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Title/Style of Cause:	Alfonso Martin del Campo Dodd v. Mexico
Doc. Type:	Report
Decided by:	President: Luz Patricia Mejia Guerrero; First Vice President: Victor Abramovich; Second Vice President: Felipe Gonzalez; Commissioners: Florentin Melendez, Sir Clare K. Roberts, Paolo G. Carozza.
Dated:	12 November 2009
Citation:	del Campo Dodd v. Mexico, Case 12.228, Inter-Am. C.H.R., Report No. 117/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by:	APPLICANTS: Accion de los Cristianos contra la Tortura, the Center for Justice and International Law and the Lawyers Committee for Human Rights
Editor's Note:	The text of the footnote 49 is missing in the original.
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I. SUMMARY

1. On July 13, 1998, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the IACHR") received a petition lodged by Alfonso Martín del Campo Dodd. It alleged that the United Mexican States (hereinafter "the State") had incurred international responsibility by its unlawful arrest of Mr. Martín del Campo Dodd, his torture and his subsequent conviction and 50-year prison sentence. His conviction allegedly came on the heels of a trial that failed to take account of the elements of due process and in which a torture-induced confession was used against the victim. In a later submission, Acción de los Cristianos contra la Tortura (ACAT), the Center for Justice and International Law (CEJIL) and the Lawyers Committee for Human Rights were added as co-petitioners.[FN1]

[FN1] A communication was received from the LCHR on March 22, 2002, advising the IACHR of its decision to withdraw as a co-petitioner in the case.

2. The petitioners allege that the facts denounced constitute violations of various provisions of the American Convention on Human Rights (hereinafter the "American Convention"): the right to humane treatment (Article 5); the right to personal liberty (Article 7); the right to a fair trial (Article 8); and the right to judicial protection (Article 25). The petitioners also allege that all the admissibility requirements stipulated in the American Convention have been met. The Mexican State contends that there are no violations of the American Convention, as Mr. Martín

del Campo had recourse to various courts and proceedings in which the rules of due process were observed. It also alleges that his torture was never proven. The State contends, therefore, that it is not guilty of any violation of Mr. Alfonso Martín del Campo Dodd's rights.

3. In this report, the IACHR concludes that Mexico City's judicial police arbitrarily detained Alfonso Martín del Campo Dodd on May 30, 1992, and subjected him to torture and other forms of cruel, inhuman and degrading punishment. Their purpose was to force him to confess to the previous night's murder of his sister Juana Patricia Martín del Campo Dodd and his brother-in-law Gerardo Zamudio Aldaba. The Inter-American Commission also concludes that given the evidentiary value that the various magistrates accorded to the torture-induced confession, the guarantees of due process were denied, especially the right to presumption of innocence. The State also failed to guarantee protection of Martín del Campo Dodd's fundamental rights. The facts established in this report constitute violations of articles 5, 7, 8(1), 8(2), 8(3) and 25 of the American Convention, and articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, all in violation of the general obligation stipulated in Article 1(1) of the American Convention, which is to respect the rights protected therein and ensure their free and full exercise.

II. SUBSEQUENT PROCESSING OF REPORT No. 81/01

4. The IACHR approved Report No. 81/01 on October 10, 2001. In that report the Inter-American Commission decided "To declare this case admissible as regards the alleged violations of the rights contained in Articles 5, 7,8 and 25 of the American Convention." The parties were advised of the decision by note dated October 18, 2001, whereupon the two-month time period began for the petitioners to present any additional observations they might have on the merits of the case. At the same time, the Commission placed itself at the disposal of the parties for purposes of arriving at a friendly settlement, pursuant to Article 48(1)(f) of the American Convention. None of the parties formally expressed any interest in seeking a friendly settlement of this case.

5. On December 17, 2001, the Commission received a communication from ACAT and CEJIL MESOAMERICA in which an extension was requested for submitting the petitioners' observations. A one-month extension was granted on December 28, 2001. On January 11, 2002, the IACHR received the petitioners' final observations on the merits; another document was added on January 18, 2002. Both communications were forwarded to the State on January 29, 2002. In keeping with Article 38(1) of the Commission's Rules of Procedure, the State was given two months in which to respond. Its observations were submitted by note of April 3, 2002.

6. On October 18 2002, at the request of the Mexican State, the IACHR held a hearing on the merits of the present case. Both parties reiterated the factual and legal arguments they have held during the processing of the case, in particular in the communications that contain the observations of the merits.

III. THE PARTIES' POSITIONS ON THE MERITS

A. The petitioners

7. According to the petitioners, on May 29, 1992, Mr. Alfonso Martín del Campo Dodd was asleep at the Mexico City home he shared with his sister Patricia Martín del Campo Dodd, his brother-in-law Ricardo Zamudio Aldaba, and the couple's three children. At around midnight, he was awakened by his sister's cries for help. When he ran in the direction of her cries, two persons whose heads were covered with stockings struck him several times and tried to knock him unconscious. They then ordered him to get dressed, put him in the trunk of one of the cars at the house, and drove some 25 minutes until they brought the car to a stop. Mr. Martín del Campo states that he then managed to get the car trunk open and went in search of help. He came upon the Federal Highway Police on the highway leading to Cuernavaca.

8. The petition indicates that one of the police accompanied Mr. Martín del Campo back to the car, where they found a glove and a knife. He identified them as being those that the unknown assailants had used to threaten him. Another police officer then drove him to his residence. When he arrived he saw an ambulance parked outside and learned that his sister and brother-in-law had been murdered. He was then taken to the Benito Juárez Station, where the petitioners contend Mr. Martín del Campo was tortured by judicial police:

They placed a plastic bag over his entire head; they then squeezed the bag so he would not get enough air, while the judicial police officers wrote up their version of events. He was subjected to coercion from between 10 and 12 officers; he also received severe blows, administered with wet cloths, to his stomach and to his head. He also received open-handed slaps to his face and was kicked in the testicles; the police officers took turns to hit him, and they forced him to sign and place his thumbprint on an incriminating statement. In the statement that he gave under coercion, Alfonso Martín del Campo Dodd admitted having killed both his sister and his brother-in-law, and he also stated that he tried to fake a kidnapping to conceal his guilt.[FN2]

[FN2] Petitioners' submission, October 27, 1999, pp. 3 and 4.

9. Alfonso Martín del Campo Dodd was tried, convicted and sentenced to 50 years in prison for the double homicide of his sister and brother-in-law. The 55th Criminal Court of the Federal District handed down the lower court ruling on May 28, 1993. On appeal, the Eighth Criminal Chamber of the Federal District Superior Court upheld the conviction in a ruling of August 17, 1993. Mr. Martín del Campo Dodd's defense filed a petition seeking amparo relief challenging that court's definitive ruling. However, on December 2, 1997, the conviction was confirmed. A motion seeking recognition of innocence filed with the Federal District Superior Court was denied on April 29, 1999. Mr. Martín del Campo Dodd's representatives then brought amparo relief proceedings to challenge that ruling, which was also denied on September 3, 2001 by the Fourth Collegiate Criminal Court of the First Circuit. They also pursued administrative remedies. A complaint was filed with the PGJDF's Internal Controller, which found that judicial police office Sotero Galván Gutiérrez had arbitrarily detained Mr. Alfonso Martín del Campo Dodd and violated his physical integrity. A complaint of torture filed with the PGJDF on May 11, 1995 was filed.

