

WorldCourts™

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 53/01; Case 11.565
Session:	Hundred and Eleventh Special Session (3 – 6 April 2001)
Title/Style of Cause:	Ana, Beatriz and Celia Gonzalez Perez v. Mexico
Doc. Type:	Report
Decided by:	Chairman: Claudio Grossman; First Vice-Chairman: Juan E. Mendez; Second Vice-Chairman: Marta Altolaguirre; Commissioners: Helio Bicudo, Robert Goldman, Peter Laurie, Julio Prado Vallejo.
Dated:	4 April 2001
Citation:	Gonzalez Perez v. Mexico, Case 11.565, Inter-Am. C.H.R., Report No. 53/01, OEA/Ser.L/V/II.111, doc. 20, rev. (2000).
Represented by:	APPLICANT: Center for Justice and International Law
Editor's Note:	The title of the case has a footnote with the following text: "Fictitious names. The real identities of the sisters and their relatives are withheld at the express request of the petitioners and in keeping with the practice of the Commission when dealing with denounced acts such as are characterized in this case which, when published, could affect a person's privacy. (See, for example, the IACHR 1996 Annual Report, Report N° 38/96, Case 10.506–X and Y, Argentina, pages 52 to 78). Moreover, one of the alleged victims was a minor at the time the violation allegedly occurred. In their note of May 2, 1999, the petitioners stated the following: After lodging the petitions, the victims suffered reprisals from the community where they lived, as a result of which they had to move away from their village of origin and two of them changed their names. For those reasons, we, the petitioners, have left out the names of the injured parties and respectfully request the honorable Commission in future to keep the names of the victims secret. The Mexican State knows the identity of the victims. This information appears in the report that opened Case 11.565, the pertinent parts of which were transmitted to the State on January 18, 1996, and in the petition lodged on June 30, 1994 with the Office of the Attorney General of Mexico in San Cristóbal de las Casas, Chiapas."
Terms of Use:	Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. SUMMARY

1. On January 16, 1996, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the IACHR") received a petition filed by the Center for Justice and International Law (CEJIL, hereinafter "the petitioners"). The petition alleges the international responsibility of the United Mexican States (hereinafter "the State") for the illegal

detention, rape, and torture of the Tzeltal native sisters Ana, Beatriz, and Celia González Pérez, as well as the subsequent failure to investigate and provide redress for those acts. The petitioners allege violation of several rights enshrined in the American Convention on Human Rights (hereinafter the "American Convention"): right to humane treatment (Article 5); right to personal liberty (Article 7); right to a fair trial (Article 8); right to privacy (Article 11); rights of the child (Article 19); and right to judicial protection (Article 25).

2. According to the petition, on June 4, 1994 a group of military personnel detained in the state of Chiapas, Mexico, the sisters Ana, Beatriz, and Celia González Pérez and their mother Delia Pérez de González, in order to interrogate them; the four women were held for approximately two hours. The petitioners allege that the three sisters were separated from their mother, beaten, and raped several times by the military personnel; that on June 30, 1994 a petition was filed with the Federal Public Prosecutor's Office (Office of the Attorney General of the Republic or "PGR") based on a gynecological examination; that same examination was corroborated before the said institution by the testimony of Ana and Beatriz, the two older sisters; that the record was transferred to the Office of the Public Prosecutor for Military Justice in September 1994; and that the latter decided finally to close the record for failure of the sisters to come forward to testify again and to undergo an expert gynecological examination. The petitioners assert that the State failed in its duty to investigate the facts denounced, punish those responsible, and provide redress for the violations.

3. For its part, the Mexican State contends that the competent authorities carried out a serious investigation, although domestic remedies were not exhausted; that the representatives of the González Pérez sisters did not show sufficient interest in the case; consequently, the military investigation could not be reopened; and that human rights were not violated.

4. In this report, the IACHR analyzes the merits of the case reported and concludes that the Mexican State is responsible for violation of the rights enshrined in the American Convention: right to humane treatment and to privacy (Articles 5 and 11); right to personal liberty (Article 7); right to a fair trial and judicial protection (Articles 8 and 25); and in the case of Celia González Pérez, rights of the child (Article 19); all in keeping with the general obligation to respect and guarantee rights, provided for in Article 1(1) of this international instrument. The Inter-American Commission also establishes that the Mexican State is responsible for violation of Article 8 of the Inter-American Convention to Prevent and Punish Torture.

5. As a result of the violations established, the IACHR is recommending that the State conduct a serious, impartial, and exhaustive investigation to determine the criminal liability of those responsible for the violations mentioned and that it impose, as necessary, the appropriate legal sanctions on the guilty parties. It further recommends that Mexico provide adequate compensation to Ana, Beatriz, and Celia González Pérez for the infractions committed.

II. PROCESSING BY THE COMMISSION

6. The Inter-American Commission assigned the number 11.565 to the case and requested information from the Mexican State on the pertinent parts of the petition on January 18, 1996. Following an extension granted by the Commission to Mexico, the latter provided a response on

May 13, 1996, which was forwarded to the petitioners on May 24, 1996. The comments of the petitioners were transmitted to the Mexican State on September 10, 1996. On October 24, 1996, the State sent its comments to the Commission, which forwarded them to the petitioners.

7. The IACHR requested updated information from the petitioners on the case on November 13, 1998 and, in the absence of a reply, repeated the request on March 19, 1999. The petitioners submitted information on the case on May 27, 1999, the Mexican State doing likewise on July 14, 1999. Finally, the petitioners submitted additional comments on September 7, 1999.

8. On October 4, 1999, a working meeting was held to address this case at the headquarters of the Commission and was attended by the petitioners and representatives of the State. At the meeting, the Commission received updated information on the positions of the parties with regard to the admissibility and merits of the petition.

9. During its 105th session, the Inter-American Commission reviewed the case and declared it admissible in its report N° 129/99 of November 19, 1999.[FN2] In that report, the IACHR decided to make itself available to the parties with a view to reaching a friendly settlement. On December 20, 1999, the State submitted correspondence in which it stated that it could not accept the offer of the Inter-American Commission due to the circumstances surrounding the case.[FN3] In correspondence addressed to the IACHR of March 2, 2000, the petitioners signaled their willingness to discuss a friendly settlement of the case, based on the evidence presented in PGR Preliminary Investigation N° 64/94. The State did not change its position on the matter.

[FN2] IACHR, 1999 Annual Report, Report N° 129/99, pages 268 to 280.

[FN3] In that correspondence, the Mexican State reiterated its position during processing of the case by stating:

Due to the lack of cooperation on the part of the alleged victims, as well as their legal representatives, which would allow the steps required under the law to be taken to prove the commission of sexual offenses, on February 7, 1996, the competent authorities closed the file, with the legal confidentiality, related to investigation A.5.F.T.A/03/94/94-E.

Since it was not possible to continue the appropriate investigations, these authorities could not make a decision regarding the classification of criminal evidence and, consequently, the existence of probable responsibility on the part of the military. To date, the situation has remained unchanged.

In light of the foregoing, the Mexico Government cannot agree to institute proceedings that would involve negotiating or agreeing to recognize illegal acts that have not been substantiated, and the resulting fictitious determination of criminal liability...

III. POSITIONS OF THE PARTIES

10. The Inter-American Commission in its report N° 129/99 analyzed the arguments of the parties pertaining to the requirements set forth in Articles 46 and 47 of the American

Convention. The allegations pertaining to the merits of the issue are summarized below, and will be expanded in the analysis of this case.

A. The petitioners

11. The petitioners alleged that on June 4, 1994, at approximately 2:30 p.m., members of the Mexican Federal Army arbitrarily detained Mrs. Delia Pérez de González and her daughters Ana, Beatriz, and Celia, and interrogated them in order to make them confess to membership in the Zapatista National Liberation Army – EZLN (Ejército Zapatista de Liberación Nacional).[FN4] They claim that facts were duly reported with strong supporting evidence to the authorities in Mexico but that the transfer of competency to the Office of the Public Prosecutor for Military Justice and its lack of willingness resulted in the failure to investigate the violations, the result being that, to date, those responsible have gotten off scot-free.

[FN4] An armed dissident group that led a rebellion in Chiapas in 1994. The “Law for Dialogue, Conciliation and Fitting Peace in Chiapas”, which entered into force on March 11, 1995, defines the EZLN as a “group of people who identify themselves as an organization of mostly indigenous Mexican citizens, who, for various reasons, chose to rebel and became involved in an armed conflict that started on January 1, 1994”. As of the date of approval of this report, the conflict continues and the negotiations for reaching peace in Chiapas remain unconcluded.

B. The State

12. The Mexican State indicates that it has not been able to verify fully the claims of the petitioners, due to the lack of cooperation on the part of the victims. It alleges that the investigation was closed because the González Pérez sisters refused to appear in the Office of the Public Prosecutor for Military Justice to submit their evidence and to undergo another gynecological examination. As a result, it maintains that the Mexican State did not engage in any human rights violations whatsoever and asks the Inter-American Commission to reject the petition.

IV. ANALYSIS

A. Right to personal liberty (Article 7 of the American Convention)

13. Article 7(1) of the American Convention guarantees every person the right to personal liberty and security. The petition alleges that on June 4, 1994, the sisters Ana, Beatriz, and Celia González Pérez, and their mother Delia Pérez de González were “illegally detained by members of the Mexican Federal Army” at the military checkpoint located on the road to the Jalisco communal lands, Altamirano municipality in Chiapas State, at approximately 2:30 p.m., as they were returning from a neighboring town to which they had gone to sell their agricultural produce.[FN5]

[FN5] Correspondence from the petitioners dated January 16, 1996, page 1.

