FN55] Truth Commission Report, page 131.

55. On March 20, 1993, five days after the Truth Commission Report was submitted, the Legislative Assembly of El Salvador adopted the General Amnesty Law by Decree N° 486.[FN56] The Supreme Court of Justice of El Salvador declared itself without jurisdiction to review its constitutionality, as it considered that the amnesty was an "eminently political" act.[FN57]

[FN56] Decree N° 486, published in the Diario Oficial N° 56, vol. 318, March 22, 1993.

[FN57] Constitutional Chamber of the Supreme Court of Justice, Decision of May 20, 1993.

C. Considerations of Law

1. The right to life (Article 4 of the American Convention)

56. Article 4(1) of the American Convention provides: "Every person has the right to have his life respected.... No one shall be arbitrarily deprived of his life." Article 27(2) of the American Convention enshrines this right as one of those that cannot be suspended in time of war, public danger, or other emergency that threatens the independence or security of the states parties.

57. As established supra, the Archbishop of San Salvador was assassinated with the participation, as planner and perpetrator, of Major Roberto D'Aubuisson and Captains Alvaro Saravia and Eduardo Avila. Also participating were civilians Fernando Sagrera and Mario Molina, and a "professional killer" whose identity is unknown. D'Aubuisson is the person responsible for giving the order to assassinate Monsignor Romero, and for giving precise instructions to members of his security entourage, who acted as members of a death squad in carrying out the extrajudicial execution.[FN58]

[FN58] The Truth Commission carried out an exhaustive investigation of the summary execution of Monsignor Romero as a case illustrative of the death squads in El Salvador and indicated that former Major D'Aubuisson confirmed his own role in planning this crime in reserved circles. Truth Commission Report, p. 134.

58. In 1980 and 1981, death squad operations were frequently coordinated with the Armed Forces. The clandestine nature of their actions made it possible to cover up the State responsibility and to create an ambience of total impunity for the killers.[FN59] A look at the

history of El Salvador shows that some sectors of the State security forces maintained a distorted perception of their true function in relation to the vast majority of the civilian population.[FN60] In this way, the limits between the death squads and the Armed Forces became blurred. The Truth Commission established that:

[FN59] *Id.*, p. 131.

[FN60] *Id.*, p. 130.

The death squads, in which members of State structures were actively involved or to which they turned a blind eye, gained such control that they ceased to be a marginal or isolated phenomenon and became an instrument of terror used systematically for the physical elimination of political opponents. Many of the civilian and military authorities in power during the 1980s participated in, encouraged, and tolerated the activities of these groups.[FN61]

[FN61] *Id.*, p. 132.

59. In particular, several reports on the events at that time indicate that high-level officers of the security forces of El Salvador directed the assassinations carried out by the death squads. According to one of those reports, "the names and personal details, and, in some cases, even the photographs of Salvadorans selected for kidnapping and assassination, were given to non-commissioned officers of the Army, who made up 'death-squad'-type teams with active and reserve members of the security forces and the Army." [FN62]

[FN62] Amnesty International, *Ejecuciones extrajudiciales en El Salvador*, 1984, p. 16.

60. The IACHR issued pronouncements regarding numerous violations of the right to life committed by members of the security forces and paramilitary groups that operated in some cases at the orders of those security forces, and in other cases with their tolerance.[FN63] The United Nations Commission on Human Rights expressed similar concerns, deploring the violations of the right to life committed by "governmental paramilitary organizations." [FN64]

[FN63] IACHR, Annual Report 1980-1981, *supra*, p. 111; Annual Report 1981-1982, *supra*, p. 120.

[FN64] UN Commission on Human Rights, Resolution 36/155, December 16, 1981; and Resolution 1982/28 of March 11, 1982.

61. In order to situate the phenomenon of the death squads in proper context, one must recall the 1979 coup, which profoundly altered the political landscape of El Salvador. On that

occasion, approximately 80 officers of the Armed Forces and security forces were cashiered, among them Major Roberto D'Aubuisson. As a retired military officer, he became the leader of a current that sought to defeat the dissident armed groups, and which opposed any type of political opening or negotiation with them. Certain sectors perceived the group led by D'Aubuisson as the only faction capable "of preventing a left-wing takeover".[FN65]

[FN65] Truth Commission Report, p. 135.

62. Roberto D'Aubuisson obtained the support of powerful financial sectors of civil society who feared that their interests would be adversely affected by the reforms announced by the Government Junta and by a possible Marxist insurrection.[FN66] In this respect, the Truth Commission received testimony from several witnesses that wealthy landowners and businessmen provided their farms, homes, vehicles, and bodyguards to support the action of the death squads, especially those directed by D'Aubuisson.[FN67] He also had the support of sectors of the Armed Forces, through which he had access to intelligence reports that he used for his own purposes. Even though the High Command of the Armed Forces was aware of a "steady leak of information, not only was nothing ever done to control it but intelligence leaks were even organized intentionally." [FN68]

[FN66] Id., p. 134.

[FN67] Id., p. 135.

[FN68] Id., p. 135.

63. The political organization that D'Aubuisson led included among its activities individual attacks, robberies, "recovery of funds," and acts of sabotage.[FN69] One of the successful individual attacks carried out by his organization was precisely the extrajudicial execution of the Archbishop of San Salvador.

[FN69] See "Cuadro General de la Organización de la Lucha Anti-Marxista en El Salvador," supra.

64. As established above, the death squads incorporated active members of the state security forces in their ranks and had the support of the corresponding official institutions. Accordingly, such groups effectively operated as agents of the Salvadoran State, and committed their unlawful acts making use of government organs.

65. As regards the direct participation of state agents in the death squads, their unlawful acts are directly imputable to El Salvador and trigger the international responsibility of the State. The Inter-American Court of Human Rights has established:

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 the Convention. [Article 1.1]

This conclusion is independent of whether the organ or official has contravened provisions of internal law or overstepped 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 of 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.[FN70]

[FN70] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Judgment of July 29, 1988, paras. 169-172. See also Case of Godínez Cruz, Judgment of January 20, 1989, paras. 179-180; and Case of Neira Alegría and others, Judgment of January 19, 1995, para. 63.

66. The IACHR should also note that the assassination of Monsignor Romero constitutes a grave infraction of the basic principles of international humanitarian law, insofar as it was an attack directed against a member of the civilian population, who in no way could be considered a legitimate target in the context of the armed conflict in El Salvador.

67. Specifically, common Article 3 of the Geneva Conventions of 1949[FN71]--which was applicable to the Salvadoran internal conflict--expressly and in all circumstances prohibits "violence to life and person" of "persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat...." In addition, the basic rules of common Article 3 are developed and strengthened by Article 13 of the Second Protocol Additional to the Geneva Conventions of 1949.[FN72] This norm codifies the principle of civilian immunity in the following terms:

[FN71] El Salvador ratified the Geneva Conventions of 1949 on June 17, 1953.

[FN72] El Salvador ratified the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) on November 23, 1978.

1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.

2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

3. Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities.

68. It has been established supra that during the Salvadoran armed conflict, State agents and individuals who acted with the approval and acquiescence of the Salvadoran State identified the Archbishop of San Salvador with dissident armed groups because his homilies exposed grave human rights violations committed by the security forces of El Salvador. It has also been noted that the pro-Government press had characterized him as "a demagogic archbishop...who from the Cathedral encouraged the embrace of terrorism." [FN73]

[FN73] El Diario de Hoy, San Salvador, February 11, 1980, p. 53.

69. In this respect, it should be noted that in no case can the mere expression of sympathy for the cause of one of the parties to the conflict be tantamount or likened to the kind of acts considered by humanitarian law as posing a real and immediate threat to the enemy that could make a civilian a legitimate target of attack. [FN74]

[FN74] See, in this regard, M. Bothe, K. Partsch & W. Solf, *New Rules for Victims of Armed Conflicts: Commentary on the two 1977 Protocols Additional to the Geneva Conventions of 1949*, (1982), p. 303.

70. In its Report on the Situation of Human Rights in El Salvador, [FN75] published in 1978, the IACHR stated that both the Government and certain organizations that enjoyed official favor were systematically and seriously harassing nuns, priests, and laypersons who participated in activities that constituted part of the Church's social action programs. The Church authorities reported that the bishops were attacked publicly for alleged links with terrorism and subversion. In this context, the Commission recommended to the Salvadoran State that "the necessary measures be taken to prevent any continuation of the persecution against members of the Catholic Church who act in the legitimate exercise of their pastoral mission." [FN76]

[FN75] IACHR, Report on the Situation of Human Rights in El Salvador (1978), p. 119, para. 26.

[FN76] *Id.*, p. 166, para. 8; p. 167, para. 6.

71. Independent of the direct participation of State agents, the State is, in any event, responsible internationally for acts violative of human rights perpetrated by individuals or organized groups of individuals, like the death squads, that act with its approval, acquiescence, tolerance, or even in collaboration with State security forces. [FN77]

[FN77] See IACHR, Third Report on the Situation of Human Rights in Colombia (1999), para. 236.

72. Based on the foregoing considerations of fact and law, the IACHR concludes that the Salvadoran State is responsible for the violation of the right to life of Monsignor Romero by virtue of the acts of the death squads. El Salvador has violated, in the person of Monsignor Romero, the right set forth in Article 4 of the American Convention, in conjunction with the principles codified in common Article 3 of the Geneva Conventions.

2. The duty to investigate and punish violations of the rights protected by the American Convention (Articles 1(1), 8(1), and 25)

73. Article 25(1) of the American Convention provides:

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 of 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.

74. The Inter-American Court has said that under this provision, the States Parties to the American Convention are required to provide effective judicial remedies to victims of human rights violations. Such remedies must be substantiated in accordance with the rules of due process of law (Article 8(1)), all within the general obligation of the States Parties to guarantee the free and full exercise of the rights recognized to vest in all persons under the jurisdiction of said states (Article 1(1)).[FN78] In addition, the Court has said that Article 25(1) of the American Convention incorporates the principle of the effectiveness or efficacy of the procedural means or instruments aimed at guaranteeing the rights protected therein.[FN79] By virtue of this, the non-existence of effective domestic remedies leaves victims of human rights violations defenseless and justifies international protection.[FN80]

[FN78] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Preliminary Objections, para. 91

[FN79] Inter-American Court of Human Rights, Advisory Opinion OC-9/87 of October 6, 1987, Judicial Guarantees in States of Emergency, para. 24.

[FN80] Inter-American Court of Human Rights, Case of Fairén Garbí and Solís Corrales, Preliminary Objections, Judgment of June 26, 1987, Ser. C N° 2 (1987), para. 92. Although these cases refer to forced disappearance, the IACHR considers that the analysis of the Inter-American Court also applies to cases of extrajudicial execution such as that analyzed in this report.