10. The petitioners allege that the criminal trial conducted was a blatant violation of due process, basically because the only evidence upon which the conviction rests is a statement made under torture. They further allege that a person of confidence or an attorney did not represent Mr. Martín del Campo Dodd. The PGJDF's internal investigations, instituted at the insistence of Martín del Campo Dodd's family, found that in October 1994, officer Sotero Galván Gutiérrez hand incurred administrative responsibility for the following:

Having arbitrarily detained him and having beaten him, thus failing to safeguard the legality and honesty he is required to observe; carrying out actions that constituted an abuse of his position or the undue exercise thereof, for failing to comport himself correctly in his job, for having violated other legal provisions related to public service, including the Operations Manual of the Judicial Police; because he failed to respect the principles of legality and constitutionality with respect to the complainant; because he did not refrain from the use of force, and did not safeguard the basic rights [of Mr. Martín del Campo].[FN3]

[FN3] Decision of the Internal Controller of the PGJDF of October 14, 1994, PGJDF File QC/011/FEB-94, quoted in the petitioners' submission of October 27, 1999, paragraph 9, p. 4.

11. In their additional observations on the merits, the petitioners allude to the "pattern of confessions obtained under torture in Mexico." To support their allegations, they cite reports of the Inter-American Commission and other international sources.[FN4] The petitioners contend that Mr. Alfonso Martín del Campo Dodd's case fits that pattern. They also argue that in its 1998 report on Mexico and again in the Manuel Manríquez case, the Inter-American Commission criticized the practice whereby the principle of "procedural immediacy" is invoked to lend legitimacy to torture-induced confessions.[FN5]

[FN4] Petitioners' submission, January 18, 2002, pp. 3 to 5.

[FN5] The petitioners cite the Inter-American Commission's report on the situation of human rights in Mexico, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, Chapter IV "The right to humane treatment," and Report 2/99, Case 11,543 – Manuel Manríquez, 1998 Annual Report of the IACHR.

12. The petitioners allege that:

By Alfonso Martín del Campo's arbitrary detention, the use of his torture-induced confession, and the inefficacy of the Mexican courts in remedying his situation, Mexico has incurred international responsibility under the American Convention and the Inter-American Convention to Prevent and Punish Torture (hereinafter the "Convention against Torture). Mexico is party to both those instruments

The petitioners are therefore asking the Commission to find that the Mexican State has violated, to the detriment of Alfonso Martín del Campo Dodd, articles 5, 7, 8 and 25 of the American

Convention, and in so doing has also violated its general obligation under Article 1.1 of that instrument. Because Mexico signed and ratified the Convention to Prevent and Punish Torture before the events at issue in this petition occurred, the petitioners consider -and ask the Commission to so declare- that the State of Mexico has also violated various provisions of that Inter-American Convention.

The case of Alfonso Martín del Campo is paradigmatic in that there is irrefutable evidence of his innocence and in that the case fits into a pattern of confessions extracted by torture inflicted by agents of the State.[FN6]

[FN6] Petitioners' submission, January 18, 2002, pp. 5 and 6.

B. The State

13. In its observations on the merits of this case, the State describes Mr. Martín del Campo Dodd's juridical status since May 29, 1992, the day on which Gerardo Zamudio Aldaba and Patricia Martín del Campo Dodd were murdered. It explains that the preliminary inquiry found Alfonso Martín del Campo Dodd responsible *prima facie* and the judge of first instance "decided to try him for the crime, allowed him the opportunity to defend himself and to be heard, and also respected due process of law." However, the State alleges that the evidence supplied by the defense "did not refute the charges brought by the Public Prosecutor's Office, which were based on the evidences introduced in the criminal proceedings."

14. The Mexican State notes that the sentence of 50 years' imprisonment, delivered on May 29, 1993 by the judge of first instance, was confirmed on appeal on August 17, 1993. As for the December 2, 1997 decision denying the petition that Alfonso Martín del Campo Dodd filed seeking *amparo* relief, the State reasons that "this means that the court decisions were delivered in accordance with the law and the Federal Constitution." [FN7] It adds that the motion that the representatives of Mr. Martín del Campo Dodd filed seeking recognition of his innocence was denied because it did not meet the requirements that the law demands.

[FN7] The State's submission, April 3, 2002, p. 5

15. As for allegations made concerning violation of the right to humane treatment, the State argues that:

As to the torture that Mr. Alfonso Martín del Campo is alleged to have suffered, the State complied with its duty to investigate the facts. Accordingly, the Federal District Public Prosecutor's Office, the Federal District Human Rights Commission and the National Human Rights Commission, all instituted inquiries. None of these turned up sufficient evidence to establish that Mr. Martín del Campo had been tortured.[FN8]

[FN8] *Idem*, p. 3.

16. The State's observations continue with a recounting of the actions taken since the present case was declared admissible in IACHR Report No. 81/01:

Since that report, the Government has, in good faith, taken several measures to determine whether some judicial error might have occurred in the present case, even though his juridical situation has already been examined and settled by a number of judicial and non-judicial bodies within Mexico's juridical system.

The Federal District Public Prosecutor's Office (PGJDF) was urged to hasten any pending investigations yet to be solved and to see whether there are juridical avenues that would allow the inquiries already completed to be reopened.[FN9]

[FN9] *Idem*, p. 6.

IV. ANALYSIS

17. The Commission will now proceed to analyze the arguments of both parties in regards to the alleged violation of the rights to personal liberty, to humane treatment, to judicial protection and to a fair trial committed by the Mexican State on the detriment of Alfonso Martín del Campo Doo.

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

18. The information available in the case file reveals that in the early morning hours of May 30, 2002, Alfonso Martín del Campo Dodd arrived on foot at the toll booth on the highway connecting the Federal District and Cuernavaca. He related what had happened to Federal Highway Police officers at the tollbooth at the time. The police returned with him to the abandoned vehicle, where Alfonso Martín del Campo Dodd recognized the knife used by the assailants who had kidnapped him and the gloves they used in the robbery. One of the federal officers then accompanied Mr. Martín del Campo Dodd to his home, where the latter said he learned that his sister and brother-in-law had been murdered.