14. They add that at the time of their detention, “the military personnel started to harass and torture them to make them confess their membership in the EZLN ... since they belong to the Tzeltal ethnic group their knowledge of Spanish is very limited, owing to which they could not respond to the questions that were put to them.”[FN6] According to the report, the military officers separated the sisters from their mother at that time and led them to a wooden room when the interrogation allegedly continued.

[FN6] Idem

15. The petitioners maintain that the threats continued in that room, with the participation of a high-ranking officer, who had ordered other soldiers to enter and hold the women. The petition states that the three sisters were then repeatedly raped by the military officers there, until 4:30 p.m. After this, the mother was allowed to enter the room and the official, with the assistance of an interpreter, “threatened the victims and stated that if they reported the incident, they would be detained again and imprisoned at Cerro Hueco or even killed.”[FN7]

[FN7] Idem, page 2.

16. An account of the incident that took place on June 4, 1994 is provided in the report filed by the victims and their representatives with the Office of the Attorney General in San Cristóbal de las Casas, Chiapas, on August 30, 1994. That report, which opened preliminary investigation 64/94, contains the fingerprints of the three González Pérez sisters and the written account that was prepared with the assistance of translators. In the document, which has been in the possession of the Mexican authorities since August 30, 1994, the persons filing the report state:

As we passed through the checkpoint, [the soldiers] started to harass us, stating that we had to be checked. We therefore returned and tried to pass through the other checkpoint located at the entrance to the road leading to the Jalisco communal lands. I did not want them to check me, because I was afraid that they would take away the money that we had made and would harass us by checking our bodies. I did not like this and am bothered by the way they touch us to see what we have in our clothing. The soldiers at the other checkpoint did not let us pass either, and began to ask us our names and where we were going, and stated that we could not pass. They took us from there to the other checkpoint, the first one, where they ordered us to sit, but our mother began to cry and we were separated. One of the soldiers said that we had to speak to a Sergeant and separated us.

At the checkpoint, the Sergeant told us that we had to await the arrival of the Commander who would speak to us, and told us also that we should not be worried. While the Sergeant was speaking by radio to the Commander, some of the other soldiers who were there asked us if we

were single women, and when we said that we were, they told us that that was good, since we had to spend the night with them.

About ten soldiers then grabbed us and carried us away by force, dragging and shoving us, and shouting things at us that we could not understand. They then put us in a house by ourselves and our mother stayed outside. There were only children and one indigenous man there, dressed white, wearing a shirt with patches and a hat, who seemed to be looking for his horse.

The house where they put us had only one wooden room, was windowless, had an unpainted door, a sheet metal roof, an earth floor, was fairly small, and had an outdoor kitchen. Inside, there was a bed and hoes, sticks, pickaxes, machetes, and an ax.[FN8]

[FN8] Statement provided by Ana González Pérez, confirmation of the complaint filed with the Office of the Attorney General of the Republic on August 30, 1994, paras. 6-11. PGR Preliminary investigation N° 64/94.

17. The report goes on to describe in detail the abuse suffered by the sisters. In addition, it describes the interrogation during which they were accused of being members of EZLN, to which they responded that they knew nothing of the accusations, that they were not zapatistas, and that they did not have weapons. They added that when they stated this, the soldiers became more enraged, and that they could not see their mother during the entire time that were interrogated and abused. They could not tell how long the incident lasted, but they stated: “when we entered the house it was daylight, and when we left it was about 6:30 in the evening, since the sun was setting.” They end this part of the report to the PGR by stating that they finally managed to leave the place where they had been detained and abused, walking slowly because they had been beaten, and reached their community at 7:30 p.m.

18. The State argues that the Armed Forces were performing public safety activities in Chiapas, in accordance with Mexican domestic law:

The Constitution of the United Mexican States clearly stipulates that it is the responsibility of the Armed Forces to guarantee the domestic safety and external defense of the Federation, and that these forces cannot limit themselves solely and exclusively to their barracks and that they can take action in any place and at any time, in times of both war and peace.

The Organic Law of the Mexican Army and Air Force provides a more detailed description of their general mission, which is to: “I. Defend the integrity, independence, and sovereignty of the nation; II. Guarantee domestic security; III. Assist the civil population when such assistance is needed; IV. Engage in civic and social activities that are aimed at the progress of the country; and V. In the event of disaster, provide assistance in the area of law and order, assistance to persons and their property, and with the rebuilding of the areas affected.” (emphasis in the original).

Based on these guidelines, the military officers were performing a service outside their barracks aimed at the protection of the civilian population, the human rights of whom were seriously affected by a group that violates the law, and in support of the civilian authority of Chiapas State, since their efforts to reestablish rule of law were being thwarted by this group.

The military officers were performing a service on that day related to the CHECKPOINTS; consequently, they were on duty and never left the location, since the place where the alleged victims were taken for interrogation was within the radius of the area assigned for the performance of their activities. (Upper case in the original)[FN9]

[FN9] Communication of October 24, 1996 from the State, page 14.

19. The State also cites a part of the proceedings for unconstitutionality (I/96) instituted by the members of the LVI Legislature against Article 12(III and IV) of the "General Law Establishing the Coordination Bases of the Public Security system." [FN10] In these proceedings, the federal legislators argued that the Army, Navy, and Air Force of Mexico had usurped the security functions assigned solely to the civil authorities. The Mexican Supreme Court decided to declare these proceedings lawful but unfounded; consequently, the legal provisions challenged were constitutional. The Mexican Supreme Court maintained, inter alia, that:

[FN10] The aforementioned provision of the General Law states that the coordination bases of the National Public Security System are the following:

Article 12: The National Council shall be the senior coordinating entity of the national system and shall be made up of:

The Secretary of Government, who shall serve as chair;

II. The State Governors;

III. The Secretary of National Defense;

IV. The Secretary of the Navy;

V. The Secretary of Communications and Transportation;

VI. The Attorney General of the Republic;

VII. The head of the Federal District Government; and

VIII. The Executive Secretary of the National Public Security System.

The law is the expression of the will of the people and military officers do not have to take any action in their regard unless they are so requested, ordered, or authorized by the civil authorities, in all matters that are not directly related to their duty to obey, the basic law to which they are bound. (sic)

The possibility of the provision of assistance and support by the Army to the civil authorities has been noted, as long as it is recognized that the military is, in all situations, subject to the civil authority, and can act when the legitimate authority seeks its assistance.[FN11]

[FN11] Idem, page 16.

20. In that decision, the Supreme Court confirms that "the Armed Forces have the authority to act, following the orders of the President, under his strictest responsibility," in situations that are not "dire cases of intrusion, serious law and order disturbances, or any other situation that places a society in serious danger or conflict," but which create the concern that, without the immediate intervention of the Armed Forces, such situations can become very dire. The Supreme Court expressed its opinion as follows:

Great care must be exercised to safeguard individual guarantees by ensuring, through close monitoring, even through the appropriate entities, that actions are taken in accordance with the procedures outlined. For the population, the suspension of guarantees can lead to the undermining of the inestimable values of life and liberty, which is clearly not in the interest of the community, and to justification of intervention by the Armed Forces, the purpose of which is to provide service. Consequently, an effort should be made to avoid that extreme situation and to promote measures that make it possible to overcome the situation, even with the assistance of the Armed Forces, but based on absolute respect for individual guarantees and subordination to the civil authorities.[FN12]

[FN12] Idem, pages 18 and 19.

21. The State adds that "the intention of the petitioners to mislead the Commission is totally and manifestly clear." It further provides several statements regarding the conduct of the members of the Armed Forces in the area.[FN13] Based on the foregoing, the State maintains its position that no infraction took place in this case.[FN14]

[FN13] The information submitted by that State includes the statements provided by persons living in the area where the events occurred, one of whom stated:

Since the time that the military officers came here, they have gotten along well with the people. I have never witnessed any problem between the people here and the military. The military officers only ask people to show identification and check their bags. I have never heard any rumor that the military officers who are at the checkpoint close to my house have taken advantage of women...

I have never seen the soldiers hit young girls, since such conduct would have been reported to the authorities. I have never been coached by anyone to make this statement, nor have I been threatened. No one has given me money to provide this statement and on that day no drinking was taking place... [sic].

Idem, page 4.

[FN14] The State maintains that:

It is incomprehensible that accusations would be leveled against institutions that are in good standing and enjoy a good reputation such as the Mexican Army, without any evidence other than rumors that merely create insecurity from a legal standpoint and are a most shameful attack against the institutions responsible for National Security, which were moved to the conflict zone for the sole purpose of fulfilling their duty, that is, their constitutional mission of protecting the internal security of the Nation, within a system based on the rule of law and respect for human rights as exists in Mexico.

22. It is the responsibility of the IACHR to analyze whether the deprivation of the liberty of the three González Pérez sisters and their mother, which took place in Chiapas on June 4, 1994, under the circumstances described above, constituted a violation of the right to personal liberty guaranteed in the American Convention. On a preliminary basis, it should be borne in mind that all States have not only the right but also the duty to preserve law and order and public safety within their territory. In that regard, the guarantees established in the American Convention for the protection of the right to liberty and personal security do not in any way imply the curbing of the legitimate activity of the public security organs of the State. The prohibition of arbitrary detentions is precisely a basic safeguard of citizen safety, to the extent that it prevents the legal mechanisms created to defend the safety of all inhabitants from being used to commit transgressions.