75. For its part, Article 8(1) of the American Convention establishes the right of all persons "to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law ... for the determination of his rights and

obligations of a civil, labor, fiscal, or any other nature.” With respect to that provision, the Inter-American Court has indicated:

It should be interpreted broadly so that such an interpretation would be based on both its letter and its spirit, and it should be read in conjunction with Article 29(c) of the Convention, according to which no provision of the Convention can be interpreted so as to exclude other rights and guarantees inherent in the human being or that derive from democratic and representative government.[FN81]

[FN81] Inter-American Court of Human Rights, Case of Blake, Judgment of January 24, 1998, para. 96.

76. According to this criterion, the Inter-American Court understands that Article 8(1) includes the right of the victim's next-of-kin to judicial guarantees.[FN82] Such judicial guarantees consist of an effective investigation, the trial of those responsible for the illegal acts, the imposition of appropriate sanctions, and compensation for any damages and losses suffered by the next-of-kin.[FN83]

[FN82] Id., para. 97.

[FN83] Id.

77. The Inter-American Court has determined that the obligation assumed by the states to guarantee the free and full exercise of the rights recognized in the American Convention means:

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.[FN84]

[FN84] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Judgment of July 29, 1988, para. 166.

78. The Court has also indicated that:

The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.[FN85]

[FN85] Id., para. 174. See also Inter-American Court of Human Rights, Case of Godínez Cruz, Judgment of January 20, 1989, para. 184.

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.[FN86]

[FN86] Id., para. 176. Case of Godínez Cruz, para. 187.

79. As to the manner in which the duty to investigate should be carried out, the Court has specified that:

[the investigation] 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.[FN87]

[FN87] Id., para. 177.

80. A basic aim of any criminal proceeding is to clarify the truth in respect of the event investigated. The judicial investigation must be undertaken in good faith and must be diligent, exhaustive and impartial and geared to exploring all possible lines of investigation that make it possible to identify the perpetrators of the crime, so that they can be tried and punished.

81. In this case, the violation of Monsignor Romero's right to life is also an offense provided for and punished by Salvadoran criminal law.[FN88] Therefore, the State had the duty to undertake, at its own initiative--through the Office of the Public Prosecutor--an effective judicial investigation aimed at identifying all the perpetrators of the violation, judging them, and applying the corresponding punishments under law, to which end it should have promoted and given impetus to the criminal proceedings to their final consequences.

[FN88] The act was characterized in the proceedings as aggravated homicide (Article 153 of the Criminal Code of 1973). The Criminal Code of El Salvador of 1973 and the Code of Criminal Procedure of the same year were the substantive and procedural laws in which the judicial case proceeded. The criminal justice system in place at the time of the conduct in question (1980) was an inquisitorial model with two phases: (a) general inquiry, during which the criminal act is

determined and the individual or individuals responsible for committing the illegal act are prosecuted; and (b) the special inquiry, which unfolds as it fully identifies the persons involved, taking the evidence, and handing down the corresponding judicial verdict. These stages are the procedural activity in which the judge is the main procedural subject, so much so that he both investigates and hands down the judgment.

82. As the IACHR has indicated in other cases, the "Principles on the Effective Prevention and Investigation of-Extra-legal, Arbitrary and Summary Executions," recommended by the United Nations Economic and Social Council in its resolution 1989/65, set forth what is required to investigate a suspicious death, based on the due diligence standard.[FN89]

[FN89] See, for example, IACHR, Annual Report 1995, Report N° 10/95, Ecuador, paras. 32-34; Annual Report 1997, Report N° 55/97, Argentina, paras. 423 and 424; Annual Report 1998, Report N° 1/98, Mexico, paras. 75 and 76.

83. The above-mentioned principles establish that in cases such as this, the investigation should be aimed at determining the cause, manner, and time of the death, the person responsible, and the procedure or practice that may have caused it. In addition, an adequate autopsy must be performed, all the material and documentary evidence must be compiled and analyzed, and the witness statements must be taken. The investigation should distinguish among death due to natural causes, death due to accident, suicide, and homicide.

84. The UN organs have complemented those principles with the "Manual on the effective prevention and investigation of extra-legal, arbitrary and summary executions,"[FN90] according to which the main purpose of an investigation is "to ascertain the truth about events leading to the suspicious death of a victim." The Manual provides that those who carry out inquiries should adopt measures that include at least the following:

[FN90] UN, document ST/CSDHA/12.

- (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; ... [and]
- (g) Bring the perpetrator or perpetrators suspected of having committed a crime to a competent court established by the law.

85. To guarantee an exhaustive and impartial investigation of an illegal, arbitrary or summary execution, the Manual indicates that "one of the most important aspects [of the investigation] is the gathering and analysis of the evidence." Therefore, "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 may have occurred." According to the standards set forth in the Manual, the procedure for collecting the evidence should be in line with certain criteria, some of which are as follows:

- (a) The area contiguous to the corpse must be secured. Access to the area must be permitted only to the 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 circumstance 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 should 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:
 - (i) temperature of the body (warm, cool, cold);
 - (ii) position of corpse and degree of discoloration;
 - (iii) rigidity of corpse; and
 - (iv) state of decomposition.
- (...)
- (j) 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 the shots and/or detect metal fragments.

86. In the section of this report that refers to the facts that are not controverted, the IACHR established that the investigation carried out in the judicial proceeding on this case in El Salvador was deficient. What follow is a more detailed analysis of the investigation, in light of the minimum standards set forth in the above-mentioned UN Manual

... continued

a. Irregularities in the investigation

87. Irregularities in the initial investigation definitively marked the judicial proceedings in the case of the assassination of the Archbishop of San Salvador, as the authorities in charge did not recover or conserve the evidence, failed to obtain expert evidence, and neglected procedural steps that are urgent and not subject to reproduction, such as the reconstructions and taking of statements from eyewitnesses. In addition, the authorities failed to investigate facts clearly linked to the summary execution of the Archbishop, which would have made it possible to establish, in a fair trial, the identity of the material perpetrators and planners of the crime.

i. Evidence was neither collected nor conserved

88. As mentioned supra, the Truth Commission determined that the National Police acted deficiently, as they failed to collect material indicia of the crime at the crime scene. In effect, the agents of the National Police, an institution which by legal and constitutional mandate should intervene in all cases of violent death, went to the crime scene almost four days after the fact.[FN91] The police did not collect evidence nor did they provide the Judge any information or evidence whatsoever to help in the investigation.

[FN91] Judicial file, folio 895.

89. In statements made in 1982, Judge Ramírez Amaya[FN92]--the first of four judges to sit in the case--referred to "premeditated omissions on the part of the officials in charge of justice" aimed at "covering up the assassination from the beginning." The Judge stated, in this regard:

[FN92] Judge Ramírez Amaya had to flee El Salvador after receiving several death threats and an assassination attempt on March 27, 1980 (folio 73 of the file). This assassination attempt came three days after the extrajudicial execution of Monsignor Romero (folio 750 of the proceedings).

Monsignor Oscar Arnulfo Romero was assassinated the afternoon of Monday, March 24, by one shot. I do not believe that the crime will be resolved under the current circumstances. Above all, I believe that no one will be indicted as a result of the work currently being done.

The Criminal Investigations Section of the National Police intervenes in all cases of violent death, even obvious cases of suicide. They always arrive before the judicial authorities. Nonetheless, in the assassination of Monsignor Romero they arrived almost four days after the crime, and did not provide the court any information or evidence of an investigation into the crime. On the 28th I noted this failure to carry out their obligations as criminal justice officers; I directed these observations to the police experts who came around noon, almost four days after the assassination, to ask whether "they could help with anything." The same happened with the office of the Public Prosecutor of the Republic; the special prosecutor came the 28th, also with instructions to be present in the proceedings. These premeditated omissions on the part of criminal justice officers leaves no doubt that there was some kind of conspiracy to cover up the assassination from the beginning.

ii. Procedural steps essential to determine the truth were not performed or were not validated

90. When the autopsy was performed on the corpse of the Archbishop of San Salvador, three pieces of shrapnel were extracted from the thoracic cavity for study.[FN93] Based on their weight, the National Police confirmed that the projectile was a .22-caliber bullet. Nonetheless, the corresponding proceeding does not appear in the judicial file; nor do the X-rays of the thorax taken during the autopsy.[FN94]

[FN93] The autopsy report appears at folios 32-33 of the judicial file.

[FN94] See Truth Commission Report, note 391.

91. Some eyewitnesses were called to give testimony long after the crime, even though witness testimony should have been taken without delay so that the eyewitnesses could accurately recall the details of what they saw, and be kept from being subjected to threats or any type of undue pressure. For example, Sister María Clelia Flores Iraheta stated that she had seen a moving vehicle in front of the chapel when they shot Monsignor Romero; and that she had also seen a person who was leaning towards the vehicle, as if to be putting something away. Nonetheless, Flores Iraheta was not interviewed as a witness until December 18, 1985, more than five years after the crime.[FN95]

[FN95] Witness statement by Sister María Clelia Flores Iraheta (known as Mother María del Socorro Flores), folios 231-245 of the judicial file.

iii. The direct perpetrators and planners of the extrajudicial execution of Monsignor Romero were not investigated

92. Based on the doctrine of the IACHR and the provisions of the above-mentioned UN Manual, the investigators should have identified and apprehended the person or persons who participated in the execution and brought them before a lawfully-established court. The IACHR has established that the decision to execute the Archbishop of San Salvador was made by Major Roberto D'Aubuisson; that Captains Alvaro Saravia and Eduardo Avila and civilians Eduardo Sagrera and Mario Molina actively participated in planning the execution; and that Walter Antonio "Musa" Alvarez and Captain Saravia were implicated in the payment made to the gunman.

93. The deficient investigation was not seriously aimed at identifying, apprehending, placing on trial, and punishing the above-mentioned persons; to the contrary, it was aimed at ensuring that their criminal actions would enjoy impunity.

iv. No proper investigation was undertaken into Captain Alvaro Saravia, and the testimony of Amado Antonio Garay, a key eyewitness, was dismissed

94. Amado Antonio Garay Reyes, Captain Saravia's driver, gave key testimony to clarify this case, as he confessed to having transported the gunman in the execution of Monsignor Romero, and revealed the details of that execution. Garay Reyes identified Captain Alvaro Saravia as the person who planned and decided to carry out the homicide, along with Major D'Aubuisson, and Dr. Antonio Regalado as the marksman. In the testimony taken by the Investigative Commission on November 16, 1987,[FN96] Garay Reyes stated:

[FN96] The order of the Investigative Commission says: "Having obtained, in the process of the investigations carried out by the Executive Unit, information provided by a source who is Mr. Amado Antonio Garay Reyes, he could provide information helpful to clarify the death of Monsignor Oscar Arnulfo Romero y Galdámez, it is ordered that he be located, wherever he may be, and that his statement be taken as a witness." (Folio 273 of the judicial file.)