19. According to the petitioners, after Mr. Alfonso Martín del Campo Dodd told the police officers at his home what had happened, he was taken to the PGJDF "in the capacity of victim and aggrieved party." The police did not bother with an arrest warrant because he was not considered a suspect at the time. However, as soon as Mr. Martín del Campo was on the premises of the PGJDF, the police quickly made him the principal suspect in the murder of his sister and brother-in-law, in what the petitioners described as a "capricious" decision. They add that Mr. Martín del Campo Dodd was held in custody at the PGJDF from Saturday morning, May 30, 1992, until 2:00 p.m. the following Monday. That was more than the maximum 48-hour

period allowed under Mexican law between the time that one is deprived of one's liberty to the time one is brought before a judge.

20. For its part, the Mexican State did not take specific issue with any of the petitioners' allegations concerning the violation of Mr. Martín del Campo Dodd's right to personal liberty. Its general contention was that Mr. Martín del Campo Dodd had access to a number of juridical mechanisms, but was unable to support his arguments.

21. The relevant provisions of Article 7 of the American Convention read as follows:

1. Every person has the right to personal liberty and security.
 2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
 3. No one shall be subject to arbitrary arrest or imprisonment.
- (...)

22. The Commission's analysis to determine whether a deprivation of liberty is compatible with the provisions of Article 7(2) and (3) above is done in three phases. [FN10] The first is to determine the legality of the detention from a material and formal standpoint. To do so, it must be determined whether the detention is compatible with the domestic laws of the State in question. The second step involves the analysis of the 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 must then be determined whether the application of the law in a specific case was arbitrary

[FN10] See, for example, IACHR, 2001 Annual Report, Report No. 53/01, Case 11,565, Ana, Beatriz and Celia González Pérez, Mexico, 4 April 2001, OEA/Ser./L/V/II.111 doc. 20, rev. 16, par. 23.

23. Article 16 of Mexico's National Constitution provides as follows:

No one shall be molested in his person, family, domicile, papers, or possessions except by virtue of a written order issued by the competent authority, stating the legal grounds and justification for the action taken.

No order of arrest or detention shall be issued by anyone other than the competent judicial authority and unless such order of arrest or detention is preceded by a charge, accusation, or complaint alleging an act that the law states to be a crime punishable by imprisonment at the least, and when there is evidence showing the existence of a corpus delicti and suggesting the likelihood of the suspect's guilt.

The authority executing the arrest warrant shall bring the suspect before the judge without delay and under his/her strictest responsibility. Any violation of this provision shall be an offense punishable by law.

In cases of flagrante delicto, any person may arrest the suspect and turn him over to the closest judicial authority without delay; that authority, in turn, shall turn the suspect over to the Public Prosecutor's Office.

(...)

No suspect may be held by the Public Prosecutor's Office for more than forty-eight hours, by which time either his release shall be ordered or he shall be turned over to the judicial authority ...

24. In the instant case, the petitioners contend that Alfonso Martín del Campo Dodd went to the PGJDF to make his statement as a kidnapping victim. He was accompanied by judicial police officer Sotero Galván Gutiérrez, who was subsequently subject to an administrative sanction for having failed to respect Mr. Martín del Campo Dodd's constitutional guarantees. The resolution of the Office of the Internal Controller, which came as a result of a complaint that Alfonso Martín del Campo Dodd filed with the CNDH, states in its introduction that police officer Galván Gutiérrez was guilty of “acts that implied an abuse or improper performance of his function, by virtue of his arbitrary detention of the complainant”.[FN11] (emphasis added) Lastly, the petitioners allege that for no good reason, the victim's status changed from that of deponent to detainee, and he was held in custody for longer than the maximum period allowed under Mexican law. The State does not dispute the facts, but generally contends that they were duly examined by the Mexican courts and dismissed on the basis of domestic law.

[FN11] Federal District Public Prosecutor's Office, Internal Controller, Office of the Deputy Controller of Institutional Coordination, CNDH/121/DF/018, File QC/0011/FEB-92, October 14, 1994, Point IX of the Preamble.

25. Given the State's procedural silence on this point, confirmed by official documents, the Commission takes it as fully proven that the alleged victim in this case was detained without an order from a court and despite the fact that this was not a case of flagrante delicto. Again, absent any denial on the State's part, it is established that Mr. Alfonso Martín del Campo Dodd was held in the custody of police officer Sotero Galván Gutiérrez and other members of the judicial police on the premises of the Public Prosecutor's Office, for more than the 48-hour period that is the maximum allowed under Mexican law. And so, the detention does not get beyond the first of the three tests mentioned earlier, as it was not performed in accordance with the provisions of Mexico's own Constitution. The IACHR concludes that the Mexican State is responsible for violating the right to personal liberty and security protected under Article 7 (subparagraphs 1, 2 and 3) of the American Convention, to the detriment of Mr. Alfonso Martín del Campo Dodd.

B. The right to humane treatment (Article 5 of the American Convention)

26. Having established that Mr. Alfonso Martín del Campo Dodd was arbitrarily detained, the Commission must now turn its attention to the parties' allegations as to what transpired during the unlawful deprivation of liberty. Time and time again, the Commission has expressed its deep concern over the practice of unlawful detentions in countries of this hemisphere, including Mexico. It reasons that such unlawful detentions can be a prelude to violations of other basic human rights.[FN12] For its part, the Inter-American Court has repeatedly held that "a persons who is unlawfully detained [...] is in an exacerbated situation of vulnerability creating a real risk that his other rights, such as the right to humane treatment and to be treated with dignity, will be violated." [FN13]

[FN12] The Inter-American Commission has written the following:

This is one of the most serious problems that occur in Mexico. Reports of illegal detention are a common occurrence in Mexico and directly involve agents of the country's various police forces: federal or state judicial police, preventive police, etc. However, the most delicate aspect of the problem is that this type of human rights violation often marks the beginning of a chain of violations of other rights, which generally includes the right to personal integrity and legal guarantees. The relationship between illegal detention and the violation of an individual's personal integrity and legal rights is not a function of circumstance. Rather, it is the logical consequence of the relationship of dependency that is often found between the administrative and judicial authorities.

IACHR, Report on the situation of human rights in Mexico, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, 24 September 1998, Chapter III "Right to personal freedom", par. 219.

[FN13] See, for example, I/A Court H.R., Case of the "Street Children" (Villagrán Morales et al.) Case v. Guatemala, Judgment of November 19, 1999. Series C No. 63, par. 166; Suárez Rosero v. Ecuador Case, Judgment of November 12, 1997, par. 90; and Loayza Tamayo v. Peru Case, Judgment of September 17, 1997, par. 57.

27. In the present case, it is an uncontested fact that Mr. Martín del Campo Dodd remained in the hands of the PGJDF judicial police from Saturday morning, May 30, 1992, to the following Monday afternoon, and was interrogated by them during that time. The petitioners describe what happened in that period as follows:

During his interrogation, Alfonso Martín del Campo was subjected to excessively harsh treatment. The moment he arrived at the PGJDF, he was taken to the commandant's office, where the judicial police used torture to interrogate him. He was stripped naked, beaten on the testicles, on the face and over his entire body. A plastic bag was put on his head, making it impossible for him to breathe. All this was duly documented by the General Bureau of Investigative Services and by the clerk of the court of the 55th Federal District Criminal Court. The State has not contested these public documents, so that we are asking that the Commission accord them the weight of full proof.