23. The analysis of the compatibility of the deprivation of liberty with the provisions of Article 7(2 and 3) of the American Convention should be done in three phases. The first consists of determining the legality of the detention from a material and formal standpoint. To do so, it must be determined whether this action is compatible with the domestic legislation of the State in question. The second step involves the analysis of these domestic provisions within the context of the guarantees established by the American Convention, in order to determine whether they are arbitrary. Finally, if the detention meets the requirements of a domestic legal provision that is compatible with the American Convention, it should be determined whether the application of this law in this specific case was arbitrary.

24. In this case, the Mexican State has provided general information aimed at justifying the presence of the Armed Forces in Chiapas, but has not cited the specific domestic legal provision that authorized the military officers to detain civilians. The State fails to make clear the relevance of the Supreme Court decision regarding the composition of the National Public Security Council to the specific claims and facts analyzed herein. In the view of the Commission, this State has failed to fulfill its obligation to provide an explanation regarding the specific claim pertaining to the illegality of the detention.

25. The information contained in the file shows that the four women were deprived of their liberty while they were traveling on the public road. Armed soldiers at a military checkpoint in Altamirano, Chiapas, in the conflict area, detained them a few months after the EZLN rebellion. Subsequently, the four women were taken away and held against their will.

26. The Inter-American Commission notes that, from the time that the EZLN armed rebellion started in 1994, the Mexican State did not adopt any measures related to the suspension of

guarantees in Chiapas State in accordance with Article 27 of the American Convention.[FN15] However, Article 7 of the aforementioned international instrument is fully applicable to this case. With regard to the first step of the above-mentioned analysis, the facts related to the case show that the four women were deprived of their liberty without any reason being given and without any order from the appropriate authority, which constitutes a clear violation of the guarantees established in the American Convention.

[FN15] Article 27(1) of the American Convention states:

In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.

The next paragraph of this provision states that rights may not be suspended in such situations, which include the right to personal safety and judicial guarantees. Finally, Article 27 establishes the procedure to be followed in the event of the suspension of guarantees, consisting of the immediate notification of the other States parties to the American Convention, through the OAS Secretary General, "of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension."

27. Since this case has not made it through the first of three steps of the analysis mentioned above, the IACHR concludes that the Mexican State is responsible for the violation of the right of Ana, Beatriz, and Celia González Pérez and Delia Pérez de González to liberty and personal security, which is protected under the American Convention.

B. Right to humane treatment and privacy (Articles 5 and 11 of the American Convention)

28. An analysis must now be done of the information pertaining to what was said to have taken place in the closed room near the checkpoint where the Tzeltal sisters were detained in Chiapas, based on the applicable provisions of the American Convention.

29. The petitioners claim that the three sisters were beaten and physically abused while they were in the custody of the military officers, in order to get them to admit to membership in the EZLN. They further claim that the three sisters were raped repeatedly by the majority of the military officers holding them in the wooden room mentioned above, as others looked on. According to the petitioners, before they were let go, they were told that if they reported what had happened, they would be killed.

30. The complaint filed by the victims and their representatives in the PGR office in Chiapas on August 30, 1994 contains information regarding the events. The version of the oldest González Pérez sister is provided below:

Two soldiers grabbed me, and one threw me on the floor as I tried to defend myself and my sisters with my hands and bites. However, many soldiers were holding my sisters and me and

they would not leave us alone. They continued to hit my sisters and me until we could no longer defend ourselves.

At the same time, I saw that my other two sisters [Beatriz and Celia] were lying on the floor near to me and at least two soldiers were having sex with Beatriz, but I could not see how many were having sex with [Celia]. One soldier also told us that he would give us pills to prevent us from getting pregnant.

The first soldier who assaulted me was tall, heavy, dark-skinned, young, and had a moustache. He put himself on top of me while another held me and pushed me down and took off my pants and underwear. He forced me to open my legs and placed his yath (penis) inside my l'u (vagina).

I felt great pain, and felt as though I was dying and then passed out; when I regained consciousness, I saw another soldier on top of me and I tried to scream but he pushed a handkerchief in my mouth and covered my eyes with a cloth. This soldier was younger than the first and thinner....

While they were on top of us, they were laughing and saying things like: how delicious the zapatistas are and how good it was that they took advantage of us. I remember that my sisters were screaming a lot. They were not saying anything, they were only screaming. Sometimes they shouted: "let us go." [FN16]

[FN16] Statement provided by Ana González Pérez, paras. 19-24, PGR Preliminary Investigation N° 64/94.

31. The second of the González Pérez sisters also gave her version of the events that occurred on July 4, 1994:

I remember that they grabbed me and the person who took advantage of me was thin, dark-skinned, and tall, and seem to be indigenous. I remember the screams of my sisters and seeing Ana in bed with other soldiers. They were near me on one side, and I could not see what was happening in front of me. I only heard her screams and those of my sister Celia. Two soldiers were holding on to Ana and another to Celia...

We counted about ten soldiers when we entered the house. However, some left and when we screamed for help, we heard those soldiers fighting to see who could get in bed with us first...

We were crying and complaining about the fact that we were being hit and what they had done to us. When we went out, we could see that our mother was also crying, since she had heard our screams from outside where she was being held. Like us, she does not speak Spanish, I understand a little bit of Spanish but cannot speak it.[FN17]

[FN17] Statement provided by Celia González Pérez, paras. 3, 5, and 7, PGR Preliminary Investigation N° 64/94.

32. The Commission will now discuss the events related by the petitioners and borne out in documents that were not disputed by the Mexican State. The IACHR has ascertained that on June 29, 1994, Dr. Guadalupe Peña Millán, a certified medical practitioner, did a gynecological examination of each of the three sisters and noted that signs of rape were evident, more than 20 days after the facts were reported. This medical evidence was included with the complaint filed on June 30, 1994 with the PGR's office in San Cristóbal de las Casas, Chiapas. On August 30, 1994, Ana and Beatriz González Pérez confirmed and explained their complaint before this authority as part of Preliminary Investigation 64/94 that had been opened on the basis of the complaint.

33. The medical report, which was not disputed by the Mexican State, is dated June 29, 1994, and bears the signature of Dr. Guadalupe Peña Millán, whose professional identification number is 1182409, and has been duly registered. She states that she "is available to provide any clarification." The medical report provides a detailed description of the medical examination done of the three sisters, as well as of the circumstances surrounding the case. In that regard, Dr. Peña Millán explains that the women: "simultaneously received emotional support first and three hours later were sent to the medical clinic, and, with the assistance of a translator, they were told the reasons for the medical check and asked whether they wanted it done. They were also given a detailed description of what the check would entail, and they confirmed that they did want it."

34. Ana González Pérez, age 20, indicated that during the medical examination she had a stomach ache and felt nauseous, and the gynecologist noted that "she was oriented in terms of time, and space, she walked slowly, was medium complexioned, suffered hypertrophy (diminished muscle mass), was prone to crying, and had a calm demeanor and was cooperative during the interrogation." The medical certificate noted the woman spoke "in a low tone, agreed to a general check but had reservations about the gynecological exam, did not show any visible sign of illness, and when placed in the position for the gynecological exam, became apprehensive. It was again explained to her that she would not be hurt, that she would simply be checked and a sample taken. She agreed, but at the beginning her legs were trembling slightly." The report on the examination of Ana González Pérez stated:

Slight muscular resistance was found (enough to make the examination difficult); the labia majora covered the labia menora, and when placed in the lithotomy position, her hymen was found to be torn, and the surrounding areas red and swollen; she has erythema ++ that is more than 15 days old, and scarring over 90% of the area with at least three carunculae myrtiformis, and swelling ++ (moderate redness because of irritation in the genital area at the time of the check), with a whitish discharge from which the sample was taken.

35. Beatriz González Pérez, 18 years of age, "seemed nervous, was sad-faced, and apprehensive, but she cooperated during the interrogation (she was asked the same questions)." Dr. Peña Millán describes her gynecological check thus:

There was muscular resistance, suffering, anguish, and fear. The check was stopped in order to speak to her and provide her with reassurance and support. Finally, despite moderate muscular resistance, it was noted that the labia majora covered the labia menora, with carunculae myrtiformis protruding from the vulva, and when placed in the lithotomy position, her hymen was found to be torn. She had erythema +++ in the vulva, and the remainder of the carunculae myrtiformis were erythematous +++ and there was no discharge... on the inner aspect of the labium minor and at the level of right junction were two lesions in the form of erythematous plaques with a whitish halo. A general vaginal sample was taken using a swab, and since it was not possible to obtain a sample of these plaques, the examination was concluded.

36. Celia González Pérez, 16 years old, displayed much more fear and anguish during the examination:

She began to breathe heavily, and we calmed her down. When placed in the position for the gynecological examination, she covered her face with both hands. She was on the verge on tears. For a while, her body moved involuntarily (convulsions) while her breathing and heart rate increased. At that time, the check had not yet started. There was muscular resistance during the entire period, and it was very difficult to evaluate the genital area and only the following information was obtained: the labia majora covered the labia menora, with a slight white discharge. The vulva was erythematous +++++, and she had at least five linear dermoepidermal lesions on both buttocks (two on the right and three on the left), which were consistent with scratches and had bloody edges, with desquamation more than 15 days old. At the end of the check, she was extremely upset, and was crying uncontrollably. She was again sent to the emotional support section.