That he worked as a driver for Captain Alvaro Rafael Saravia, his work consisting of driving his wife's vehicle and some vehicles that Captain Saravia brought to his residence or that were loaned to him, running errands to the supermarkets or other missions assigned to him by Captain Saravia or his wife; in addition he drove Captain Saravia himself; that one day towards the end of March 1980, the exact date of which he doesn't recall, he left Captain Alvaro Saravia's residence at about five o'clock in the afternoon, driving a vehicle that had been provided to the Captain, who told him that he would guide him to the place he was going, which he did, and he arrived at the black gate of a residence situated in the San Benito neighborhood of this city;

That the declarant parked the vehicle by the parking lot, and Captain Saravia got out of the vehicle and entered the residence in question, while the declarant had remained outside that house, ... moments later he was called by a female domestic employee of that residence..., who offered him a refreshment and a piece of bread ... that while he was having the refreshment by the door used by the domestic employees, he was called by Captain Alvaro Saravia, who had emerged from inside the house and he told him: "drive that car," pointing to a red four-door vehicle, a Volkswagen, and also telling him: "follow that car that is ahead," in respect of which he did not recall the make, color, or number of persons in that vehicle, but he did note that there were more than two persons; he then got in the red vehicle and, once inside, realized that in the back seat, to the right, was a bearded man, about 25 years old, at that time, good looking, tall, slim, straight hair but with curls at the top of the forehead, who he did not know, but he can recognize him if introduced at any time; that obeying the order given by Captain Saravia, he followed the vehicle that went ahead ... upon reaching a black gate, the bearded individual in the back seat told him to turn left and enter the gate, that he should no longer follow the vehicle ahead, and he did so, realizing that from that gate there was a street with paving blocks that led to a church ... that he entered the gate towards the above-mentioned church, coming in front of it, and the bearded individual told him to turn the car around, which the declarant did in a parking area at that place, stopping the vehicle some three or four meters before reaching the front of the church; that when he stopped the vehicle at that place, the bearded individual with him told him: "No, stop in front of the church"; that when he stopped in front of the church, he saw a priest holding mass at the altar, not knowing who it was and that there were people listening; that afterwards, the bearded man told him that he should make it look like he was fixing something in the car, without telling him why, and so he simulated as if he were fixing the transmission stick....

That when he was appearing to be fixing the transmission stick, he heard a loud explosion caused by a firearm, behind the declarant, and so immediately got up, scared, looking back, seeing that the bearded man who was in the back seat was holding a rifle in both hands pointing to the right of the vehicle's right rear window ... seeing and hearing that inside the church they were

shouting, without the declarant able to determine what had happened at that instant; that the bearded individual immediately told him, with a calm voice: "drive slowly and easily," and so he put the vehicle into drive.

That when he calmed down a bit he could situate himself in the place where he was, and was able to reach the same place from which the red four-door vehicle had left, where they opened the gate as he entered the residence, and he parked in the parking area; that the declarant and the bearded man got out of the red vehicle, which remained parked in that house's garage, the bearded individual got out first, and the declarant noted that Captain Saravia was outside that house, waiting for him, and the bearded person saluted him with his right hand and told him: "Mission accomplished."

That at six o'clock that afternoon, he heard on the radio that they had killed Monsignor Arnulfo Romero, one day earlier at six o'clock in a church in San Salvador, confirming at that moment that the perpetrator of that death had been the bearded individual who was in the back seat of the red car the declarant was driving.

That three days after the death of Monsignor Romero, at approximately 3 o'clock in the afternoon, he took Captain Saravia to a house he had that looked like a castle, situated across from the television station Canal Dos of San Salvador; that to enter that residence one enters through a door from which an internal street begins that leads to that house, with a distance of fifty meters from the gate to the residence; that on entering that house he saw that Major Roberto D'Aubuisson was waiting for Captain Alvaro Saravia at the main door, and that Captain Saravia got out of the car driven by the declarant and, turning to Major D'Aubuisson, told him: "we already did what we had planned in terms of the death of Monsignor Arnulfo Romero."

That he did not inform the authorities of this because he thought that nothing would happen to these persons, given the power they had, and from that time the declarant began to fear for his life, in view of what he knew, but he continued working for approximately two months, for Captain Saravia the whole time, while seeking an opportunity to resign and leave the country, because if he stayed in the country his life would be in danger; that in the last days of May 1980, he was able to leave the country, and that once he was outside he was informed by his wife that she was threatened by armed persons pressuring her to tell them where he was....[FN97]

[FN97] Witness statement by eyewitness Amado Antonio Garay at folios 274-276 of the judicial file.

95. The attorney for the Ministry of Justice, Julio Alfredo Samoya, gave a witness statement in the Fourth Criminal Court of San Salvador on February 21, 1989. The IACHR considers that Samoya's testimony is important, as it validates the testimony of Amado Antonio Garay. Among other things, attorney Samoya declared as follows:

Garay's name appears repeatedly in a photocopy of the Diary of Captain Alvaro Rafael Saravia Marino, which was in the possession of the CIHD and that it was the means by which it was

learned that he was the Captain's driver and that he had also been arrested at the San Luis farm, jurisdiction of Santa Tecla, on May 7, 1980, along with Major D'Aubuisson and Captain Alvaro Saravia and other civilians and military officers; that he was later located in Costa Rica with the collaboration of the Judicial Investigation Authority of Costa Rica and the security forces of that country, it having been established that he was there as a refugee; that when the Garay residence was located members of the Investigations Unit were sent to Costa Rica to speak with him, so he might tell them what he knew about the case of the death of Monsignor Romero, he denied initially that he knew anything about it, but ultimately prepared a statement on his participation in the crime, which he retold in this court. That so that he could give testimony in this court the Government of Costa Rica gave him authorization to leave the country, guaranteeing he could re-enter Costa Rica after making his statement to this court.[FN98]... That he was given a polygraph test, i.e. a lie detector test, on which he performed satisfactorily.[FN99]

[FN98] Folio 335 of the judicial file.

[FN99] Folio 336 of the judicial file.

96. On November 24, 1987, based on the testimony of Amado Garay Reyes, the provisional detention of Alvaro Saravia was ordered when he had already left the country and was residing in the United States of America. Nonetheless, the Supreme Court of Justice of El Salvador voided that order, considering that Garay Reyes' declaration did not merit full faith, given the time elapsed since the assassination. The Supreme Court ruled, moreover, that the Public Prosecutor was not authorized to request the extradition of Captain Saravia. The IACHR considers that this act placed a fundamental obstacle in the way of the investigation.

97. There was an evident lack of diligence and of official will to give impetus to the investigation, as the authorities had sufficient grounds for calling Garay Reyes to testify in relation to the crime from the moment he was arrested and evidence was seized at the "San Luis" farm. Yet Garay's testimony was only ordered seven years later, which resulted in the Supreme Court of Justice alleging that the time elapsed rendered his statement unreliable, and thereby precluded the apprehension and punishment of the persons responsible for this crime.

98. As was indicated by the Truth Commission, the Supreme Court of Justice of El Salvador "played an active role that served to hinder the extradition from the United States and later imprisonment of former Capt. Saravia in El Salvador. Among other things, this provided the planner of the assassination with impunity." The impunity was consolidated on March 31, 1993, when the judge in charge at the Fourth Criminal Court applied the General Amnesty Law and dismissed definitively the case against Captain Alvaro Saravia for the crime of aggravated homicide in the assassination of Monsignor Romero.[FN100]

[FN100] Ruling of the Fourth Criminal Court of San Salvador of March 31, 1993. The judge stated as follows:

The offense in itself, aggravated homicide, is a common crime, but the consequences of that death, no doubt, have left a mark on our society, insofar as the effects and aims derived

therefrom were political, which all Salvadorans have perceived in the course of the armed conflict, thus no one can fail to acknowledge, looking at the current juncture, that with the victim's charisma among broad sectors of society in our country, with whom he had come to identify, indeed he was even called "THE VOICE OF THE VOICELESS," and (in) whom mainly the poor found consolation, which earned him great respect and leadership, within that movement that came about in late 1979 and early 1980, and which was sought to be beheaded with his homicide.

Wanting to fail to acknowledge that the death of Monsignor Oscar Arnulfo Romero had a political aim is to divorce oneself from reality, because it shook up all sectors of national and international life, and in several periods throughout the armed conflict it went beyond the legal sphere into the sphere of politics.

Consistent with the foregoing, the conduct attributed to Captain Alvaro Saravia or Alvaro Rafael Saravia Marino in this crime falls under the conditions of Article 2 and Article 4(c) of the Law on General Amnesty for the Consolidation of Peace, therefore, pursuant to Article 275 Section 5 ff. of the Code of Criminal Procedure in relation to Article 119, Section 2 of the Criminal Code, the charges against Captain Alvaro Saravia or Alvaro Rafael Saravia Marino for the aggravated homicide of Monsignor Oscar Arnulfo Romero are hereby dismissed with prejudice. He shall remain free without any need for bond, as his provisional detention has been revoked.

v. No effective investigation was carried out into Major D'Aubuisson

99. As expressed supra, Major D'Aubuisson took credit in very closed circles for having planned the assassination of the Archbishop of San Salvador[FN101] and was accused by witness Amado Antonio Garay of masterminding that extrajudicial execution. D'Aubuisson was also incriminated by the "Saravia Diary" and other documents found and seized on May 7, 1980.[FN102] Nonetheless, he was not duly investigated nor brought before the judicial organs of El Salvador.

[FN101] Truth Commission Report, p. 135.

[FN102] For example, the "Cuadro General de la Organización de la Lucha Anti-Marxista en El Salvador," supra.

100. This was confirmed 13 years after the execution of Monsignor Romero by the Fourth Criminal Judge, on ruling on the application of the Amnesty Law to Roberto D'Aubuisson and the possible dismissal of charges against him. The Judge considered that charges against D'Aubuisson, now deceased, should not be dismissed for the following reasons:

Procedurally, he was not an accused, and in any event his death, which was public and notorious and need not be proven, extinguishes the criminal action (Article 119 Section 1 of the Criminal Code), thus the Law on General Amnesty for the Consolidation of Peace is not applicable, and so there was no declaration that a criminal complaint be pursued against him by the Legislative Assembly that might give him the status of an accused.[FN103]

[FN103] Ruling of the Fourth Criminal Judge of San Salvador, supra.