Compounding the blows and physical mistreatment he sustained was the fact that Mr. Alfonso Martín del Campo felt powerless to convince his captors of his innocence. He suffered the

anguish of knowing that the torture being inflicted upon him would only stop if he admitted to the murder of his sister and brother-in-law. The fact that he was nude was also a humiliation for the victim.

In the Loayza Tamayo Case, the Inter-American Court held that "even in the absence of physical injuries, psychological and moral suffering ... may be deemed inhuman treatment. The degrading aspect is characterized by the fear, anxiety and inferiority induced for the purpose of humiliating and degrading the victim and breaking his physical and moral resistance."

In the instant case, Alfonso Martín del Campo experienced both types of suffering: he was tortured physically, and was subjected to severe psychological duress...

In the opinion of the petitioners, the suffering caused by being surrounded by more than ten judicial police officers who had to take turns in order to prolong his interrogation and torture, all to force him to confess, is itself a violation of the American Convention on Human Rights.

The officers present resorted to the use of disproportionate force, exacerbating Alfonso Martín del Campo's vulnerability and defenselessness.

The petitioners would also like to underscore one very serious fact, which is that a superior -in this case a police commandant- allowed his office to be used to torture Mr. Martín del Campo Dodd: rather than admonish his subordinates, the commandant helped the judicial police officers find a place where the victim in this case could be forced to incriminate himself in two murders.[FN14]

[FN14] The petitioners' submission of January 18, 2002, pp. 8-10.

28. The Mexican State contends that Mr. Martín del Campo Dodd's defense failed to show that he had been tortured, despite the numerous opportunities it had with the courts, the Federal District Human Rights Commission and the National Human rights Commission. In its observations on the merits, the State alleges that:

It was not until May 11, 1995, three years after the alleged events occurred, that Mr. Alfonso Martín del Campo filed a complaint with the Federal District Public Prosecutor's Office ... alleging acts of torture to which he [alone] was subjected. To look into the matter, the Federal District Public Prosecutor's Office launched Preliminary Inquiry SC/3839/95-03, which did everything necessary to ascertain the facts.

Once all the evidence compiled during the investigation was assessed, a motion was introduced on September 27, 1999, recommending that no criminal action be brought. The Auxiliary Agents Coordination Commission approved the motion on December 27, 1999, reasoning that the evidence was not sufficient to prove the crime of torture. The interested parties were so notified. The decision of the Public Prosecutor's Office was challenged through an amparo proceeding,

which the lower court dismissed. Whether that decision was challenged before the Collegiate Circuit Court is unknown.

The foregoing notwithstanding, an administrative inquiry that the Internal Controller's Office in the Federal District Public Prosecutor's Office instituted in 1994 found an isolated incident for which Judicial Police officer Sotero Galván Gutiérrez was internally sanctioned, for failure to refrain from the use of force and failure to protect Alfonso Martín del Campo's basic human rights. The Office of the Controller therefore ordered that he should be barred from holding any public position or office for a three-year period.

29. The State adds that Alfonso Martín del Campo de la Peña and Bessie Dodd Burke, parents of the convicted man, filed a complaint with the Federal District Human Rights Commission (CDHDF) asking that a new line of investigation be pursued in connection with the May 1992 murders and that the torture-induced confession be declared invalid. On November 10, 1998, two visitors from the CDHDF met with Mr. Martín del Campo Dodd at the Social Re-adaptation Center in Tula de Allende, in the state of Hidalgo. The director of the prison provided a certified copy of the convicted man's physical condition, prepared on June 1, 1992, at the time he entered Mexico City's Reclusorio Preventivo Varonil Oriente [Eastern Men's Preventive Detention Center]. On November 24, 1998, the CDHDF petitioned the criminal court judge for the file on criminal case 57/92, which was the lower court conviction of Alfonso Martín del Campo Dodd on charges of double homicide. That file contains various documents attesting to the convicted man's physical condition, as well as the May 30, 1992 statements that he made to the Federal District judicial police allegedly confessing to the murders.

30. The CDHDF's forensic physician examined the documents in question and concluded "the evidence was not sufficient to establish that Mr. Alfonso Martín del Campo had been tortured." The State explains what those documents were:

a) Physical health certificate for Alfonso Martín del Campo Dodd, issued by the General Bureau of Investigative Services of the Federal District Public Prosecutor's Office, May 29, 1992, at 14:00 hours and signed by Dr. Jesús López Sánchez. The record shows two contusive blows to the rear portion of both parietal bones; dermal-epidermal abrasion on the paraaxiliar region of the left eye; an abrasion on the left side of the nose; a contusive blow at the hairline; an abrasion on the right knee; red blotches on the face, and dermal-epidermal abrasion on the back side of the right hand.

b) Coprological study done at the General Bureau of Investigative Services of the Federal District Public Prosecutor's Office, dated 12:10, May 29, 1992, containing the following data: form of male buttocks, with no anal or perianal lesions; normal mucous with no secretions; elastic sphincter; funnel like anus; normal folds; no fecal incontinence; no erosion on the mucosa; no signs or symptoms indicating the presence of venereal diseases at the time of the examination.

c) Opinion of the forensic psychiatrist prepared by Dr. Guillermo León González of the General Bureau of Investigative Services, May 31, 1992, wherein he concluded that the individual he examined showed no signs of mental disturbance at the time of the exam and had cognitive and affective abilities.

d) Certificate attesting to physical condition, issued at the Oriente Prison Medical Service, January 19, 1994, at 10:48 a.m., and signed by Dr. Héctor Arturo Guzmán Aguirre. It states that Alfonso Martín del Campo had a cut on his upper right lip, an unsutured wounded measuring 2 centimeters with a serohematic scab in the parietal region on the right side of the head; an abrasion on the nasal pyramid, in the zygomatic region and on the left cheek, and a yellowish-green bruise on the upper third of his right forearm. These lesions are not life threatening and will take less than 15 days to heal.[FN15]

[FN15] The State's submission, April 3, 2002, pp. 4 and 5.

31. It is the Commission's understanding that the first two documents the State mentions must be from May 30, 1992, as there is no dispute between the parties as to the precise hour at which Alfonso Martín del Campo Dodd was deprived of his liberty. All the other documents in the case file are consistent with the fact that the Mexico Federal District Judicial Police intervened in the morning hours of May 30, 1992.

32. Another fact not in dispute between the parties in this case is that judicial police officer Sotero Galván Gutiérrez, who figured in the arrest of Alfonso Martín del Campo Dodd and in his interrogation at PGJDF headquarters, was found guilty of having "violated [Martín del Campo Dodd's] human rights" and of having attacked his physical integrity. In effect, as noted earlier, the Mexican State acknowledges that the violation of Mr. Martín del Campo Dodd's physical integrity did occur. It simply argues that it was "an isolated incident."