37. The gynecologist concludes her medical report thus:

It is important to point out that the three women were in a very poor emotional state, and the gynecological examination, which lasted for more than 45 minutes on average, caused them to relive the trauma. In addition to the information provided above, laboratory samples were obtained in order to conduct tests or prevent sexually transmitted diseases... An antibiotic (penicillin) was prescribed as a prophylactic (preventive treatment) against venereal diseases. During the follow-up visits, VDRL and HIV tests will have to be conducted, since the sexual habits of the aggressors are unknown and this is not possible now because of the refusal of the three women to give a blood sample. At the time of the check, the possibility of pregnancy was ruled out.

In addition to the foregoing, psychological treatment was recommended in order to facilitate emotional recovery, prior to further medical or laboratory visits or legal proceedings. Subsequent medical follow-up visits are required in at least eight days and then within three weeks in order to obtain samples.

38. In the view of the IACHR, the document summarized above contains clear and detailed information, and shows that an in-depth professional examination was done of the three victims involved in this case. The medical evidence was presented in a timely fashion and in the manner required. Despite this, it was not challenged or even considered within the framework of legally

valid proceedings in Mexico. Although the burden of proof lay with the Mexican State in terms of the processing of this case by the Inter-American Commission, the Mexican State failed to meet its obligation to disprove the allegations made in a serious and well-founded manner. The Inter-American Commission therefore lends complete credence to the medical certificate issued by Dr. Guadalupe Peña Millán on June 29, 1994 in San Cristóbal de las Casas, Chiapas.

39. The United Nations Commission on Human Rights recently defined a series of principles that must be taken into account by medical professionals in investigating reports related to torture.[FN18] According to these principles, the conduct of doctors should, at all times, be in keeping with "the strictest ethical guidelines" and the consent of the person to be examined should be obtained. Examinations shall take place in accordance with medical practices, and "never in the presence of security agents or other government officials." The "reliable report" to be prepared immediately by medical experts should include, at a minimum, the following information:

[FN18] United Nations, Torture and other cruel, inhuman or degrading treatment. Principles on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment. Annex, E/CN.4/RES/2000/43, April 20, 2000.

- (i) Circumstances of the interview: name of the subject and name affiliation of those present at the examination; the exact time and date; the location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g. detention center, clinic, house, etc.); the circumstances of the subject at the time of the examination (e.g. nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanor of those accompanying the prisoner, threatening statements to the examiner, etc.); and any other relevant factor;
- (ii) History: a detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, the times when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms;
- (iii) Physical and psychological examination: records of all physical and psychological findings on clinical examination including appropriate diagnostic tests and, where possible, color photographs of all injuries;
- (iv) Opinion: an interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill treatment. A recommendation for any necessary medical and psychological treatment and/or further examination should be given;
- (v) Authorship: the report should clearly identify those carrying out the examination and should be signed.

40. The medical reports, the parameters of which are defined by the United Nations, must be confidential and must be delivered to the alleged victim or representative appointed by that person. It adds "the report should also be provided in writing, where appropriate, to the authority responsible for investigating the allegation of torture or ill-treatment."

41. The medical examination done of the González Pérez sisters falls within the parameters established by the United Nations. Indeed, it relates the circumstances under which the interview took place with the level of detail necessary, with data that is sufficiently precise and consistent; it includes the professional interpretation regarding the possible reasons for the injuries noted, contains a recommendation regarding appropriate treatment, and identifies the doctor, who indicates that she is available to provide any clarification necessary.

42. The IACHR establishes, on the basis of the unchallenged report and other evidence available, that Ana, Beatriz, and Celia González Pérez were subjected to illegal interrogation, accompanied by physical abuse that included the rape of the three sisters. These acts were perpetrated on June 4, 1994 in Altamirano, Chiapas, by a group of military officers during the time that the sisters were illegally deprived of their liberty. The context in which these events took place also leads us to conclude that the acts were committed in a bid to intimidate the three women because of their alleged ties with the EZLN. Furthermore, the IACHR establishes that, as a result of the humiliation created by this abuse, the González Pérez sisters and their mother had to flee their habitual residence and their community.

43. Article 5(1) of the American Convention states that "every person has the right to have his physical, mental, and moral integrity respected." Article 5(2) of that international instrument clearly prohibits torture and guarantees respect for the human dignity of persons who have been deprived of their liberty. The American Convention to Prevent and Punish the Crime of Torture defines this aberrant practice:

Torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

44. Furthermore, Article 11 of the American Convention guarantees every individual the right to respect of this privacy and recognition of his dignity, and states that "no one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation."

45. Sexual violence committed by members of the security forces of a State against the civilian population constitutes, in any situation, a serious violation of the human rights protected under Articles 5 and 11 of the American Convention, as well as the guidelines of international humanitarian law. In fact, in its final verdict in the Celebici case, the International Criminal Tribunal for the former Yugoslavia (ICTY) expressly stated that "there can be no doubt that rape and other forms of sexual assault are expressly prohibited under international law." [FN19] The United Nations Special Rapporteur on violence against women explains that "rape during warfare has also been used to terrorize populations and induce civilians to flee their homes and villages." She also adds that "the consequences of sexual violence are physically, emotionally and psychologically devastating for women victims." [FN20]

[FN19] Case N° IT-96-21 T, Ruling, para. 476, November 16, 1998. Taken from Louis Henkin et al, Human Rights. Foundation Press, New York, 1999, pages 380 and 381.

[FN20] United Nations, Report submitted by Mrs. Radhika Coomaraswamy, Special Rapporteur on violence against women, including its causes and consequences, in accordance with Resolution 1997/44 of the Commission, E/CN.4/1998/54, January 26, 1998, paras 13 and 14. An article recently published by Pace University states:

Rape is not a novel concept particular to our time. Women have been subjected to various forms of sexual assault in times of peace and in times of war, since time immemorial. In efforts to demoralize and humiliate the enemy, these assaults have occurred with increasing frequency in recent years, especially in internal conflicts, where women are targeted because of their affiliation with the opposition....

Samantha I. Ryan, From the furies of Nanking to the Eumenides of the International Criminal Court: The Evolution of Sexual Assaults as International Crimes, Pace International Law Review, Pace University School of Law, Fall 1999, page 447.

46. The IACHR points out that the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará Convention) guarantees all women the right to a life free of violence.[FN21]

[FN21] Mexico signed the Belém do Pará Convention on June 10, 1994 (six days after the events related to this case were confirmed) and deposited its instrument of ratification on November 12, 1998. Article 4 of this Convention states that "every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments." These rights include, among others:

The right to have her physical, mental and moral integrity respected; the right to personal liberty and security; the right not to be subjected to torture; the right to have the inherent dignity of her person respected and her family protected; and the right to simple and prompt recourse to a competent court for protection against acts that violate her rights.

47. In international law, rape is a form of torture under certain circumstances. The IACHR confirmed this in the case of a woman who was abused and harassed for her alleged participation in an armed dissident group:

Rape produces physical and mental suffering for the victim. In addition to the violence suffered at the time that it is perpetrated, victims usually sustain injuries and in some instances become pregnant. Being the object of this kind of abuse also produces psychological trauma resulting from their humiliation on the one hand and victimization on the other, and from the condemnation of members of their community if they report the mistreatment to which they were subjected.

Raquel Mejía was raped in order to inflict personal punishment on her and to intimidate her. Her testimony reveals that the person who sexually abused her told her that both she and her husband were wanted for subversive activities.[FN22]

[FN22] IACHR, Report 5/96 cited above, pages 199 and 200.

48. The United Nations Special Rapporteur against torture has indicated that rape is a method of physical torture that is used in some instances to punish, intimidate, and humiliate.[FN23] Using similar language, the European Court of Human Rights stated:

[FN23] United Nations, E/CN/4/1986/15, paras. 119 and 431.

Rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim. Furthermore, rape leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence.[FN24]

[FN24] European Court of Human Rights, *Aydin v. Turkey*, (57/1996/676/866), Ruling of September 25, 1997, para. 83.

49. The concept has been developed in recent years, particularly in cases referred to the International Criminal Tribunal for the former Yugoslavia. In the *Furundzija* case, this tribunal stated:

As evidenced by international case law, the reports of the United Nations Human Rights Committee and the United Nations Committee against Torture, those of the Special Rapporteur and the public statements of the European Committee for the Prevention of Torture, this vicious and ignominious practice can take on various forms. International case law, and the reports of the United Nations Special Rapporteur evince a momentum towards addressing, through legal process, the use of rape in the course of detention and interrogation as a means of torture and, therefore, as a violation of international law. Rape is resorted to either by the interrogator himself or by other persons associated with the interrogation of a detainee, as a means of punishing, intimidating, coercing, or humiliating the victim, or obtaining information or a confession from the victim or a third person.[FN25]

[FN25] ICTY, *Prosecutor v. Anto Furudzija*, ruling of December 10, 1998, para. 163. This judicial decision was confirmed in the ICTY Court of Appeals by a ruling of July 21, 2000.

50. The facts established here are particularly serious, since one of the women raped was a minor, and as such was entitled to special protection under the American Convention. Furthermore, the rape took place while the three women were illegally detained, a few months after the armed rebellion of the EZLN, against a backdrop of harassment of persons considered to be "zapatistas," in an area where this armed dissident group exerted influence.