101. It has also been seen that the above-noted judicial resolution was confirmed by the First Criminal Chamber on May 13, 1993. The same Chamber declared final the judgment handed down on this motion, as the legal term elapsed without the Office of the Public Prosecutor having filed any motion.[FN104]

[FN104] Certification granted by Mr. Wilfredo Hernández Calderón, Secretary of the First Criminal Chamber of the First Section, Central, San Salvador, Official note N° 304, Saca N° 85, May 25, 1993.

102. Pursuant to the above-cited judicial decisions, any later investigation of the crime was impeded, and the veil of impunity covering and which continues to cover all those who masterminded the crime has been consolidated.

vi. The forced disappearance of eyewitness Pedro N. Martínez was not duly investigated

103. Mr. Pedro N. Martínez disappeared on April 13, 1980, 20 days after having witnessed the summary execution of and taken Monsignor Romero to the hospital. His brother, Mr. Roberto Antonio Martínez, declared that he had received information that some individuals in civilian dress had captured him when he was about to get into his vehicle and placed him in a beige or white minivan. Despite that declaration, the disappearance of the witness was not duly investigated. The whereabouts of Pedro N. Martínez have yet to be determined as of the date of adoption of this report.[FN105]

[FN105] Witness statement by Roberto Antonio Martínez, brother of the disappeared eyewitness, folios 584 ff. of the judicial file.

104 .According to the declarant, after the assassination of Monsignor Romero, his brother had told him he was present at the mass offered by the Archbishop the day of the events analyzed here. In this respect, Roberto Antonio Martínez stated as follows:

That a gunshot had been heard, then Monsignor Romero had fallen and that he had assisted him, to drive him to a health care center, which is true because the photograph of his brother carrying Monsignor Romero when they were taking him to the hospital was published, with no more details noted in this respect. That after his brother was kidnapped, the declarant and his family searched for him in all the security forces, without receiving any information about him; and that they lodged complaints at the National Red Cross and in the Legislative Assembly; that he remembers that Attorney Mauricio Méndez Garay, who has or had his office at Tercera Calle Poniente [Third Street West] and Diecisiete Avenida Norte [17th Avenue North] helped them

move about, looking for him, this attorney even visited several security forces, but no positive results were obtained, such that his brother has yet to appear.[FN106]

[FN106] Id., folio 585 of the judicial file.

105. Despite these declarations, and even though Pedro N. Martínez was a key witness, his disappearance was not duly investigated in relation to the extrajudicial execution of Monsignor Romero.

vii. The search of the Office of Legal Assistance was not duly investigated

106. According to the information received by the IACHR, on July 5, 1980, approximately four months after the assassination of Monsignor Romero, the Office of Legal Assistance in El Salvador was searched. The search was allegedly undertaken by members of the security forces, who took the files in the Monsignor Romero case, including witness statements that implicated the Armed Forces in the assassination, as well as other important evidence. This incident was not duly investigated.[FN107] The IACHR is of the view that this is yet another basis for determining the responsibility of the Salvadoran State in covering up the assassination of Monsignor Romero.

[FN107] See folio 750 of the judicial file.

vii. Neither the threats received by the Archbishop of San Salvador nor the earlier attempt on his life were duly investigated

107. Monsignor Romero was subjected to an insidious press campaign in which he was accused of being a terrorist and a subversive.[FN108] This campaign was stepped up in the weeks prior to his death, along with threats against his life.[FN109] On March 9, 1980, 15 days before his extrajudicial execution, a bomb was found at the Basilica of the Sacred Heart of Jesus (Basílica del Sagrado Corazón de Jesús)[FN110] apparently aimed at causing his death. The explosive device, manufactured with 72 sticks of commercial dynamite camouflaged in a black briefcase, was found behind the pulpit, between the pillars of the High Altar,[FN111] where the Archbishop of San Salvador had officiated mass the previous day in memory of attorney Mario Zamora Rivas, assassinated by the death squads.

[FN108] For example, La Opinión, January 1978, N° 15, published the following headlines on the front page: "Human Rights Commission will investigate Monsignor Romero," "The Danger of Marxist Infiltration in the Church," "There is talk of Christian Charity at the same time as a call to class struggle." La Opinión of April 1978, N° 22, published in large letters the title "Monsignor Romero prepares Terrorist Acts."

[FN109] Monsignor Romero constantly denounced the "institutionality" ("institucionalidad") of the violence and took up the defense of the victims. He attributed this to the closed attitude embraced by the "extremes" in fighting over and defending their ideas. For the Archbishop, and for the Church itself, the conflict had become a fratricidal struggle between the most extreme positions in the country. Oscar A. Romero, interview with the newspaper La Nación of Costa Rica, 1980. This situation began to lead radicalized sectors to desperation, as they began to ask themselves about the opportunity to eliminate Monsignor Romero at an opportune moment. This is indicated by one of the death threats he received from the Unión Guerrera Blanca (White Warriors Union): "You, Monsignor, are at the head, as part of the group of clerics who at any moment will receive some 30 projectiles in the face and chest." (Appendix 3: on death threats to Monsignor Romero). By late 1979, Monsignor Romero knew the imminent danger that stalked him, and often made reference to it: "I have said that the danger for me exists ... but I want to assure you, and I ask for prayers to be faithful to this pledge: that I will not abandon my people, but I will assume, with the people, all the risks that my ministry requires of me...." (See Homily of November 11, 1979, Su Pensamiento VII, p. 431). All this contributed to thinking that his life was in imminent danger; later events confirmed those fears.

[FN110] See folios 456-453; 435-500 of the judicial file.

[FN111] Confidential Official note N° 0125, from Second Lieutenant José Ramón Campos Figueroa to the Chief of the Department of Police Investigations, of March 14, 1986, reporting on the event and on the details of the deactivation of the explosive device (folios 495 ff. of the judicial file).

108. The Explosives and Demolition Unit of the National Police of El Salvador reported that the explosive was no doubt prepared by experts who used highly sophisticated equipment and materials "never before used by subversives." [FN112] In the opinion of the National Police, it was the first such case in El Salvador. Even so, the grave event was not duly investigated.

[FN112] Folio 437 of the judicial file.

109. In addition, as confirmed by the correspondence between the Office of the Public Prosecutor and the Investigative Commission, no judicial proceedings were opened to identify the persons responsible. In effect, on February 12, 1986, six years after the crime, the Executive Unit of that Commission requested the Public Prosecutor of El Salvador to report on whether the institution he headed up had initiated any inquiry into the intended dynamite attack of March 9, 1980. [FN113] The Public Prosecutor answered in the negative and literally reproduced the following report, which one of the prosecutors gave him:

[FN113] Unnumbered official note, folio 449 of the judicial file.

DISTINGUISHED PUBLIC PROSECUTOR OF THE REPUBLIC: --Sincerely and by this means I hereby REPORT: That the Fourth Criminal Court of this city is furthering the

proceedings looking into the death of Monsignor OSCAR ARNULFO ROMERO Y GALDAMEZ, which is now in its investigative phase, in which I intervene as Special Counsel, along with JORGE ALBERTO GOMEZ AND RICARDO MARCIAL ZELAYA LARREYNAGA.-- With respect to the attempted attack of March 9, 1980, at the Church of the Sacred Heart of this city, when Monsignor ROMERO Y GALDAMEZ was to hold mass, no proceeding has been initiated by this institution, nor has any been referred to any auxiliary corps, all of which has been learned by public reputation and from some communications media. (emphasis in the original)

110. This means that six years after the extrajudicial execution, as part of the negligence and cover-up by the State, this attempted dynamite attack had yet to be investigated in connection with the Monsignor Romero case, nor had "any proceedings been initiated" by the Office of the Public Prosecutor to try the persons responsible.

111. In summary, the institutional mechanisms of government in El Salvador did not react by offering due protection to Monsignor Romero, nor by duly investigating the attempted attack in relation to the events that caused his death days later.[FN114]

[FN114] The Office of the Public Prosecutor, for its part, did not carry out its obligation to initiate and give impetus to the criminal action aimed and placing on trial and convicting the persons responsible. One of the witnesses, Father Fabián Conrado Amaya Torres, declared that "Mr. Héctor Dada Irezi had given Monsignor Romero a list in which he was in fourth place for assassination, with his name appearing after that of Mario Zamora," ... "that Mr. Dada warned Monsignor to be careful, which led him to suspend a trip he was going to make to the Republic of Guatemala ... that they also noted that days before Monsignor was assassinated, he tried to distance himself from his friends, perhaps so that nothing would happen to them, and moreover he no longer slept where he had customarily done so...." (Witness statement by Father Fabián Conrado Amaya Torres, folio 592 ff. of the judicial file). Mr. Dada Irezi was at that time a member of the Government Junta.

ix. The assassination attempt against Judge Ramírez Amaya was not duly investigated

112. On March 27, 1980, three days after the execution of the Archbishop of El Salvador, there was an attack on Judge Atilio Ramírez Amaya, the judicial officer investigating the case. That day, his domestic employee, María Hernández, allowed two young persons, unknown to her, into the house; they said they had come on behalf of someone who the judge had supposedly been looking for. The judge, who was suspecting an attack, presented himself to the unknown persons with a shotgun. When one of them pulled out a machine-gun, the judge lifted the shotgun to fire, which he could not do because Mrs. Hernández placed herself between him and the unknown persons. The youths took advantage of the opportunity to flee, but not without first firing several shots, one of which wounded her in the hip.

113. Inspector Francisco Sánchez Escobar, who was in charge of the inquiry into the attack, reported that Judge Ramírez Amaya had stated that he could not suspect anyone in particular, nor

associate it with any accident, "except for persons he knows from his functions, among whom he can mention those charged with the assassination of Monsignor Oscar Arnulfo Romero." [FN115]

[FN115] Communication of March 27, 1980, by Inspector Francisco Sánchez Escobar to the Commander of the Company of Detectives (folio 74 of the judicial file).

114. It should be added that Ramírez Amaya declared that he had begun to receive death threats the day after the assassination of the Archbishop of San Salvador. The judge said that he did not have enemies or political views, and that he considered that the attempts on his life were due to the fact that he was in charge of "the investigations into the case of the savage assassination of Monsignor Romero." [FN116]

[FN116] "Monseñor Oscar Arnulfo Romero, Arzobispo y Mártir, su Muerte y Reacciones," (Monsignor Oscar Arnulfo Romero, Archbishop and Martyr, his Death and Reactions to it), pp. 186-192, folio 223 of the judicial file.