33. The relevant part of the October 14, 1994 decision of the PGJDF's Office of the Internal Controller reads as follows:

III. 6At 227 of criminal case 57/92, prosecuted before the 55th Federal District Criminal Court, in which the complainant in the present case was tried for the crime of homicide, the record also shows that in Mr. MARTIN DEL CAMPO's cross examination of Mr. Sotero Galván Gutiérrez, the latter answered yes when Mr. MARTIN DEL CAMPO's side told him "... they were even going two by two, taking turns beating him..."

VIII. The administrative culpability attributed to Mr. SOTERO GALVÁN GUTIERREZ was established with public documents, specifically the court record of the proceedings in case 57/92 prosecuted against complainant in the 55th Criminal Court and referenced in Consideranda III.6 of this report, to which full probative value against that civil servant is attached, pursuant to articles 197 and 202 of the Federal Code cited, inasmuch as during those proceedings, Mr. GALVAN GUTIERREZ admitted to having beaten complainant.

The public servant in question never disproved the charge against him; he simply denied the facts.

IX. Given the foregoing, by his conduct SOTERO GALVAN GUTIERREZ violated his obligations under paragraphs I, V, XXI and XXII. He violated paragraph I by failing his duty to

safeguard the lawfulness and honor that he is duty-bound to uphold. Instead, he abused or improperly exercised his office by arbitrarily detaining the complainant. He violated paragraph V by his failure to observe good conduct in his job. He violated paragraphs XXI and XXII (prior to the amendments published in the Federation's Official Gazette of July 21, 1992), because he violated other legal provisions related to public service, such as the Judicial Police's Operations Manual, published in the Federation's Official Gazette of October 17, 1989, articles 29 -subparagraphs I and II-, 30, 31 and 32 -subparagraphs I and II-, because he failed to respect the principles of legality and constitutionality with respect to the complainant; because he did not refrain from the use of force and did not protect MARTIN DEL CAMPO's basic rights.

X. By virtue of the foregoing and based on Article 54 of the relevant law, and inasmuch as public servant SOTERO GALVAN GUTIERREZ is an agent of the Judicial Police, age 35, married with a secondary-school education, all circumstances that make him fit to understand the ramifications of his misconduct and to know what his limitations as a public servant are, his attitude violated human rights because it was an abuse of complainant's physical integrity; and inasmuch as Sotero Galván Gutiérrez has a record with this Controller's Office, in case file D/0136/ABR-93. His punishment in that case on November 26, 1993, was to be removed from his post. This internal control body therefore considers that his misconduct is egregious and he is therefore disqualified, for a period of three years, from holding any other public job, office or commission, the goal being to eradicate practices that are an obvious stain on the image of this Office ... (emphasis added).[FN16]

[FN16] PGJDF, Resolution cited, pp. 5, 7 and 8.

34. Torture is prohibited in Mexico, both by domestic law and by the international human rights obligations that the State undertook of its own free will. Article 30 of the Federal Constitution sets forth the guarantees to which every person being prosecuted for a crime is entitled. They include the guarantee against being forced to be a witness against oneself. It is expressly provided that "any solitary confinement, intimidation or torture is prohibited and shall be a punishable offense under criminal law." The relevant provisions of the Federal Law to prevent and punish torture read as follows:

Article 3

Any public servant who, in discharging his duties and functions, inflicts upon a person severe pain or suffering, whether physical or psychological, to obtain information or a confession from either the torture victim or a third party, or to punish him or her for something he or she is suspected of having done, or to coerce him or her to perform or desist from some conduct... will be committing torture.

Article 4

Any person who commits torture shall be imprisoned for a period of three to twelve years, be subject to a fine ranging from two hundred to five hundred days, and be disqualified from any

public position, job or commission for a period up to twice the period of imprisonment. The number of days of fine shall be governed, in the case of the local courts, by Article 29 of the Federal District Penal Code, and in the case of the federal courts the Penal Code for the entire Republic.

Article 5

The punishments provided for in the preceding article shall be enforced against any public servant who, in the exercise of his functions and for any of the purposes indicated in Article 3, instigates, compels or authorizes a third party, or uses that third party, to inflict upon a person serious physical or psychological pain or suffering; or does not prevent such pain and suffering from being inflicted on a person in his/her custody.

The same punishment shall be meted out to any third party who, for whatever purpose and at the explicit or implicit instigation or authorization of a public servant, inflicts grave physical or psychological pain and suffering upon a person in custody.

35. The Inter-American Court of Human Rights has held that "a true international system prohibiting all forms of torture has been in place." [FN17] Article 5(1) of the American Convention stipulates, "every person has the right to have his physical, mental, and moral integrity respected." Article 5(2) of the Convention flatly prohibits torture and guarantees to all persons deprived of their liberty respect for their dignity as human persons. Article 2 of the Inter-American Convention to Prevention and Punish Torture reads as follows:

... 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.

[FN17] I/A Court H.R., Cantoral Benavides Case v. Peru Case, Judgment of August 18, 2000, para. 103.

36. The evidence in the case file bears out the fact that a number of police officers, including the one who arbitrarily detained him, beat and kicked Mr. Alfonso Martín del Campo Dodd, and subjected him to other forms of humiliating and degrading treatment. The complaint states that the purpose of the treatment was to force him to confess to the double homicide of his sister and brother-in-law.

37. At the time the torture allegedly occurred, the victim was in the exclusive control and custody of agents of the Mexican State. Based on the jurisprudence of the inter-American system in cases of torture alleged to have occurred under such circumstances, the burden of proof rests with the Mexican State to explain how the victim's injuries occurred. [FN18]

[FN18] See, in this regard, Inter-American Court of Human Rights, *Neira Alegría v. Peru Case*, Judgment of January 19, 2005, par. 65; 1997 Annual Report, Report 55/97, Case 11,137. Juan Carlos Abella et al., paragraphs 195-199.

38. The European Court of Human Rights has adopted a similar test for proof of alleged violations of the right to humane treatment or the right to life in the case of persons in the custody of State authorities. In effect, although the European Court's general standard for evaluating material obtained has been proof "beyond reasonable doubt", [FN19] such proof may follow from the co-existence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact. Where the events in issue are, in whole or in large part, within the exclusive knowledge of the authorities, as in the case of persons within the control and custody of agents of the State, strong presumptions of fact will arise with regard to the injuries or deaths occurring during that detention. In such cases, the burden of producing evidence providing a satisfactory and convincing explanation rests with the State. [FN20]

[FN19] See European Court of Human Rights, *Ireland v. United Kingdom*, Judgment of January 18, 1978, Series A No. 25, par. 161.

[FN20] In a specific case submitted to it for consideration, the European Court held that:

... such proof may follow from the co-existence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation.