51. Ana, Beatriz, and Celia González Pérez were sexually assaulted as part of an illegal interrogation conducted by military officers in a zone of armed conflict and were accused of collaborating with the EZLN. The Inter-American Commission, within the context of this case and the pertinent analysis, also lends credence to the reports of death threats and additional acts of torture reported by the aggressors when they released them, since these acts were reported and never investigated in accordance with due process in Mexico. Given the manner in which they were assaulted, the accusations made against them, and the serious threats, it is reasonable to believe that the military officers wanted to humiliate and punish the women for their alleged links with the rebels.[FN26]

[FN26] In that regard, the report of the Special Rapporteur states the following:

Perhaps more than the honour of the victim, it is the perceived honour of the enemy that is targeted in the perpetration of sexual violence against women; it is seen and often experienced as a means of humiliating the opposition. Sexual violence against women is meant to demonstrate victory over the men of the other group who have failed to protect their women. It is a message of castration and emasculation. It is a battle among men fought over the bodies of women.

United Nations, E/CN.4/1998/54 cited above, para. 13.

52. In the view of the Inter-American Commission, abuses targeting the physical, mental, and moral integrity of the three Tzeltal sisters committed by agents of the Mexican State constitute torture.[FN27] Furthermore, the events described herein represent a violation of the private lives of the four women and their families and an illegal attack on their privacy, which led them to flee their community in a situation of fear, shame, and humiliation.

[FN27] In a recent decision, the Inter-American Court explains:

According to international standards related to protection, torture can be perpetrated not only through the exercise of physical violence, but also through acts that cause acute physical, mental, or moral suffering for the victim.

Both the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Inter-American Convention on that topic cover that possibility. In order to address the right to humane treatment in clear terms, the latter of those two instruments makes express reference to the physical and moral integrity of individuals.

Inter-American Court, Cantoral Benavides Case, Judgment of August 18, 2000, paras. 100 and 101.

53. Based on international human rights case law, under certain circumstances, the anguish and suffering imposed on the close relatives of the victims of serious human rights violations also constitute a violation of the right of these persons to humane treatment.[FN28] In this case, the IACHR holds the view that the treatment extended to Delia Pérez de González, who had to stand by helplessly and witness the abuse of her three daughters by members of the Mexican Armed Forces and then to experience, along with them, ostracism by her community, constitutes a form of humiliation and degradation that is a violation of the right to humane treatment guaranteed by the American Convention.

[FN28] In the case of the "street children of Guatemala, the Inter-American Court established that the victims had been kidnapped, tortured, and assassinated by State agents, who, in addition, abandoned their abused bodies to the elements. Consequently, the Court determined that "the manner in which the remains of the victims were treated, which were sacred to their relatives and to their mothers, constituted a form of cruel and inhuman treatment for them." Inter-American Court, Case of Villagrán Morales et al., cited above, para. 174. In the decision, the Inter-American Court cites its own precedent in the case of Blake (Judgment of January 24, 1998, para. 115) and other decisions of the European Court of Human Rights and the United Nations Committee on Human Rights.

54. The Inter-American Commission concludes, based on the facts proven and the arguments outlined above, that the Mexican State is responsible for violation of Articles 5 and 11 of the American Convention, to the detriment of Ana, Beatriz, and Celia González Pérez and Delia Pérez de González.

C. Rights of the child (Article 19 of the American Convention)

55. The petitioners allege that the facts established in this case point to a violation of the rights of the child protected under the American Convention. The State did not specifically address this claim.

56. Article 19 of the American Convention guarantees that every child has "the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state." The Inter-American Court has determined that "both the American Convention and the Convention on the Rights of the Child form part of a very comprehensive international corpus juris on the protection of children" that serves "to determine the content and scope of the general provisions contained in Article 19 of the American Convention." [FN29]

[FN29] Inter-American Court, Villagrán Morales case cited above, paras. 194-196.

57. The Convention on the Rights of the Child was in effect in Mexico on the date on which the events related to this case occurred.[FN30] Article 2 of this instrument states:

[FN30] Mexico deposited the instrument of ratification for the Convention on the Rights of the Child on September 21, 1990.

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

58. The aforementioned instrument also states that "no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honor and reputation," and that "the child has the right to the protection of the law against such interference or attacks" (Article 16). The States parties to the Convention on the Rights of the Child undertake to ensure that no child is submitted to torture or other cruel, inhuman, or degrading treatment or punishment or is illegally or arbitrarily deprived of his liberty and, at all times, "is treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of his or her age;" and that in accordance with the obligations assumed under international humanitarian law, "the States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict" (Article 37).

59. The Committee on the Rights of the Child recommended that the Mexican State "should intensify its action against all violence resulting in cases of ill-treatment of children, in particular when committed by members of the police forces and security services and the military. The State party should ensure that cases of crimes committed against children by members of the armed forces or the police are tried before civilian courts." [FN31]

[FN31] United Nations, Concluding observations of the Committee on the Rights of the Child: Mexico. CRC/C/15/Add. 13, February 7, 1994, para. 17. The Committee also recommended to the authorities that that State allocate resources to children, "particularly children living and/or working in the streets, children belonging to minority groups or indigenous communities and other vulnerable children." (para. 16)

60. Celia González Pérez was 16 years old at the time that the acts described in this report took place. In the view of the Inter-American Commission, the illegal detention, followed by the physical abuse and rape of the adolescent, as well as the subsequent and continuing impunity of the perpetrators, is a clear violation of the duty of the Mexican State to accord her the special protection guaranteed under the American Convention and other applicable international instruments.

61. In light of the foregoing, the IACHR has determined that the Mexican State is internationally responsible for the transgression involving Celia González Pérez under Article 19 of the American Convention, based on the general obligation to respect and guarantee rights provided for in Article 1(1) of this international instrument.

D. The right to a fair trial and to judicial protection (Articles 8 and 25 of the American Convention) in the investigation of the acts of torture (Articles 6 and 8 of the American Convention to Prevent and Punish Torture)

62. The petitioners maintain that they fulfilled the requirement to file the appropriate internal complaints offered under the Mexican system to resolve the matter reported, and that the transfer of competence to the military authorities was a violation of the Mexican Constitution and of the duty to investigate the acts that involve the violation of rights. In this regard, the petitioners state:

From the time of the transfer of competence to the military courts in September 1994, no significant progress has been made with the investigation, despite the fact that the civil court ordered the Office of the Public Prosecutor for Military Justice to continue the investigation. The case has been closed since February 1996, which represents a failure to fulfill the obligation to investigate.

The fact that Mexican legislation stipulates that a military court will prosecute common offenses committed by military officers while on duty or as a result of acts related thereto, and the defense offered by the government that a military court should prosecute this case implies that the detention, torture, and rape of the victims were acts conducted while these persons were on duty or conducting acts related thereto.[FN32]

[FN32] Correspondence from the petitioners of May 27, 1999, page 4.

63. The victims in this case reported the acts of torture and rape, which allegedly occurred while they were illegally detained, and which are serious offenses in Mexico, to the Office of the Attorney General of the Republic, and described the violation of the human rights guaranteed in the American Convention. The report, which is accompanied by a certificate issued by a gynecologist, was confirmed and expanded upon before the PGR by Ana and Beatriz González Pérez.[FN33]

[FN33] The case was also documented by Amnesty International in a report on Mexico entitled "Three Tzeltal sisters raped by Mexican soldiers in Chiapas." This report states that "the soldiers reportedly hit the women with their weapons and kicked them to extract information...they were then reportedly raped by about 10 soldiers before being released free of charge on that same day." Amnesty International, *Overcoming Fear: Human rights violations against women in Mexico*, AMR 41/009/1996 of March 3, 1996.

64. The petitioners add that this medical examination "indicates that sexual intercourse had taken place at the time of the report, and that the rape took place amidst great commotion." This is borne out by "the statement of at least seven soldiers, which corroborated the account provided by the victims, since they explicitly or tacitly admitted that they had engaged in acts of violence against the sisters and their family." [FN34]

[FN34] Correspondence from the petitioners of May 27, 1999, page 8.