115. Once again, despite the suspicions expressed by Judge Ramírez Amaya, the assassination attempt on his life was not duly investigated in connection with the death of Monsignor Romero. The judge's suspicions were later confirmed in the findings of the Truth Commission Report: "There is sufficient evidence that the failed assassination attempt against Judge Atilio Ramírez Amaya was a deliberate attempt to deter investigation of the case." [FN117]

[FN117] Truth Commission Report, Finding N° 3, p. 138.

116. To illustrate the delay and deficiency in the investigation and the way in which this incident was separated from the death of Monsignor Romero, it should be noted that the judge's domestic employee was not called to testify until two years and eight months after the assassination attempt. At that time, obviously late, an order was given to "examine the blood and condition of the lesions she may have." [FN118] On February 27, 1984, i.e. almost four years after the assassination attempt, the Fourth Criminal Judge voided that summons, considering that the domestic employee had been "wounded in an act that is distinct from that which is being investigated." At the same time, the judge ordered that the proceeding on the respective information be done separately. [FN119]

[FN118] Judicial summons of November 27, 1982, folio 110 of the judicial file.

[FN119] Judicial file, folio 139.

x. The kidnapping and death of Walter Antonio "Musa" Alvarez

117. The IACHR has determined that there is sufficient evidence that Walter Antonio "Musa" Alvarez, together with Captain Saravia, was involved in making the payment to the direct perpetrator of the assassination. Alvarez knew the assassin's identity and could implicate both the assassin and Saravia, among others, in the extrajudicial execution of the Archbishop of San Salvador. Coincidentally, "Musa" Alvarez was kidnapped in September 1981 and found dead shortly thereafter.

118. According to what the petitioners stated in the hearing held at IACHR headquarters during its 105th session, it was "Musa" Alvarez, and not Dr. Regalado, who shot Monsignor Romero. It should be recalled that the Truth Commission considered that the information available to it was not sufficient to determine who was the direct perpetrator of the assassination.

b. Conclusions as to the duty to investigate and punish

119. As has been established, in the instant case the State did not undertake an effective investigation nor did it adopt the necessary measures to bring to trial all of the persons implicated. Nor did it act as was required to duly try the accused. In effect, from the first procedural acts, one could note an official attitude of reluctance to proceed properly in the case of Monsignor Romero. The judicial proceeding was so drawn out that it unfolded from 1980 to 1994. During that time, several Attorneys General of the Republic served in succession and various judges were in charge of the case. The excessively sluggish pace of the proceedings depended on the vicissitudes of politics, which made it ever less likely that an in-depth investigation would be carried out.

120. In this respect, the Truth Commission established that "the investigation to determine who was responsible for the Archbishop's assassination was not only inefficient but also highly controversial and plagued by political motivations." [FN120] One example of such political motivation was the designation of José Francisco Guerrero in June 1984 as Public Prosecutor of El Salvador. Mr. Guerrero was a member of the ARENA party and the personal attorney of Roberto D'Aubuisson before assuming the post. The appointment was made thanks to a coalition of parties in the Legislative Assembly, [FN121] in the face of strong opposition from the elected members of the Christian Democratic party. On May 21, 1985, the new Legislative Assembly dismissed Guerrero "for not meeting the well-known requirements of morality and competence" (the coalition had lost its majority in the previous elections). Guerrero was restored to the post pursuant to a decision by the Supreme Court of Justice that declared that his dismissal had been unconstitutional.

[FN120] Truth Commission Report, "The official investigation", p. 128.

[FN121] Judicial file, folio 753. Guerrero was reinstated as Public Prosecutor in December 1985, after the Supreme Court of Justice determined that his dismissal had been unconstitutional, see folio 743 of the judicial file.

121. The sluggish pace of justice was not spontaneous. In this case it came about as the result of strategic and concerted actions that kept the Supreme Court of Justice, the Office of the Public Prosecutor of the Republic, and the Courts from acting impartially and seeking a fair trial with due process guarantees.

122. Accordingly, 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 judicial protection, set forth at Article 25 of the Convention. The Commission also concludes that the Salvadoran State, by virtue of the conduct of the authorities and institutions identified in this report, is responsible for failing to carry out its duty to investigate seriously and in good faith the violation of rights recognized by the American Convention; to identify the persons responsible for that violation, place them on trial, punish them, and make reparations for the human rights violations; and for failing in its duty to guarantee rights as established in Article 1(1).

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

a. General considerations

123. The States parties to the American Convention have freely assumed the obligation to respect and guarantee all the rights and freedoms protected therein to the persons subject to their jurisdiction and to adapt their legislation so as to make effective the enjoyment and exercise of those rights and freedoms (Articles 1(1) and 2 of the Convention).

124. Some states, seeking mechanisms for peacemaking and national reconciliation, have adopted amnesty laws whose result is to leave without remedies the victims of serious human rights violations by depriving them of the right of access to justice.

125. The compatibility of the amnesty laws with the American Convention has been examined by the IACHR on several occasions in decisions on individual cases.[FN122] The laws examined in those cases provided for impunity for serious human rights violations committed against persons subject to the jurisdiction of the respective State party to the American Convention.

[FN122] IACHR, Reports N° 28/92 (Argentina) and N° 29/92 (Uruguay), Annual Report of the IACHR 1992-93; Reports N° 36/96 (Chile) and N° 34/96 (Chile), Annual Report of the IACHR 1996; Report N° 25/98 (Chile), Annual Report of the IACHR 1997; Report N° 1/99 (El Salvador), Annual Report of the IACHR 1998.

126. The Commission has indicated repeatedly that the application of amnesty laws that impede access to justice in cases of serious human rights violations renders ineffective the obligation of the States parties to the American Convention to respect the rights and freedoms recognized therein, and to guarantee their free and full exercise to all persons subject to their jurisdiction with no discrimination of any kind, as provided in Article 1(1) of the

Convention.[FN123] In effect, the amnesty laws eliminate the most effective measure for the observance of human rights, i.e. the trial and punishment of those responsible for violations of human rights.[FN124]

[FN123] IACHR, Report N° 36/96 (Chile), para. 78; Report N° 34/96 (Chile), para. 76; Report N° 28/92 (Argentina), para. 41; and Report N° 29/92 (Uruguay), para. 51.

[FN124] IACHR, Reports Nos. 28/92 and 29/92, supra.

127. The doctrine and practice of the IACHR in respect of amnesties coincides with the conclusions of the study on impunity prepared by United Nations Special Rapporteur Louis Joinet.[FN125] In his study, submitted to the UN Commission on Human Rights on October 2, 1997, Joinet recommended the adoption of 42 principles aimed at protecting and promoting human rights through actions to combat impunity.[FN126]

[FN125] United Nations, 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. That report was prepared by Louis Joinet, pursuant to Resolution 1996/119 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, of the UN Commission on Human Rights.

[FN126] *Id.*, pp. 13-15.

128. Principle 20 refers to the duty of states in relation to the administration of justice. Joinet stated, in this regard, that impunity arises from the fact that the states do not carry out their duty to investigate these violations and to adopt, particularly in the administration of justice, measures to guarantee that the persons responsible for having committed them be accused, tried, and punished. In addition, impunity arises from the fact that the states do not adopt appropriate measures to provide the victims with effective remedies to make reparation for the damages they have suffered, and to prevent the recurrence of such violations.

129. The Inter-American Court has also laid down a clear doctrine according to which an amnesty law cannot be used to justify the failure to carry out the duty to investigate and to grant access to justice. The Court has stated:

The States cannot, in order to not carry out their international obligations, invoke provisions of their internal law, as is, in this case, the Amnesty Law ... which in the view of this Court hinders the investigation and access to justice. For these reasons, the argument ... that it is impossible for it to carry out that duty to investigate the events that led to this case must be rejected.[FN127]

[FN127] Inter-American Court of Human Rights, Case of Loayza Tamayo, Reparations, Judgment of November 27, 1998, para. 168.

130. Consequently, a state cannot rely on the existence of provisions of internal law to elude carrying out its obligation to investigate human rights violations, place on trial the persons responsible, and prevent impunity. Moreover, the Court has defined impunity as "the failure, taken together, to investigate, prosecute, arrest, try, and convict those responsible for the violations of the rights protected by the American Convention," and has noted that "the State has the obligation to combat that situation by all available legal means, as impunity fosters the chronic repetition of human rights violations and the total defenseless of the victims and their next-of-kin." [FN128]

[FN128] Inter-American Court of Human Rights, Case of Paniagua Morales et al., Judgment of March 8, 1998, para. 173. See also, Case of Loayza Tamayo, supra, para. 170.

131. In its "Report on the Situation of Human Rights in El Salvador," the IACHR referred specifically to the General Amnesty Law applied to the persons allegedly responsible for the assassination of Monsignor Romero. On March 26, 1993, within the term available to President Alfredo Cristiani to veto the recently approved amnesty law, the IACHR conveyed to the Salvadoran Head of State its concern that said law would be an obstacle to carrying out the recommendations of the Truth Commission:

The Legislative Assembly's passage of a General Amnesty Law on March 20, immediately after publication of the Truth Commission Report, 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."

132. In that report, moreover, the IACHR recalled the specific recommendations related to this issue, which had already been made to the State in Report 26/92 ("Las Hojas Massacre").[FN129]

[FN129] IACHR, Report on the Situation of Human Rights in El Salvador, *supra*, pp. 78-79. In the case of the "Las Hojas Massacre," the IACHR referred to the General Amnesty Law approved by the Legislative Assembly of El Salvador on October 27, 1987. Like Decree 486 of 1993, that law had granted a "full and absolute amnesty" to the perpetrators and accomplices of political crimes or common crimes related to political crimes, or common crimes in which no less than 20 persons participated, committed as of October 22, 1987. As the IACHR stated in that report, the law had the effect of eliminating "the possibility of an effective investigation and the prosecution of the responsible parties, as well as proper compensation for the victims and their next-of-kin by reason of the civil liability for the crime committed." IACHR Annual Report 1992-93, Report N° 26/92, Case 10,287, "Las Hojas Massacre," El Salvador, para. 11.

133. Notwithstanding the concern expressed in timely fashion by the IACHR, the Legislative Assembly of El Salvador adopted the General Amnesty Law[FN130] only five days after the Truth Commission Report was issued. That law 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 in which the number of persons involved is no less than twenty."[FN131]

[FN130] Decree N° 486 of March 20, 1993, published in the Diario Oficial N° 56, Volume 318, of March 22, 1993.