European Court of Human Rights, Third Section, *Demiray v. Turkey Case*, (Application N° 27308/95), Judgment, Strasbourg, November 21, 2000, par. 43. See also, *Salman v. Turkey*, Judgment of June 27, 2000, par. 100; *Labita v. Italy*, par. 212; *Dikme v. Turkey*, Judgment of July 11, 2000, par. 73.

39. The October 14, 1994 resolution of the PGJDF's Internal Controller's Office, the pertinent parts of which are quoted earlier in this report, expressly establish that Sotero Galván Gutiérrez "violated human rights because [his attitude] was an abuse of [the] physical integrity" of Mr. Alfonso Martín del Campo Dodd. This decision is an official document that was never challenged within Mexico and whose legitimacy and content the State never attempted to discredit during the IACHR's proceedings on the case. This despite the fact that it was up to the State to show that the facts denounced did not occur, or to provide a satisfactory and convincing explanation of what did happen to the victim while he was in the custody and control of officers with the judicial police. To the contrary, the Mexican State confirmed what happened, but described it as an "isolated incident." Consequently, the Commission is attaching full probative value to that resolution of the Federal District Public Prosecutor's Office concerning the violation of Mr. Martín del Campo Dodd's right to humane treatment.

40. That piece of evidence is consistent with the document attesting to Mr. Alfonso Martín del Campo Dodd's state of health, prepared on May 30, 1992 by the PGJDF's own experts. That document records that Mr. Martín del Campo Dodd had sustained two contusive blows to the face, abrasions on his eye, nose, hand and knee and had red blotches on his face. Like the resolution of the PGJDF Internal Controller's Office, that certificate carries full probative value, as it is an official document, never challenged within Mexico and which the Mexican State never discredited in the proceedings on the present case.

41. Based on these facts, the Inter-American Commission finds that Alfonso Martín del Campo Dodd was beaten by Sotero Galván Gutiérrez and other officers in the Federal District's judicial police force, while being arbitrarily detained at the PGJDF on May 30, 1992.

42. This torture was followed by Mr. Martín del Campo Dodd's confession to the double murder of his sister Patricia Martín del Campo Dodd and his brother-in-law Gerardo Zamudio Aldaba. That confession, allegedly extracted on the premises of the Public Prosecutor's Office where Martín del Campo Dodd was being arbitrarily detained, was retracted by Mr. Martín del Campo Dodd in the presence of the judge presiding over his case, and at every procedural opportunity he has had in Mexico since then. It is utterly illogical to suppose that an individual who is arbitrarily detained and then beaten and mistreated by those who took him into custody would then be able to give a spontaneous or valid confession. Furthermore, when answering the petitioners' complaints regarding this point, the Mexican State did not introduce any evidence to disprove the charge, as it should have, nor did it provide a reasonable or credible explanation of the circumstances under which Mr. Alfonso Martín del Campo Dodd gave his supposed confession at the headquarters of the Public Prosecutor's Office.

43. In the present case, the IACHR considers that the purpose of the egregious violations of Mr. Alfonso Martín del Campo Dodd's right to humane treatment was to force him to confess to the double homicide. The acts committed against Mr. Martín del Campo Dodd constitute torture, as they were inflicted intentionally, to cause him physical and mental pain and suffering, all in order to get him to incriminate himself in the events that were the subject of the criminal investigation that the PGJDF had just launched on May 30, 1992.

44. The Inter-American Commission therefore concludes that the Mexican State is responsible for the violations of Article 5 of the American Convention committed by its agents against the victim in the instant case. Those acts fit the definition of torture given in the Inter-American Convention to Prevent and Punish Torture and in other applicable international instruments.

C. The right to a fair trial (Article 8 of the American Convention) e invalidez de las confesiones obtenidas bajo tortura (artículo 10 de la Convención Interamericana para Prevenir y Sancionar la Tortura)

45. Alfonso Martín del Campo Dodd was arbitrarily detained and tortured by agents of the judicial police of Mexico City. The first opportunity that he had to declare spontaneously was on June 1st, 1992, when he was taken to criminal law judge. In that occasion, Mr. Martín del Campo

Dodd retracted what he allegedly declared at the PGJDF, expressed his innocence and provided a version of the facts. It is pertinent to analyze the response from the jurisdictional bodies in Mexico from the claims and the evidence submitted to them, with the purpose of establishing if said response complies with the norms contained in the American Convention that guarantee the right to due process:

Article 8. Right to a Fair Trial

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.
2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

(...)

- c. adequate time and means for the preparation of his defense;
- d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
- e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
- f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
- g. the right not to be compelled to be a witness against himself or to plead guilty; and

(...)

3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.

(...)

46. It is not the function of the supervisory bodies of the inter-American human rights system to offer a sort of judicial appeal instance or a place for judicial review of judgments delivered by national courts,[FN21] or to determine the innocence or culpability of persons. The role of the IACHR and the Inter American Court of Human rights is to determine if the procedures have been fair when taken as a whole, including the way evidence has been obtained. This determination requires a comprehensive evaluation of the process of the case like the present one, where violations to the right to judicial guarantees were being alleged in the detriment of the victim.

[FN21] See I/A Court H.R., Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala, Judgment cited supra, para. 202.

a. Value attached to the torture-induced confession

47. The most serious of the violations of due process that the petitioners in this case allege is, without question, that a torture-induced confession was used to convict Mr. Martín del Campo Dodd. The petitioners' allegations are as follows:

Alfonso Martín del Campo Dodd went from being victim and aggrieved party to the chief suspect in the murder of his sister and brother-in-law. The authorities in charge of the investigation never gave him the benefit of the presumption of innocence. Furthermore, and in flagrant violation of the provisions of Article 8.3 of the American Convention on Human Rights, they forced him to confess against his will.

Therefore, the confession produced during Alfonso Martín del Campo Dodd's detention has no probative value, since it was extracted by coercion. Furthermore, there was no other evidence that would have been sufficient to convince the judge of the Federal District's 55th criminal court that Mr. Martín del Campo was, beyond any doubt, guilty of the crimes of which he was accused. The judge failed to order an investigation of the torture and, based on the outdated principle of procedural immediacy, accepted as proof positive Mr. Martín del Campo Dodd's self-incriminating confession.[FN22]

[FN22] The petitioners' submissions of January 18, 2002, pp. 10-12.

48. The petitioners further allege that none of the evidence introduced in the lower-court proceedings substantiates the statement forced from Alfonso Martín del Campo Dodd under torture. In their additional observations on the merits of the instant case, the petitioners summarize the evidence introduced and describe it as follows:

- a) The May 30, 1992 appearance by law-and-order police officer Miguel Angel Gutiérrez Lara (who was not privy to the facts and who in no way implicated the complainant);
- b) The crime scene investigation, exhibit documenting corpses, wounds, and the removal and transfer of the bodies (nothing of which in any way involved the complainant);
- c) The new exhibit documenting corpses, lesions, kinship, and medical records, as well as a new identification of the corpses (nothing of which implicated the complainant);
- d) Medical report number 35 on the identification of the body of the individual who in life had been Juana Patricia Martín del Campo Dodd (again, nothing to implicate the complainant);
- e) The autopsy record for Juana Patricia Martín del Campo Dodd (nothing of which implicated the complainant);
- f) The statement made by witness Alfonso Martín del Campo de la Peña (who was not privy to the facts and who in no way implicated the complainant);
- h) The medical report resulting from the identification of the body of the person who in life had been Gerardo Zamudio Aldaba, as well as the autopsy record on the person so named;
- i) The statement made by witnesses Roberto Zamudio Aldaba and María del Carmen Aldaba Corral (who were not privy to the facts and who in no way implicated the complainant).