65. On September 2, 1994, the PGR decided to turn over Preliminary Investigation 64/94 to the Office of the Public Prosecutor for Military Justice "because it did not have jurisdiction over the matter." The representative of the González Pérez sisters in Mexico were opposed to the use of the military court since, in their view, "in this case, the military court is synonymous with privilege, impunity, and partiality, and they would have to subject themselves to a military legal system after being sexually assaulted by elements of the same group." To demonstrate the partiality of the military courts in this instance, they cite Bulletin N° 38 issued on July 3 by the Department of National Defense (SEDENA), in which this authority "vigorously denied the false charges made against military personnel, and reserved the right to take legal action against persons or institutions who slander our institution." [FN35]

[FN35] Correspondence from the petitioners of January 16, 1996. In that correspondence, they state:

Brigadier General Mario Guillermo Fromow, responsible for criminal proceedings in the military court, stated, in correspondence addressed to Ms. Mercedes Barquet of the College of Mexico A.C. on August 1, 1994, in providing her with information on this case, that the victims have been summoned, through the civil authorities, to appear before the military authorities. In that correspondence, he demonstrates a complete lack of familiarity with the case, confusing the names of the victims with other names that are completely different. Surprisingly, he alleges that no complaint whatsoever had been filed but goes on to state: "the Preliminary Investigation conducted into the events that were publicized contained no report of the events, and they have not been proven. Therefore, to date, the criminal acts have not been proven, let alone the possible responsibility of any member of the military." (sic)

66. The State does a detailed analysis of the military preliminary investigation, which includes statements provided by several persons attesting to the good conduct of the men in uniform and denying that the acts occurred. The Office of the Public Prosecutor for Military Justice describes the proceedings in the following manner:

He obtained further testimony from the civilians who witnessed the events, who in short said that at no time was there any physical or verbal abuse by the military personnel against the alleged injured parties, much less sexual assault. He obtained further testimony from the military personnel involved in the presence of their respective court-appointed defense counsel, who

offered rebutting for the confrontation between his clients and the alleged injured parties, it not being possible to compare that evidence due to the nonattendance of the alleged injured parties. At the request of the Military Prosecuting Attorney, staff from the National Commission on Human Rights were present as observers of the way the proceedings were put into practice, as were translation experts from the National Institute of Indigenous Affairs, and experts in medical law specializing in gynecology, all of whom are civilians and residents of the area. He summoned Mrs. Martha Guadalupe Figueroa Mier and Mr. Roger Maldonado Baqueiro, (emphasis in the original) alleged legal representatives of the injured parties, of whom only the former appeared in court, she being noticeably annoyed, haughty, and intimidating, but with extreme nervousness (sic). By reason of the foregoing, the Head of Preliminary Inquiries of Military Justice concluded that the charge against the military personnel is totally and manifestly false.[FN36]

[FN36] Idem, page 3.

67. The State's analysis continues with a section entitled "Considerations regarding the competence of the military courts to take cognizance of the facts". In this section, the State indicates that "the existence of the War Court is in keeping with the very nature of the Armed Forces institution and its unique way of life," and explains that the prerequisites for the involvement of that court are the following: the perpetrator of the infraction is a member of the Armed Forces; the military officer is carrying out his duty or engaging in acts relating thereto; and that the infraction is a breach of military discipline. The State then applies those prerequisites to the case under consideration:

There is considered to be no problem whatsoever with the first prerequisite since the complainants themselves expressly accept that the persons involved in the crime are members of the Armed Forces.

As to the second of these, regarding participation in the crime while on duty or engaging in acts relating thereto, duty should be understood as any act executed by military personnel, either individually or collectively, to carry out the orders they receive in the course of performing the tasks assigned, depending on their rank and in accordance with the laws, regulations, and provisions of the Army. (Article 37 of the Army Corps Service Regulations)

In relation to the third element, that the infraction or offence must be in breach of military discipline, Article 57 of the Code of Military Justice is very explicit when it establishes that the following ...are offenses in breach of military discipline (...) II. Common or federal offenses in any of the following circumstances: a) They were committed by military personnel while on service or in the performance of acts thereof (emphasis in the original)[FN37]

[FN37] Idem, pages 10 and 11.

68. The State concludes that this case "is based on vague hypotheses and circumstantial evidence rather than on firm evidence, a prime example of this being a newspaper article and a report filed with an authority that has no jurisdiction over the matter."

69. The State has not disputed the filing of the complaint in Mexico or the medical evidence that the victims enclosed therewith. The Inter-American Commission notes that, in light of the serious evidence submitted to the authorities, the Mexican State had an obligation to undertake an prompt, impartial, and effective investigation, in accordance with the guidelines stipulated in its own domestic legislation and the international obligations freely assumed by this State. The information available in this case file reveals that the authorities in the Office of the Attorney General of Mexico transferred their competence to the Office of the Public Prosecutor for Military Justice, which in turn completely ignored the evidence submitted by the victims and proceeded to order another gynecological examination for them. Finally, when the victims refused to undergo another examination as part of the military investigation,[FN38] the PGJM closed the case on September 25, 1995, based on the evidence provided by persons living in the area and the "lack of interest, from a legal standpoint, of the victims and their representatives," because " the criminal evidence is not in any way credible, nor is the probable liability of the military officers."

[FN38] In that regard, the petitioners state:

It is inconceivable that these women, who had endured torture at the hands of the members of that institution, could feel comfortable providing a statement (for the third time) to that entity. The petitioners had, on several occasions, informed the government attorney's office for civil affairs of the fear and trauma of the victims, which made it difficult for them to appear in a civil court, since this would have required them to pass through the military checkpoint. Consequently, it was impossible for them to appear before the military authorities.

It should be noted that, due to the nature of the case, it was logical that the victims would be terrified to appear before a military institution. Furthermore, the entities involved, in this case the Army, would be the ones responsible for conducting the investigation.

The victims, who had already provided a statement to the appropriate court, had no obligation to subject themselves once more to the psychological torture that another round of questioning and gynecological examination would entail, particularly before the entity representing the persons responsible for the torture, illegal detention, and rape of the victims.

The foregoing implies a violation and form of aggression that is the same or worse than that experienced on June 4, 1994. For this reason, the recommendation of military that the investigation be reopened cannot be considered valid, since this would mean ignoring the investigation already conducted by the Federal Public Prosecutor's Office. This is all the more true since they have already obtained the testimony of their own soldiers who "interrogated" the victims and they admitted that they were at the location and had the opportunity to commit the acts of aggression. The only thing that they do not admit to in their testimony is raping them. However, they admitted that they detained and interrogated them, among other things. Their contradictory statements suggest that the deponents are telling the truth and the soldiers are lying. However, all this information was ignored and none of them was ever prosecuted.

Correspondence from the petitioners dated May 27, 1999, pages 5 and 6.

70. With regard the State's allegation of lack of interest on the part of the representatives of the victims, CEJIL maintains that the medical examination was done immediately after the events took place, and that the results were submitted to the Office of the Attorney General and subsequently confirmed through a statement provided by the victims. Based on this, the petitioners allege that evidence exists of the infractions that were committed, and that the failure to respond was due to the difficulty in finding the women, who, as a result of the events, were forced to leave their communities and families, and were rejected by the indigenous culture, in accordance with its customs.

71. The Mexican State notes that in accordance with Mexican legislation, the investigation of the events was the responsibility of the PGJM since the military officers allegedly committed the acts of abuse of authority.[FN39] It adds that the Office of Complaints and Citizen Affairs conducted an investigation based on the article published in La Jornada newspaper on June 17, 1994, and informed SEDENA of the statements made by several persons with respect to the facts. It further states that the military authorities ordered an investigation on June 25, 1994 "in order to determine whether, based on the facts in question, a breach of military discipline occurred.[FN40]

[FN39] The State further questions the delay on the part of the petitioners to submit information to the IACHR on the case, and states that: "in this regard, a delay of this magnitude cannot be justifiable under any circumstances, particularly with respect to the events that allegedly occurred." Correspondence from the State of July 14, 1999, page 1, adds that "even the CNDH ... closed the file precisely because of the inactivity and lack of cooperation of the plaintiffs, "but that despite this "they reiterated the willingness to continue with the investigation if the petitioners were willing to cooperate with the authorities."

[FN40] In this regard, the State adds:

On July 2, 1994, the Department of National Defense issued a public statement, by means of press release N° 38, that the investigation conducted into the alleged rape of three indigenous Tzeltal women by military officers had proven this charge to be completely false and that there was no breach of military discipline, based on Preliminary Investigation A5FTA/03/94-E.

Communication from the Mexican State of October 24, 1996, page 2.

72. The Inter-American Commission must determine whether the actions undertaken by the Mexican courts in this case meet the human rights guidelines that guarantee the right to a fair trial. Article 8(1) of the American Convention guarantees each person the right "to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal" in the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

73. This guideline is compatible with Article 25 of the American Convention, which states:

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

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

2. The States Parties undertake:

- a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
- b. to develop the possibilities of judicial remedy; and
- c. to ensure that the competent authorities shall enforce such remedies when granted.

74. The Inter-American Court has indicated that pursuant to Articles 8 and 25 of the American Convention, the States parties have an obligation to provide effective judicial remedies to victims of human rights violations and to support them in accordance with the rules of due process. This is included in the general obligation of these States to guarantee the free and fair exercise of rights recognized under the Convention with respect to each person under their jurisdiction.[FN41]

[FN41] Inter-American Court, Velásquez Rodríguez Case, Preliminary Exceptions, Judgment of June 26, 1987, para. 91.

75. Rape is an aberrant act, which, because of its very nature, requires evidence that is different from other crimes. Subjecting the victim to another episode of humiliation or one that causes that person to relive the events involving the most private parts of the person's body in the form of review proceedings should be avoided.[FN42] Consequently, the IACHR holds the view that the investigating authorities should analyze the circumstances surrounding the case and all available elements such as statements, circumstantial evidence, presumption, and other legal elements. In the absence of evidence, the medical examination must provide all the guarantees for fully respecting the dignity of the person and for considering that individual's mental and psychological condition.

[FN42] The Beijing Platform establishes several strategic objectives and actions for ensuring equality and combating discrimination in the area of women's rights, one of which is particularly relevant in this case:

Review national laws, including customary laws and legal practices in the areas of family, civil, penal, labour and commercial law in order to ensure the implementation of the principles and procedures of all relevant international human rights instruments by means of national legislation, revoke any remaining laws that discriminate on the basis of sex and remove gender bias in the administration of justice;

United Nations, Fourth World Conference on Women, Beijing Declaration and Platform for Action, para. 232(d).