[FN131] In addition, that article establishes that the amnesty granted extinguishes civil liability in all cases. Decree 486, Article 1, *supra*, note 26. See also Report N° 1/99, *supra*. The effects of the General Amnesty Law are set forth in its Article 4, which provides that persons convicted should be released immediately. In the case of persons facing trial, the law establishes that the charges were to be dismissed and "in the case of individuals against whom no court proceedings have been conducted, 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 for extinction of criminal action and request dismissal with prejudice."

134. The effect of the amnesty extended, among others, to the crimes of torture and forced disappearance of persons by state agents. These violations have been considered so serious by the international community that they have led to the adoption of special conventions and the inclusion of specific measures to avoid impunity in the case of such crimes, such as universal jurisdiction and imprescriptibility of the cause of action.[FN132]

[FN132] See Article 11 of the Inter-American Convention to Prevent and Punish Torture; Article V of the Inter-American Convention on Forced Disappearance of Persons; and Article 8 of the United Nations Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment.

135. The amnesty extended to the serious violations examined by the Truth Commission, which include this case. In particular, it was applied to Captain Saravia, the only one of the persons responsible against whom a provisional arrest warrant had issued in relation to the death of Monsignor Romero. In the case of Captain Saravia, it has been seen supra that the judge characterized the extrajudicial execution of the Archbishop of San Salvador a political crime, so as to ensure impunity.

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

i. The duty to adopt provisions of internal law (Article 2 of the American Convention) and the right to justice and the nondelegable duty to investigate, judge, and punish (Articles 1(1), 8, and 25 of the American Convention)

136. Article 2 of the American Convention establishes the obligation of the States parties to adopt "such legislative or other measures as may be necessary" to give effect to the rights and freedoms set forth therein. This provision includes a negative obligation: the States are also obliged to refrain from adopting laws that do away with, restrict, or render null and void the rights and freedoms, or the effectiveness thereof, set forth in the American Convention.

137. In this respect, the Inter-American Court has formulated the following interpretation:

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.

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.[FN133]

[FN133] Inter-American Court of Human Rights, Advisory Opinion OC-13/93, paras. 26 and 27.

138. The Court has also established that:

The general duty of Article 2 of the American Convention on Human Rights implies the adoption of measures along two lines: First, suppressing laws and practices of any nature that entail violation of the guarantees provided for in the Convention; and second, adopting laws and developing practices leading to the effective observance of such guarantees.[FN134]

[FN134] Inter-American Court of Human Rights, Case of Castillo Petruzzi et al., Judgment of May 30, 1999, para. 207.

139. As seen supra, the application of the General Amnesty Law to this case resulted in there being no trial or punishment for the only person for whom an arrest warrant was issued, or for any of the other persons accused of participating as direct perpetrators or planners of the extrajudicial execution of Monsignor Romero. From the facts of the case it also appears that the constitutionality of said law was challenged before the Supreme Court of Justice, which threw out the claim without addressing the merits of the case, considering it a "non-justiciable political question." In a previous case, the IACHR laid down its position on the "political question doctrine":

Democratic systems recognize the so-called "delegated powers" of the branches of government that is a product of their classic three-way separation. The appointment and removal of magistrates by the Legislature, under the conditions stipulated in the Constitution, is one of those powers.

Other examples of such powers expressly reserved for a given branch of government under the Constitution are, inter alia, the authority to declare war, ratification of treaties, declaration of a state of siege, recognition of foreign governments or their representative, appointment and removal of ministers and ambassadors, and the authority to declare something to be in the public domain.

The political question doctrine is premised on the existence of those powers of the branches of government. According to that doctrine, the Judiciary will abstain from reviewing certain acts when such a decision presupposes an eminently political judgment that is exclusively reserved for a given branch of government, whether it be the executive or legislative. However, such doctrine also recognizes that those acts can only be judicially reviewed with respect to their extrinsic conformity to the Constitution, that is, if they were passed by the competent body, following constitutional procedure, and without any express violation of some material rule in the Constitution.

(...)

The Commission does not have competence to declare per se that a national law or court ruling is either unconstitutional or unlawful, as it has stated previously. However, it does have a fundamental authority to examine whether the effects of a given measure in any way violate the petitioner's human rights recognized in the American Convention. This practice is consistent with precedents set by the European Commission of Human Rights.[FN135]

[FN135] IACHR, Annual Report 1997, Report N° 30/97 (Case 10,087, Gustavo Carranza), Argentina, paras. 42-44 and 63. In accordance with the jurisprudence of the Commission set forth in that case, where application of the political question doctrine has the effect of impeding a merits decision of a claimed violation of fundamental rights, this could constitute a violation of the right to effective judicial protection guaranteed by the American Convention.

140. In the instant case, the effect of the decision by the Supreme Court of Justice of El Salvador was the consolidation of the impunity which to date has protected the alleged direct perpetrators and planners of the extrajudicial execution of the Archbishop of San Salvador. Therefore, the IACHR concludes that that judicial decision constitutes a violation of Article 25 of the American Convention.

141. The Commission considers, as it stated in its Report 1/99, that the application of the General Amnesty Law of 1993 is incompatible with El Salvador's obligations under the Convention, as it renders ineffective the right to judicial guarantees and judicial protection established at Articles 8(1) and 25 of the American Convention, as well as the general obligation assumed by the state to respect and guarantee the rights established in the Convention.[FN136] Accordingly, the IACHR concludes that the State has violated Articles 2, 8, and 25 of the American convention, in conjunction with Article 1(1) of the Convention.[FN137]

[FN136] IACHR, Report 1/99 supra. In that report, the IACHR concluded that by applying the Amnesty Law (Decree 486), which is the same applied in the instant case, the state had violated, to the detriment of the victims and their next-of-kin, the right to judicial guarantees (Article 8 of the American Convention), effective judicial protection (Article 25 of the Convention), the duty to investigate (Article 1(1) of the Convention), and the right to the truth (Articles 1(1), 8, 25, and 13 of the Convention). Consequently, the IACHR recommended that the state carry out an exhaustive, swift, complete, and impartial judicial investigation of the events alleged and that it judge and punish all persons responsible, despite the amnesty decreed. In addition, the Commission recommended that reparations be made for the consequences of the violation of human rights, and that the victims be paid fair compensation.

[FN137] See IACHR, Annual Report 1996, Report N° 36/96, Chile, para. 53; Annual Report 1997, Report N° 25/98, Chile, paras. 72 to 84.

ii. The right to know the truth

142. The right to know the truth with respect to grave violations of human rights, as well as the right to know the identity of those who participated in them, is a duty that all States Parties to the American Convention must carry out, in respect of both the victims' next-of-kin and society in general. These obligations arise fundamentally from the provisions of Articles 1(1), 8(1), 25, and 13 of the American Convention.[FN138]

[FN138] IACHR, Report N° 1/99, *supra*, para. 147.

143. As has been indicated in this report, Article 1(1) of the American Convention provides that the States Parties undertake to respect the rights enshrined therein, and to guarantee their free and full exercise. This obligation implies, according to the Inter-American Court, the performance of real obligations on the part of the State to provide effective guarantees for such rights.[FN139] As a result, the Salvadoran State has the legal duty to take reasonable measures to prevent human rights violations, investigate with the means at its disposal the violations committed within its jurisdiction, identify the persons responsible, impose the pertinent sanctions on them, and ensure adequate reparation is made to the victim or the victim's next-of-kin.[FN140]

[FN139] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Judgment of July 29, 1988, para. 166, Case of Godínez Cruz, Judgment of January 20, 1989, para. 175. See also IACHR, Annual Report 1998, Report 1/99, para. 148.

[FN140] *Id.*, Case of Velásquez Rodríguez, para. 174. *Id.* Case of Godínez Cruz, para. 184. See also IACHR, Annual Report 1998, Report N° 1/99 (Parada Cea), El Salvador, *id.*, para 148; Annual Report 1997, p. 540, para. 70; Report N° 25/98 (Chile) and Reports Nos. 28/92 (Argentina), pp. 42-53, and 29/92 (Uruguay), pp. 162-174.

144. The American Convention in Article 13 protects, *inter alia*, the right to gain access to and to receive information. The right to the truth is a collective right that enables society to have access to information essential to the development of democracies. At the same time, it is a private right of the next-of-kin of victims that makes possible one form of reparation, especially where amnesty laws are applied. The following excerpt of the *amicus curiae* brief submitted in a case that the IACHR brought before the Inter-American Court are relevant in this regard:

The Right to the Truth is intimately linked to the obligation assumed by the states to ensure performance of the duties stipulated in human rights treaties and the fundamental freedoms to which they have voluntarily submitted. There is no doubt but that the victims' next-of-kin have the right to have any investigation undertaken be exhaustive so that they can learn the truth about the fate of their loved ones and the circumstances they have experienced, as well as the public dissemination of the identity of the persons directly responsible for the human rights violations they have suffered. In addition, the truth is essential for being able to make an adequate assessment of the compensation due in view of the responsibility for human rights violations. Nonetheless, the state's obligation to guarantee the Right to the Truth does not replace nor is it an

alternative to all other obligations it has in the context of its duty to guarantee, to wit, the duty to investigate and impart justice. This duty exists and remains independent of whether the others are carried out.[FN141]

[FN141] Amnesty International, amicus curiae brief submitted to the Inter-American Court of Human Rights in the Case of Benavides Cevallos, Ecuador, December 18, 1997, para. 61, p. 21.

145. Article 25 of the American Convention is also related to the right to the truth. The presence of factual or legal impediments--such as an amnesty law--to relevant information related to the facts and circumstances of the violation of a fundamental right is itself a clear violation of Article 25, to the extent that it impedes access to domestic remedies for the judicial protection of the fundamental rights established in the Convention, the Constitution, and the laws.[FN142]

[FN142] *Id.*, para. 150.

146. In addition to the next-of-kin of the victims directly affected by a human rights violation, the right to be duly informed vests in society at large.[FN143] The IACHR has held before that:

[FN143] Amnesty International, *Peace-Keeping and Human Rights*, AI Doc. IOR 40/01/94, January 1994, p. 38. See also IACHR, Report N° 1/99 *supra*, para. 152.

Independently of the problem of proving guilt, which in every case must be determined individually and with due process guarantees, by a pre-existing court which applies the law in force at the time the crime was committed, one of the first matters that the Commission feels obliged to give its opinion on in this regard is the need to investigate the human rights violations committed prior to the establishment of the democratic government.... Every society has the inalienable right to know the truth about past events, as well as the motives and circumstances in which aberrant crimes came to be committed, in order to prevent repetition of such acts in the future. Moreover, the family members of the victims are entitled to information as to what happened to their relatives.... Such access to the truth presupposes freedom of speech....[FN144]

[FN144] IACHR, Annual Report 1985-86, Chapter III "Areas in which steps need to be taken towards full observance of the human rights set forth in the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights".