- j) Exhibits of autopsy reports;
- k) Exhibit introduced identifying clothing and instruments supposedly used in the commission of the crime (nothing was learned from the clothing because, as the court records show, it was incinerated by an investigator with the Public Prosecutor's Office on the very same day the events occurred);
- l) Exhibit of knives;
- m) The statement made by the housekeeper Inés Guzmán Sánchez (who said that she had heard voices but could not identify who they were; she concluded that nothing was out of the ordinary and went back to sleep);
- n) The report prepared by the criminologist on May 30, 1992 (which in no way implicates the complainant because there were no fingerprints, hematic fluids, etc., to incriminate the complainant. Quite the contrary: none of the strands of hair found at the crime scene -even in the left hand of the now deceased female victim and on one of her thighs- belonged to the complainant or to either of the murder victims. This is evidence and indeed proof of the presence of persons whose identity is still unknown);
- o) Exhibit documenting the reconstruction of the events of May 30, 1992 (which is false, invalid and unconstitutional);
- p) The report of the criminologist, dated May 31, 1992 (which in no way implicates the complainant);
- q) The principal criminological report issued by the dissenting third expert, Gregorio A. Ávila Olguín;
- r) The crime scene report of the Federal District Public Prosecutor's Office, dated May 30, 1992 (which shows that the investigators found strands of hair at the crime scene that did not belong to the deceased, but no hematic fluids or fingerprints other than those of the deceased).[FN23]

[FN23] Idem, pp. 13 and 14.

49. The petitioners contend that there was nothing in the body of evidence described above to justify the sentence of 50 years in prison that Alfonso Martín del Campo Dodd was given by the Mexican courts. It is their contention that the only evidence accorded the weight of full proof was the defendant's torture-induced confession.

50. For its part, the State's only argument is that the evidence introduced by Alfonso Martín del Campo Dodd's defense was not sufficient to disprove the charges of the Public Prosecutor's Office. In its observations on the merits of this case, the Mexican State contends that "the pertinent institutions made efforts to determine whether any irregularities were committed against Mr. Alfonso Martín del Campo," even though "the allegations were not made at the proper time." The State goes on to observe that:

Mr. Martín del Campo has had recourse to each and every judicial and administrative remedy that the Mexican legal system offers for the defense of his rights. Each and every one of the bodies to which he has turned has, based on the evidence available to it, found him guilty and upheld the conviction.

The following authoritative bodies have taken cognizance of the case: the 55th Criminal Court, the Eighth Chamber of the Federal District Superior Court, the Fourth Collegiate Criminal Court, the Seventeenth Chamber of the Federal District Superior Court, the Federal District's Sixth District Court for Amparo Relief in Criminal Cases, the Federal District Human Rights Commission, and the National Human Rights Commission. The decisions delivered by these bodies have all concluded that the evidence to prove torture is not there. They have all confirmed the individual's conviction.[FN24]

[FN24] The Mexican State's submission of April 3, 2002, p. 5.

51. In the Manuel Manríquez case, the Inter-American Commission found that, like the victim in the instant case, Manuel Manríquez was tortured by judicial police in Mexico City, to force him to confess to a murder that he denies having committed. In Mr. Manríquez' case, as in this one, the Mexican court authorities invoked the "principle of procedural immediacy" to accord evidentiary value to the torture-induced confession. This happened despite the fact that a court of law had found the police guilty of torturing Mr. Manríquez and of having thus violated his right to humane treatment; moreover, there was no other evidence to suggest that Mr. Manríquez was the author of the crime of which he was convicted. In its report on Case 11,509 concerning Mr. Manuel Manríquez, the IACHR wrote the following:

...the Commission receives the complaint insofar as the confession obtained through torture was in effect the only evidence relied upon in the judgment of the court of first instance to convict Manuel Manríquez as direct perpetrator of the homicide of which he was accused. The Commission also concludes that the right to the presumption of innocence set forth at Article 8(2) of the Convention was violated, as Manuel Manríquez was forced to give testimony against himself under torture, to declare his guilt, and for having accepted his confession obtained by coercion as valid. In addition, the Commission concludes that on assigning evidentiary value to that confession, the State also violated the provision of Article 10 of the Convention against Torture.[FN25]

[FN25] IACHR, 1998 Annual Report, Report No. 2/99, Case 11,509 - Manuel Manríquez, Mexico, 23 February 1999, par. 85.

52. In the present report, the Inter-American Commission has already established that judicial police tortured Mr. Alfonso Martín del Campo Dodd on May 30, 1992, to force him to confess to a crime that he denies having committed. The alleged confession was used in the criminal proceedings against Alfonso Martín del Campo Dodd to convict him and sentence him to 50 years in prison for the double homicide of his sister and brother-in-law, supposedly on the basis of the principle of "procedural immediacy." Indeed, decision number 454/93, which the Eighth Chamber of the Federal District Superior Court delivered on August 17, 1993, makes reference to that alleged confession at page 29:

The confession in question, given by the now convicted individual, is the only indicia of evidence that is relevant for purposes of clarification of the rights at issue here, since he is the only one who gives us a picture of how the events occurred.

53. To be in compliance with its international obligations in the matter of human rights -and, for that matter, the clauses of the Mexican Constitution that protect individual guarantees-, it is incumbent upon the authorities who intervened in this matter to declare that "confession" invalid, given the overwhelming evidence proving the circumstances under which it was obtained.[FN26]

Articles 8(2)(g) and 8(3) of the American Convention protect respectively the right not to be compelled to be a witness against himself or to plead guilty and that a confession of guilt but the accused shall be valid only if it is made without coercion of any kind. The Inter American Convention to Prevent and Punish Torture is also applicable to this case.[FN27] It establishes that:

Article 10

No statement that is verified as having been obtained through torture shall be admissible as evidence in a legal proceeding, except in a legal action taken against a person or persons accused of having elicited it through acts of torture, and only as evidence that the accused obtained such statement by such means.

[FN26] In its report on the situation of human rights in Mexico, published in 1998, the Inter-American Commission had the following to say:

The practice of torture as a method of police investigation has been encouraged by the legal validity which the Mexican legal system confers on the first statement by the accused, which, as we have already noted in this report, is taken not by the judge but by the Office of the Public Prosecutor...