76. In the case of the González Pérez sisters, it has been noted that the medical examination was duly conducted; however, because of an unreasonable and arbitrary decision of the Mexican

authorities, it was not considered. The document quoted in this report serves as solid evidence, and is certainly more convincing than the documentation usually available to victims and their representatives in rape cases, for the reasons explained above.

77. The European Court of Human Rights has established that when an individual files a complaint claiming that he/she has been tortured by State agents, the concept of effective remedy includes, in addition to the payment of compensation where appropriate, an investigation that permits identification and punishment of the guilty parties. In analyzing a case similar to the one described in this report, this court added:

The requirement related to a complete and effective investigation of a complaint alleging the rape of an individual while in detention by State agents also calls for an examination of the victim, with due consideration being shown by medical professionals specializing in this area whose impartiality is not affected by the instructions issued by the Office of the Public Prosecutor regarding the scope of the investigation.[FN43]

[FN43] European Court, *Aydin v. Turkey*, cited above, para. 107.

78. The United Nations Commission on Human Rights has formulated a series of principles, mentioned above, on the manner in which an investigation into acts of torture should be conducted. Particularly relevant to this analysis is the principle stipulating that "States shall ensure that complaints and reports of torture or ill-treatment shall be promptly and effectively investigated.... the investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial."[FN44] Also, it should be noted that point 5(f) of the Draft Declaration of the Independence of Justice (known as the Singhvi Declaration) states that the competence of military courts shall be limited to military offenses.[FN45]

[FN44] United Nations, E/CN.4/2000/L.54 cited above, Principle N° 2.

[FN45] United Nations, E/CN.4/Sub.2/1998/Add.1. The United Nations Commission on Human Rights recommended in Resolution 1989/32 that member States be mindful of the principles listed in that document.

79. In its report on Mexico, the United Nations Special Rapporteur for Torture has stated that "military personnel seem to enjoy immunity from civil courts and are in general protected by military justice ... neither the National Commission on Human Rights nor the Office of the Public Prosecutor for Military Justice informed the Special Rapporteur that proceedings related to torture had been instituted against specific military personnel."[FN46] Based on this report, the United Nations independent expert recommends that "the serious offenses perpetrated by the military against civilians, in particular torture or other cruel, inhuman, and degrading treatment should be reported to the civil courts, whether or not they occurred in the discharge of their duties."[FN47]

[FN46] United Nations, Question of the human rights of all persons subjected to any form of detention or prison and, in particular, torture and other cruel, inhuman, or degrading treatment or punishment. Report of Special Rapporteur Nigel Rodley, submitted pursuant to Resolution 1997/38 of the Commission on Human Rights, E/CN.4/1998/38/Add.2, January 14, 1998, para. 86.

[FN47] *Idem*, para. 88(j).

80. In this case, the internal complaint filed for the purpose of investigating the rape and torture of the González Pérez sisters was transferred from the regular courts to the military courts.

81. In the past, the Inter-American Commission has maintained that "when the State permits investigations to be conducted by the entities with possible involvement, independence and impartiality are clearly compromised," as a result of which it is "impossible to conduct the investigation, obtain the information, and provide the remedy that is allegedly available," and what occurs is *de facto* impunity, which "has a corrosive effect on the rule of law and violates the principles of the American Convention." [FN48] In particular, the IACHR has determined that, as a result of its nature and structure, military courts do not meet the requirements of independence and impartiality imposed under Article 8(1) of the American Convention. [FN49] In that regard, the Inter-American Court ruled:

[FN48] IACHR, 1995 Annual Report, Report N° 10/95 (Case 10.580, Manuel Stalin Bolaños Quiñonez), Ecuador, para. 48.

[FN49] The unsuitability of military courts to investigate, prosecute, and impose sanctions in cases of human rights violations has been the subject of rulings of the Inter-American Commission:

The military penal system of justice has several unique characteristics that bar access to effective and impartial judicial remedy within this institution. First, military courts cannot even be considered a true judicial system. Military justice is not part of the Colombian Judiciary. This court is run by the public security forces and, for that reason, is included in the Executive. Career judges of the judicial system do not hand down rulings and the Office of the Attorney General does not play a prosecutorial role in the military system of justice.

IACHR, Third Report on the Situation of Human Rights in Colombia (1999), pages 175-186. In that regard, the Constitutional Court of Colombia has indicated:

If an offense is to fall under military criminal jurisdiction, there must be a clear link, from the outset, between the offense and the military service activities. In other words, the punishable act must represent an abuse of power that occurred within the scope of an activity directly linked to that person's functions within the Armed Forces. The link between the criminal act and the activity related to military service is broken when the offense is extremely serious, such as offenses against humanity. In such cases, the case must be transferred to the civil courts.

Constitutional Court of Colombia, Decision C-358, August 5, 1997.

In a democratic State governed by the rule of law, the scope of authority of criminal military courts must apply on a limited and exceptional basis and be aimed at the protection of special legal interests that are tied to the function assigned by law to the military forces. Consequently, the prosecution of civilians cannot fall under military jurisdiction and military officers must be prosecuted for the commission of only those offenses and infractions that, because of their nature, have an adverse effect on the assets of the military.[FN50]

[FN50] Inter-American Court, Case of Durand and Ugarte, Ruling of August 16, 2000, para. 117. The case pertained to the forced disappearance of two persons accused of terrorism in Peru, which occurred in the context of the recapture of "El Frontón" penitentiary by the military forces of that country in June 1986. In its ruling, the Inter-American Court stated that the military officers "used excessive force that went well beyond the limits of their functions, resulting in the deaths of a large number of inmates," and that, as a result, "the acts that led to this denouement cannot be considered military offenses, but rather common offenses. Therefore, the investigation into these acts and the sanctioning thereof must take place in the regular courts, whether or not the alleged perpetrators were military officers (para. 118).

82. The acts of abuse committed by the members of the Armed Forces that deprived the four victims of their liberty and the rape of the González Pérez sisters, one of whom was a minor at the time of the incident, cannot in any way be considered acts that affect the legal assets of the military, nor does this case pertain to offenses committed while military officers were discharging legitimate functions entrusted to them under Mexican legislation, since, as has been noted, this was a chain of acts of violation that began with the arbitrary detention of the four women. In other words, even if there was no evidence of common offenses that constitute human rights violations (and this is not the case here), there is no link to an activity by the Armed Forces that can justify the involvement of the military courts. The Inter-American Convention stresses that torture in all its forms is categorically prohibited by international law,[FN51] and, for this reason, the investigation into the facts related to this case by the military courts is completely inappropriate.

[FN51] In that regard, see the Inter-American Court, Case of Cantoral Benavides mentioned above, paras. 95-103.

83. The American Convention imposes on States the obligation to prevent, investigate, identify, and sanction the perpetrators of and accessories to human rights violations. As the Inter-American Court has indicated:

Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, inter alia, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered. As this Court has ruled, Article 25 "is one of the

fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention."[FN52]

[FN52] Inter-American Court, Loayza Tamayo Case, Judgment of November 27, 1998, para. 169.

84. Because of the obligations mentioned above, the State has an obligation to investigate human rights violations, prosecute those responsible, compensate victims, and avoid impunity. The Inter-American Court has indicated in this regard that the State must combat impunity, since this encourages the chronic repetition of human rights violations and strips the victims and relatives of the ability to defend themselves.[FN53]

[FN53] Inter-American Court, Paniagua Morales et al., Judgment of March 8, 1998, para. 173.

85. In the case under analysis, the Inter-American Commission holds the view that the State has failed to fulfill its obligation related to guarantees under Article 1(1) of the American Convention, which establishes the obligation of the States parties to guarantee the exercise of the rights and freedoms recognized in that instrument with respect to persons under their jurisdiction. This obligation includes the duty to organize the government apparatus, and, in general, all structures through which State power is exercised, in such a way that they are capable of ensuring the full and free exercise of human rights in a legal context. As a result of this obligation, the States parties have a legal duty to prevent, investigate, and sanction the violation of all rights protected under the American Convention.[FN54] The Inter-American Court has maintained that:

[FN54] Inter-American Court, Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 166.

If the State apparatus allows this violation to go unpunished and fails to re-establish, insofar as possible, the full exercise by the victim of his rights, then it can be said to have failed in its duty to guarantee the free and full exercise of rights by persons under its jurisdiction.[FN55]

[FN55] *Idem*, paras. 174 and 176.

86. Impunity has been defined as "the failure by States to fulfill their obligation to investigate the violation of rights and to impose the appropriate measures on the perpetrators, in particular from a legal standpoint, so that they can be prosecuted and receive the appropriate penalties; to guarantee victims effective resources and remedy for prejudice suffered; and to take the measures necessary to avoid the repetition of these violations."[FN56]

[FN56] United Nations, Expert on the question of the impunity of persons who violate civil and political rights, as defined by the United Nations, Doc. E/CN.4/Sub.2/1997/20, para. 20. Amnesty International has also referred to the scope of investigations into human rights violations, stating that "the impunity of the act...can occur when the authorities fail to investigate human rights violations, or even when they conduct an investigation, but fail to do so in a prompt and diligent manner and in accordance with international standards in this area" (emphasis added). Amnesty International. Amicus curiae legal brief submitted to the Inter-American Court of Human Rights in the case of Consuelo Benavides Cevallos-Ecuador, December 18, 1997, para. 68 page 23.