147. For its part, the Human Rights Committee of the United Nations has established, on several occasions, and specifically with respect to violations of the right to life, that the victims'

next-of-kin have a right to be compensated for those violations due, among other things, to the fact that they do not know the circumstances of the death and the persons responsible for the crime.[FN145] The UN human rights organs have clarified and insisted that the duty to make reparations for damage is not satisfied merely by offering a sum of money to the victims' next-of-kin. First, an end must be brought to their uncertainty and ignorance, i.e. they must be given the complete and public knowledge of the truth.[FN146]

[FN145] UN Human Rights Committee, Case N° 1,107/1981, Elena Quinteros Almeida and María del Carmen Almeida de Quinteros v. Uruguay; Case Nos. 146/1983 and 148-154/1983, Johan Khemraadi Baboeram et al. v. Suriname; Case 161/1983, Joaquín David Herrera Rubio v. Colombia; and Case 181/1984, A. and H. Sanjuán Arévalo v. Colombia.

[FN146] In this regard, UN Special Rapporteur Louis Joinet prepared a set of general principles under the title “The Right to Know”:

Principle 1. The inalienable right to the truth Every society has the inalienable right to know the truth about past events and about the circumstances and reasons which led, through the consistent pattern of gross violations of human rights, to the perpetration of aberrant crimes. Full and effective exercise of the right to the truth is essential to avoid any recurrence of such acts in the future.

Principle 2. The duty to remember A people’s knowledge of the history of their oppression is part of their heritage and, as such, shall be preserved by appropriate measures in fulfillment of the State’s duty to remember. Such measures shall be aimed at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments.

Principle 3. The victims’ right to know Irrespective of any legal proceedings, the families of the victims shall have the right to know the truth about the fate of their relatives. In cases of enforced disappearance or of abduction of children, this right shall be imprescriptible.

Principle 4. Guarantees to give effect to the right to know To give effect to the right to know, States should take the following measures with a view to establishing extrajudicial commissions of inquiry and ensuring the preservation of, and access to, archives of the reference period.

(...)

United Nations, Question of the impunity of perpetrators of violations of human rights (civil and political rights): final report prepared by Mr. L. Joinet, pursuant to Subcommission resolution 1995/35, 20 June 1996.

148. The right that all persons and society have to know the full, complete, and public truth as to the events transpired, their specific circumstances, and who participated in them is part of the right to reparation for human rights violations, with respect to satisfaction and guarantees of non-repetition. The right of a society to have full knowledge of its past is not only a mode of reparation and clarification of what has happened, but is also aimed at preventing future violations.[FN147]

[FN147] Alejandro González Poblete has written on impunity and the right to know the truth, and arrived at a series of conclusions. These are two of them:

3. Knowledge of the truth is an inalienable right of victims, their next-of-kin, and society. The truth should be known and disseminated by effective means. When human rights violations have become endemic, or massive and habitual for prolonged periods, constituting institutionalized policies of state terrorism, separate investigations of individual cases may not be sufficient for society to have full knowledge of the cruelty and extent of the violations, and consequently give rise to a generalized response of repugnance and condemnation in society. In such situations, or when the judicial investigations have proven ineffective or incomplete, it may be useful to set up truth commissions. Making their crimes public is the sanction most feared by the direct perpetrators and masterminds of grave attacks on human rights.

4. In those exceptional cases in which amnesties cannot be avoided, they cannot exempt liability for grave crimes, in keeping with the general principles of law recognized by the international community. The amnesty can only extinguish criminal liability. The possibility of prosecution for administrative and political liability must always be preserved.

Alejandro González Poblete, *La superación de la impunidad como requisito del Estado de Derecho*, (Overcoming impunity as a requisite of the rule of law) published in "Presente y futuro de los derechos humanos: Ensayos en honor a Fernando Volio Jiménez," Inter-American Institute of Human Rights, 1994, pp. 69-70. (unofficial translation)

149. The IACHR considers that despite the important role the Truth Commission played in establishing the facts related to the most serious violations and for promoting national reconciliation, the functions it performed do not take the place of the judicial process as a method for arriving at the truth. The value of truth commissions is that their creation is not based on the premise that there will be no trial, but on their being seen as a step towards restoring the truth and, in due course, justice.[FN148] The words of former President of the Inter-American Court Pedro Nikken are on point:

[FN148] See, in this regard, Juan Méndez, *Responsabilización por los abusos del pasado*, (Responsibility for the abuses of the past) published in "Presente y futuro de los derechos humanos", *supra*, pp. 75-104. (unofficial translation)

The establishment of a truth commission is a plausible means, within a political negotiation to reach peace in an armed conflict, as a first step and perhaps the most tangible contribution that can be made within that scenario to combat impunity.... [Nonetheless,] the establishment of the truth should not inhibit the judicial organs from judging and punishing the persons responsible, but outside the context of a political negotiation.

Impunity for crimes committed by state agents or under the cover of the state does not entail only the failure to punish the persons responsible for those crimes. An inseparable component of such impunity is the failure to carry out any investigation, the cover-up, and even the falsification of the facts to protect the persons responsible. There is no doubt that the discovery of the Truth, which is the responsibility of independent persons, destroys that element which, while not useful in itself for eradicating impunity, fulfills at least a dual function. First, it is useful for society to learn, objectively, what happened in its midst, which translates into a sort of collective catharsis.

And second, it contributes to creating a collective conscience as to the need to impede the repetition of similar acts and shows those who are capable of doing so that even if they may escape the action of justice, they are not immune from being publicly recognized as the persons responsible for very grave attacks against other human rights. In this regard, even though these do not constitute punitive mechanisms, they may perform a preventive function that is highly useful in a process of building peace and the transition to democracy.[FN149]

[FN149] Pedro Nikken, *op. cit.*, 1998, pp. 167-168.

150. It is clear that truth commissions do not take the place of the non-delegable obligation of the State to investigate the violations committed subject to its jurisdiction, to identify the persons responsible, to impose sanctions on them, and to ensure adequate reparation for the victim,[FN150] all within the imperative need to combat impunity. In the case of El Salvador, the Truth Commission expressly established that its work was not judicial in character,[FN151] as judicial proceedings were reserved for the Salvadoran courts.[FN152] Consequently, the Truth Commission lacked jurisdiction to impose sanctions or order the payment of compensation in relation to the facts investigated and established in its Report.

[FN150] Inter-American Court of Human Rights, *Case of Velásquez Rodríguez*, Judgment of July 29, 1988, para. 174.

[FN151] The Truth Commission Report indicates: "the Commission thought it important that the parties had emphasized that 'the Commission shall not function in the manner of a judicial body'" (Methodology, p. 22). In other words, not only did the parties not establish a court or tribunal, but they made it very clear that the Commission should not function as a jurisdictional organ.

[FN152] See Annex to the Mexico Agreements, April 27, 1991. In this annex, the parties recognize the need to "clear up without delay those exceptionally important acts of violence" and agree to do it "through a procedure which is both reliable and expeditious and may yield results in the short term, without prejudice to the obligations on the Salvadoran courts to solve such cases and impose the appropriate penalties on the culprits."

151. In consideration of the foregoing, the IACHR concludes that the application of the General Amnesty Law in the instant case eliminated the possibility of undertaking judicial investigations aimed at determining the responsibility of all those involved. In addition, that decision violated the right of the victim's relatives and of society at large to know the truth about the events in question.

VI. ACTIONS TAKEN AFTER REPORT N° 138/99

152. The Commission adopted Report N° 138/99 in this case pursuant to Article 50 of the American Convention, transmitted it to the Salvadoran State on January 4, 2000 and established a period of two months for compliance with its recommendations. On March 2, 2000, the State sent a communication to the IACHR indicating that it was "studying the report and preparing the proper and complete response to the denounced situation". The State's communication added:

Considering that the Honorable Commission only granted my Government a period of two months starting on January 4, instead of three months as provided for in Article 51 of the American Convention on Human Rights and Article 47(2) of the Commission's Regulations, in connection with Article 23 of its Statute, the State of El Salvador kindly requests that the legal three-month period be completed, starting on January 4, 2000.

The State of El Salvador wishes to highlight its preoccupation because in Case 10.488 P. Ignacio Ellacuría and others – El Salvador, [FN153] as well as in the instant case, the restriction of legal periods has been coinciding with events of an internal political nature in El Salvador. In the first case, the report coincided with the anniversary of the death of the Jesuit Priests and in this second case with the twentieth anniversary of the death of Monsignor Romero and with the upcoming elections for Mayors and Representatives, which shall take place precisely this March.[FN154]

[FN153] On November 16, 1989, members of the Armed Forces of El Salvador executed six Jesuit priests, Ms. Elba Julia Ramos and her daughter Celina Mariceth Ramos, a minor; the IACHR published the report on that case on December 22, 1999. See IACHR, Report N° 136/99 (Case N° 10.488 – Ignacio Ellacuría, S.J. and others), El Salvador, December 22 1999, paras. 241 to 245.

[FN154] The municipal and parliamentary elections took place on March 12, 2000. Report 31/00 regarding this case, approved pursuant to Article 51 of the American Convention, was forwarded to the State and to the petitioners, on a confidential basis, on March 13, 2000.

Finally, it is necessary to point out the need to recognize the effort carried out by the Salvadoran society as a whole to consolidate the peace process and to achieve national reconciliation, as well as to continue advancing in the path of democracy and respect for human values.

153. First of all, the political and electoral considerations raised by the Salvadoran State are notoriously out of the IACHR's purview, so there shall be no further comment on these matters. On the other hand, the State request "that the legal three-month period be completed" is based on an imprecision which must be clarified. Article 50 of the American Convention does not establish expressly a period for compliance with the recommendations in the respective report. The three months mentioned in Article 51(1) of the American Convention are the deadline for submitting a case to the Inter-American Court, which is the basis for the IACHR's practice of establishing a more brief period before issuing its final report.[FN155] This practice is also based on the interpretation of the aforementioned Articles by the Inter-American Court:

[FN155] In the interest of more clearly defining procedural stages, the Commission has included in recent merits reports on cases, a chapter that reflects the actions that took place after the Article 50 report, as well as a final chapter under the title "Publication" which lays out the proceedings that were carried out in this stage. The instant report follows such practice of the

Commission. See also, IACHR 1998 Annual Report, Chapter III.E (Merits reports on individual cases).

A second stage is regulated by Article 51. If within the period of three months, the State to which the preliminary report was sent has not resolved the matter by responding to the proposal formulated therein, the Commission is empowered, within that period, to decide whether to submit the case to the Court by means of the respective application or to continue to examine the matter...

The three months are counted from the date of transmittal of the Article 50 report to the State concerned, and the Court has clarified that the time limit, though not fatal, has a preclusive character, except in special circumstances, with regard to the submission of the case to this Court, independent of that which the Commission gives the State to fulfill its first recommendations.[FN156] (emphasis added)

[FN156] I-A Court, Advisory Opinion OC-13 of July 16 1993, "Certain attributes of the Inter-American Commission on Human rights (Arts. 41, 42, 46, 47, 50 and 51 of the American Convention on Human Rights)" requested by the Governments of the Republic of Argentina and the Oriental Republic of Uruguay, paras. 50 y 51.

154. The Inter-American Court has clearly established that the above mentioned Articles pertain to two different reports. Also, the text of Advisory Opinion OC-13/93 determines that the deadline for the State to submit information on the measures adopted in compliance with the preliminary Article 50 report is different from the one provided for under Article 51; the latter is the deadline for the IACHR or the State to send the case to that tribunal. The Commission established the period in its Report 138/99 under this legal framework and in accordance with the procedural practice set forth supra, and therefore the reference of the Salvadoran State to an alleged "restriction of legal periods" is groundless.

155. Finally, the Commission would like to recall that it has indeed addressed the importance of peace not only in El Salvador, but in every State that suffers the consequences of armed violence.[FN157] It must also be completely clear that the instant report pertains to an individual case which has been processed and decided pursuant to the American Convention and the Commission's Regulations. The considerations of a general nature on the situation of a given State may in no way be used to prevent a decision on an individual case by the IACHR.

[FN157] At the end of the internal armed conflict in El Salvador, the Commission stated: As has been said so many times before, peace is much more than the absence of war. With the signing of the Chapultepec Agreements and their slow but steady implementation, El Salvador has taken a major step toward peace and has overcome the most pressing obstacles; it has put an end to the armed conflict which has sapped the country for twelve long years. Today, the entire Salvadoran population is playing a role in its institutional recovery. For this reason, in

furtherance of its functions and authorities, the Inter-American Commission on Human Rights continues to monitor closely the evolution of the situation and will promote respect for human rights, its paramount mission under the American Convention.

(...)

Even though, as noted, there have been obstacles to the complete fulfillment of the Peace Agreements, considerable progress has been achieved and deserves to be applauded as a model of commitment and to encourage the pursuit of genuine democracy in El Salvador.

It is the Commission's desire that the present attitude of cooperation on the part of the Government of El Salvador will enable the many individual cases that the Commission is now processing to be concluded swiftly, through the administration of justice and the implementation of the necessary corrective measures in respect of all those events denounced during the period of conflict..

IACHR 1992-1993 Annual Report, OEA/Ser.L/V/II.83 doc. 14, March 12 1993, pp. 182, 183, 187 and 188. The Commission made similar considerations in its Report on the situation of human rights in El Salvador, cited supra, in which it also established the incompatibility of that country's Amnesty Law with the international obligations freely assumed when ratifying the American Convention. More recently, the IAHCR has addressed the importance of peace negotiations in its reports on the situation of human rights in Mexico (1998) and Colombia (1999).

156. The preceding considerations are especially relevant in the instant case, where the responsibility of El Salvador has been established in the violation of the right to life of Monsignor Romero, followed by denial of justice which remains uninterrupted after almost twenty years. Also, it has been some five years since the proceedings in this case were initiated by the Commission, a period during which the Salvadoran State has maintained an almost absolute procedural silence, and waived tacitly its right to contest the allegations of fact and law presented by the petitioners. As was mentioned supra, when the State requested an extension it did not offer any new elements regarding this case, nor did it provide information concerning its adoption of measures with a view to complying with the recommendations in Report N° 138/99. Therefore, the Commission decided not to grant the request for an extension and to approve this report under Article 51 of the American Convention.

VII. CONCLUSIONS

157. The IACHR concludes that the State has violated the right to life enshrined in Article 4 of the American Convention to the detriment of the Archbishop of San Salvador, Monsignor Arnulfo Romero y Galdámez. In addition, by virtue of the unlawful action of its organs for the administration of justice, the State has failed in its duty to diligently and effectively investigate the violations alleged, and in its duty to try and punish those responsible through an impartial and objective process, as required by the American Convention. All this affected the integrity of the judicial process and entailed a manipulation of justice, with an evident abuse of power. The result is that these crimes remain in impunity to this day, a clear denial of justice. The State has also violated, to the detriment of the victim's relatives, the rights to judicial guarantees and to effective judicial protection established at Articles 1(1), 8(1), and 25 of the Convention.

158. In adopting the General Amnesty Law, the State has violated Article 2 of the American Convention. In addition, by applying it to this case, the State has violated the right to justice and its duty to investigate, try, and make reparations, established in Articles 1(1), 8(1), and 25 of the American Convention, to the detriment of Monsignor Romero's next-of-kin, the members of the religious community to which he belonged[FN158] and Salvadoran society as a whole.

[FN158] In previous cases, the IACHR has ruled on the effect that the harassment of religious leaders has on their communities. See, in that regard, IACHR, Annual Report 1996, Report N° 31/96 (Case 10.526 - Dianna Ortiz), Guatemala, paras. 118 y 119; Annual Report 1998, Report N° 49/99 (Case 11.610 – Loren L. Riebe et. al.), Mexico, paras. 98 to 105; and Annual Report 1999, Report N° 136/99 (Case 10.488 – Ignacio Ellacuría, S.J. et al), paras. 232, 239 and 240.

VIII. RECOMMENDATIONS

159. Based on the analysis and conclusions of this report, the IACHR recommends to the Salvadoran State that it:

1. Undertake expeditiously a complete, impartial, and effective judicial investigation to identify, try and punish all the direct perpetrators and planners of the violations established in this report, notwithstanding the amnesty that has been decreed.
2. Make reparations for all the consequences of the violations set forth, including the payment of just compensation.
3. Adapt its internal legislation to the American Convention with a view to nullifying the General Amnesty Law.

IX. PUBLICATION

160. On March 13, 2000, the Commission sent Report N° 31/00--the text of which is above--to the State and to the petitioners, in keeping with Article 51(2) of the American Convention; and it set a deadline of one month for the State to comply with the foregoing recommendations.[FN159] On April 13, 2000, the State sent the IACHR a letter in which it set forth its opinion on the commemoration of Monsignor Romero's assassination, and the impact of this crime on Salvadoran society. [FN160] The State also expressed several considerations on the importance of the peace process in El Salvador, and it explained its interpretation of the General Amnesty Law in the context of that country's constitutional law, as well as its interpretation of norms of international law, many of which have been analyzed and applied by the Commission in the pertinent sections of this report.

[FN159] Report 31/00 was reproduced partially in the media, without authorization from the IACHR. This was deplored by the Commission in its Press Release N° 4/00 of March 30, 2000.

[FN160] The State said, inter alia:

The twentieth anniversary of the death of Monsignor Romero was celebrated in March and coincided with the approval of the aforementioned report by the Commission. His death sparks

profound national sensibility and, no matter how special it may be, it is but one of thousands of cases of Salvadorans of different conditions who perished violently during the generalized crisis suffered by El Salvador, as a consequence of the painful armed conflict which lasted twelve years and brought about extreme violence, political and ideological extremism, destruction and death, which affected the most elemental rights of the Salvadoran people and turned our country into a hot spot of Cold War tension. This convulated stage was ended by the will of the Salvadorans, by virtue of the signing of the Peace Accords on January 16, 1992, which finalized the fratricidal internal conflict that had affected and polarized Salvadoran society.

161. In accordance with Article 51(2), the Commission, in this phase of the process, shall confine itself to assessing the measures taken by the Salvadoran State to comply with the recommendations and to remedy the situation under review. Therefore, the Commission will proceed to consider the following information sent by the State which is relevant to the recommendations set forth in Report 31/00:

As to the first of the recommendations, the case was investigated and processed in accordance with the Criminal and Procedural Legislation of 1974, which was in force until April 19, 1998. On April 20 of that year new criminal, procedural and penitentiary laws were passed, which put in place deep changes by virtue of a “mixed system” leaning more on the role of the accusation. The preceding information shows that there is a legal impossibility for compliance, in the terms expressed by the Commission, since the lamentable event took place 20 years ago, and the statute of limitations precludes criminal prosecution.

The basis for assigning responsibility is the Truth Commission, which limited itself to establishing considerations on the participation of other people in the events, but by its own nature it did not mention the sources of investigation that led them to such conclusions, and which may have provided grounds for proceeding against those whom it did mention.

The Truth Commission report is not a juridical document which may be utilized as evidence, since that was not its function, but rather to provide examples of violent situations which happened in the country, as a way of avoiding the repetition of such situations in the future.

A small extract of that report’s epilogue follows: “One way or another, blame for this can be attributed to a complex web of events in El Salvador’s history and to unique circumstances in world history, so that it would be unfair to assign it to a particular individual, organization or party”.

Regarding the second and third recommendations, there does not seem to be an adequate comprehension of the grounds and motives which were present in El Salvador, where the will of a society traumatized by a conflict that had recently ended, was to follow the pacifist initiatives in place and to reach national reconciliation. In this sense, the Amnesty Law of 1993 is not only based on the Law, but it is the response which was needed by a part of the national population. (sic)

162. The Commission considers it appropriate to recall what it expressed previously on the importance of peace,[FN161] which must be built on the basis of justice, the investigation of human rights violations and the punishment of those responsible. The preceding information shows that the Salvadoran State has not adopted the necessary measures to comply with the recommendations issued in this report. It must be noted also that the Salvadoran State did not exercise its right to present observations on Report N° 138/99 on the merits, adopted under Article 50 of the American Convention; nor did it respond to the repeated requests for information made to it by the Commission during the processing of the instant case.[FN162]

[FN161] See paragraph 155 supra.

[FN162] See paragraphs 152 and 156 supra.

163. Accordingly, and pursuant to Articles 51(3) of the American Convention and 48 of the IACHR Regulations, the Commission decides: to reiterate the conclusions and recommendations contained in Chapters VII and VIII supra; to publish this report; and to include it in the IACHR's Annual Report to the General Assembly of the OAS. Pursuant to the provisions contained in the instruments governing its mandate, the Commission will continue to evaluate the measures taken by the State of El Salvador with respect to those three recommendations, until the State has fully complied with them.

Approved by the Inter-American Commission on Human Rights on April 13, 2000. (Signed): Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Juan E. Méndez, Second Vice-Chairman; Marta Altolaguirre, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo, Commissioners.