87. In its report on the human rights situation in Mexico, the IACHR concluded that "torture and cruel treatment continue to be used in some sectors of the security forces in that country, in particular during the preventive detention and preliminary investigation phases, as a way of obtaining confessions and/or intimidation," and that "the impunity of torturers is commonplace." [FN57] Based on the conclusions of this report, the IACHR made the following recommendations to the Mexican State, several of which are particularly applicable to this case.

[FN57] IACHR, Report on Mexico cited above, para. 688, page 161.

It should adopt the measures necessary to ensure that acts of torture are classified and sanctioned as such by the appropriate judicial organs, in accordance with the international definition of violation of the right to humane treatment.

It should issue the pertinent instructions so that the public agents that make arrests inform the detainees at the time of their arrest of the reasons for the deprivation of their liberty, and of their rights and guarantees thereof, in a manner that is comprehensible to them, in keeping with their education and cultural level and in their language.

It should investigate and sanction persons responsible for acts of torture.

It should take the measures necessary to rehabilitate and compensate, fairly and adequately, the victims of torture.

The appropriate authorities should pay special attention to and monitor the activities of state agents (army and police) in zones of conflict, in order to avoid torture.

The criminal acts committed against members of indigenous communities, particularly by public agents or with their consent or approval, should be investigated and sanctioned under the law, and the victims of these crimes or their relatives should be provided with compensation, including monetary compensation.

It should investigate and sanction officials who sexually abuse female detainees...[FN58]

[FN58] *Idem*, paras. 717, 719, 725, 726, 727, 746, and 754.

88. This case is characterized by complete impunity, since, more than six years after the date of the human rights violations established herein were committed and reported, the State has failed to fulfill its duty to prosecute and sanction those responsible for violation of the right of the González Pérez family to humane treatment, and has not provided compensation for the injuries or loss caused as a result of these violations. On the contrary, the investigation was transferred to the military courts, which clearly has no competence with respect to the matter and lacks the impartiality necessary to establish the facts in accordance with due process.

89. The Inter-American Convention to Prevent and Punish Torture, which was in effect in Mexico when the events took place,[FN59] states:

[FN59] Mexico deposited the instrument of ratification of the American Convention to Prevent and Punish the Crime of Torture on June 22, 1987.

Article 6

In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction.

The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature.

The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

Article 8

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

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

After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fore whose competence has been recognized by that State.

90. The IACHR concludes that the State has failed to fulfill its obligation to investigate the deprivation of liberty, rape, and torture of victims and to prosecute the perpetrators in accordance with the provisions of Articles 8(1) and 25 of the American Convention. It has also failed to ensure fulfillment of its obligations in accordance with the provisions of Article 1(1) of the above-mentioned international instrument. The failure to conduct an impartial investigation of the complaint related to torture and the complete impunity of the perpetrators thus far constitute, in addition, a violation of Articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

V. ACTIONS TAKEN AFTER REPORT N° 79/00

91. On October 4, 2000 The Inter-American Commission approved Report N° 79/00 on this case, pursuant to Article 50 of the American Convention, and forwarded it to the Mexican State on October 16, 2000 with the pertinent recommendations. The State requested an extension to submit information on the measures of compliance with the recommendations, which was granted by the IACHR until January 18, 2001. On that date, the State submitted a letter to the Commission, which expresses the following:

The Government of Mexico informs that it has decided to abide by the recommendations in Report [79/00]. Accordingly, and pursuant to Recommendation 1, the competent authorities shall reopen preliminary investigation A.5.F.T.A./03/94/E.

Once this has concluded, the Government of Mexico shall proceed to take measures pursuant to Recommendations 2 and 3, which are directly linked with the exhaustion of the respective criminal proceedings.

Taking the above into account, the Government of Mexico requests that the Commission establish a reasonable time period for the appropriate processing of the investigation. To that end, the Government shall report periodically to the IACHR on the advances in the case.

Furthermore, the Government considers it important that the victims cooperate fully, in order to facilitate the tasks of investigating and prosecuting which the competent authorities must carry out.

92. The State has requested the extension in a way that links compliance with Report N° 79/00 to the reopening of Preliminary Investigation A.5.F.T.A./03/94/E. The Commission notes that such investigation was initiated by the Office of the Military Prosecutor in Mexico, after the Office of the Public Prosecutor declined its competence to investigate the facts, and which was later closed by said military organ.[FN60] In this regard, the IACHR must reiterate what is stated in this report when analyzing the violations of the right to effective judicial protection and the obligation to investigate allegations of torture, especially in paragraphs 82 and 88 supra.

[FN60] See footnote 3 supra, pára. 1.

93. In Report 79/00 the IACHR issues two recommendations to the Mexican State.[FN61] The first one pertains to the “complete, impartial, and effective investigation, within the regular criminal courts in Mexico” (emphasis added) to determine responsibility for the violations established in this case, and the second one deals with reparations for the victims. In view of the considerations set forth in this report, the IACHR finds that reopening the military investigation into these facts in no way can constitute compliance with the recommendations but rather that it is contrary to the objectives of justice and reparations for the violations. During its 110^o sessions, the Inter-American Commission decided that it would not be possible to grant the extension and, accordingly, it approved the instant report pursuant to Article 51 of the American Convention.

[FN61] Recommendations 1 and 2 of Report 79/00 are identical to those contained in paragraph 95 of the instant report.

VI. CONCLUSIONS

94. In this report, the Inter-American Commission has assessed all the information available in the case file based on the human rights provisions of the inter-American system and other applicable instruments, case-law, and legal doctrine, in order to make a decision on the merits of the matter. The IACHR therefore ratifies its conclusions in that the Mexican State violated the following rights of Delia Pérez de González and her daughters Ana, Beatriz, and Celia González Pérez, which are enshrined in the American Convention: the right to personal liberty (Article 7); the right to humane treatment and to privacy (Articles 5 and 11); the right to a fair trial and to judicial protection (Articles 8 and 25); and, in the case of Celia González Pérez, the rights of the child (Article 19); all in keeping with the general obligation set forth in Article 1(1) of that international instrument to respect and guarantee rights. The Inter-American Commission also establishes that the Mexican State is responsible for violation of Article 8 of the Inter-American Convention to Prevent and Punish Torture.

95. The four victims in this case are members of the Tzeltal community in Mexico. When addressing the general situation of human rights in that country, the IACHR reminded the Mexican State of its obligation to respect indigenous cultures and it specifically alluded to the impact suffered by those communities in the state of Chiapas.[FN62] In the instant case, the Inter-American Commission highlights that the pain and humiliation suffered by the women was aggravated by their condition of members of an indigenous group. First of all, because of their lack of knowledge of the language of their aggressors and of the other authorities; and also because they were repudiated by their own community as a consequence of the violations established herein.

[FN62] In its report on Mexico, the IACHR stated:

It is the obligation of the State of Mexico, based on its constitutional principles and on internationally recognized principles, to respect indigenous cultures and their organizations and to ensure their maximum development in accordance with their traditions, interests, and priorities. The Commission considers that the State should conduct a study of the observance of the human rights of indigenous peoples and their organizations, having regard to the fact that article 4 of the Mexican Constitution recognizes that "Mexico is a multi-cultural country whose foundations are its indigenous peoples" and that Mexico has also ratified ILO Convention 169, on indigenous and tribal peoples.

IACHR, Report on the situation of human rights in Mexico *supra*, pára. 577. See, in the same report, paragraphs 540 to 564.

96. Based on the conclusions of fact and of law set forth in this report,

THE INTER-AMERICAN COMMISSION RECOMMENDS THAT

THE MEXICAN STATE:

1. Conduct a complete, impartial, and effective investigation, within the regular criminal courts in Mexico, to determine the responsibility of all persons who violated the human rights of Ana, Beatriz, and Celia González Pérez, and Delia Pérez de González;
2. Adequately compensate Ana, Beatriz, and Celia González Pérez and Delia Pérez de González for the human rights violations established in this report.

VII. PUBLICATION

97. On March 19, 2001, the Commission forwarded Report N° 32/01--the text of which is in the preceding paragraphs--to the Mexican State and to the petitioners, pursuant to Article 51(2) of the American Convention; and it established a period of fifteen days to supply information on compliance with the above recommendations. On April 3 2001 the Mexican State sent a letter in which it reiterated its "commitment to carry out the actions necessary to solve the case with fairness for the victims and expressed that it would "keep the Commission informed of the advances in the investigation of the case." On April 4, 2001 the State sent to the IACHR document 001739 issued on March 30, 2001 by the Human Rights Unit of the Office of the Public Prosecutor of the Republic, which includes an analysis of Mexican law, and which concludes:

In the first place, the investigation shall be carried out by Military Justice, which is competent in this case, and which is the institution that may guarantee an adequate and serious investigation; in second place, the reparation of the damage will result form a process to determine responsibility of the persons involved, in which case the Mexican government may cover such reparation.

98. The letters presented to the Inter-American Commission by the Mexican State have no information pertaining to any initiative or measure to comply with the recommendations of

Report 32/01, as it should in the current stage of the proceedings. Accordingly, the IACHR shall not make any considerations additional to those set forth in the preceding paragraphs of this report.

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

Done and signed in Santiago, Chile by the Inter-American Commission on Human Rights on April 4, 2001. (Signed) Claudio Grossman, Chairman; Juan E. Méndez, First Vice-Chairman; Marta Altolaguirre, Second Vice-Chair; Hélio Bicudo, Robert Goldman, Peter Laurie and Julio Prado Vallejo, Commissioners.