The logic behind the guarantees of the criminal proceeding is the personal intervention of the judge in his court, which is deemed to be the appropriate organ for the protection of such rights. The objective behind the principle of immediacy is to avoid as much as possible any distancing of the judge from the elements of the proceeding and especially from the accused. In addition, "the objective behind the principle of procedural immediacy is to guarantee to citizens that the most serious matters that may affect their social lives - including those of a criminal nature - would be dealt with by an organ that is endowed with a range of safeguards to guarantee in particular its independence and impartiality."

In criminal matters, the principle of procedural immediacy is of fundamental importance, since the problems to be resolved by the court concern the basic faculties of the human person, which may be affected by the criminal justice system of the State. Consequently, the guarantee of procedural immediacy should in all cases be construed as having effect only between the judge and the accused person. Improper and erroneous interpretations, including statements given at police stations or at the Office of the Public Prosecutor should be rejected, since they are not given before the judge himself.

The Mexican State is construing the guarantee of procedural immediacy in a way that, instead of serving as a procedural guarantee for those accused of a crime, is becoming its very antithesis, the source of abuse of the rights of accused persons. Instead of being brought promptly before an impartial and competent organ for the protection of their rights, such as the competent judge in each specific case, accused persons are held for 48 hours or 96 hours by the judicial police without any judicial oversight. In many cases the judicial police use coercion and torture to extract self-incriminating testimony from the accused. In this regard, the IACHR notes that it has had no knowledge of acts of torture taking place during the period in which persons accused of crimes are brought before a competent judge; on the other hand, it is aware of numerous cases of torture that have taken place when accused persons are under the responsibility of the judicial police, be they federal or state.

IACHR, Report on the situation of human rights in Mexico, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, paragraphs 309, 313-315.

[FN27] Mexico ratified the Inter-American to Prevent and Punish Torture on June 22, 1987.

54. However, in all the instances the representatives of Mr. Martin del Campo Dodd went when seeking justice in Mexico, they experienced the contrary. The decision of the second instance previously mentioned reveals that the magistrate had knowledge of the acts of torture from the beginning, when they referred to what the victim in this case declared before the court of first instance.

He went on to say that the judicial police used physical force; at first [Alfonso Martín del Campo Dodd] told the judicial police the real story two or three times over. But they kept changing his version, telling him how they thought he had done it, claiming that his story was a fairy tale. They then gave him a number of beatings and put a bag over his head. They held him down and told him "you're either going to sing or not. Now we'll hold it here for a minute and a half. We're experts at what we do." He told them that if they wanted him to confess, he would, but to stop beating him and doing the other things to him." For everything in the statement, they asked him [Alfonso Martín del Campo Dodd], "How did you do this?" When he answered "I don't know," they told him "Don't be stupid." And that's how they "extracted" the statement from him. He said that there were "a number of people there and that he [Alfonso Martín del Campo Dodd] signed the confession and after that it was taped...[FN28]

[FN28] Judgment of the Eighth Chamber of the Federal District Superior Court, August 17, 1993, File 454/93, pp. 32 and 33.

55. The appeals court's assessment of this evidence was as follows:

This Review Chamber is fully cognizant of the retraction of his confession that the defendant made to the court when entering his preliminary plea (at 2 of volume II). He now resorts to the same version of events that he unsuccessfully attempted at that time to establish facts with which to disprove his criminal culpability in those crimes. That version was one that, in his own sworn statement, he ADMITTED TO HAVING INVENTED IN AN ATTEMPT TO ESCAPE HIS

CULPABILITY IN THE HOMICIDE THAT HE HAS ALREADY RECOUNTED. (emphasis in the original)[FN29]

[FN29] *Idem*, p. 32.

56. In other words, the magistrates threw out the statement that Alfonso Martín del Campo Dodd made before the judge of first instance and assigned full evidentiary value to the confession forced out of him in the offices of the PGJDF, in the presence of a group of judicial police officers, without his attorney or even an agent of the Public Prosecutor's office being present. The complaints of torture have never been investigated and to this day no one has been punished for that torture. This ruling is a flagrant and egregious violation of the right to due process recognized by Mexican law and by the American Convention. By this ruling, the State has incurred international responsibility.

57. The Commission therefore concludes that Alfonso Martín del Campo Dodd was forced to testify against himself in a torture-induced confession, the most egregious form of coercion. That confession was not only admitted into evidence in the proceedings, but was upheld at every instance, despite the abundant evidence demonstrating how that confession was obtained. The facts in question are a manifest violation of Article 8(2)(g) and 8(3) of the American Convention and Article 10 of the Inter-American Convention to Prevent and Punish Torture.

b. Violation of the principle of presumption of innocence

58. The petitioners allege that in the instant case, Alfonso Martín del Campo Dodd's right to be presumed innocent was violated.[FN30] They add that "the court authorities failed to weigh circumstantial evidence that demonstrated Mr. Martín del Campo's innocence," including the following:

a) The report on the forensic testing that the Federal District Public Prosecutor's Office did of the hair strands, which found no strand of hair belonging to the complainant, not even the strands that the deceased female had clutched in her left hand and which the alleged confession states she grabbed from the complainant.

b) The purpose of the judicial proceeding that the judge in the case conducted at the residence where the events transpired, was to ascertain whether voices could be heard from the service quarters where housekeeper Inés Guzmán Sánchez was sleeping. She was introduced as a "circumstantial" witness in the case where Mr. Alfonso Martín del Campo Dodd was convicted. Standing in the service quarters, the judge instructed the court personnel to say something from the living room (the closest room in the house to the service quarters). The judge certified that for all legal purposes, those voices were not audible.

c) Addition to the report given in deposition by judicial police agent Sotero Galván Gutiérrez, wherein he admitted that he had beaten the complainant because the latter refused to say that he was guilty

d) Exhibit of knives, one glove and glove finger, nothing of which implicated the victim.

- e) The two pieces of black stocking found inside the Ford Thunderbird; they were never sent to the laboratory for testing, which was prejudicial to the complainant's case.
- f) Exhibit of the Ford Thunderbird automobile. The investigator from the Public Prosecutor's Office mentioned that some of the blows sustained by the complainant happened at the time of the accident in the Thunderbird. The Thunderbird's windshield was cracked or broken. However, there were no hematic fluids or fingerprints inside the car. In other words, there is nothing by which to prove or to even presume that Alfonso Martín del Campo was ever inside the interior of the car, much less that he sustained some injury at the time the car allegedly crashed. To the contrary, what has been proven, based on the hematic fluid found in the trunk of the car -as attested to by the exhibit of tests done by the Federal District Public Prosecutor's Office-, the piece of towel that appeared in the trunk -also with hematic fluid- and the broken taillight, is that Mr. Alfonso Martín del Campo Dodd was in the trunk of the car.
- g) The autopsies state that on his upper extremities, the deceased male had injuries typical of instinctive attempts at self-defense. However, the alleged confession states that the now deceased male did not attempt to defend himself. This is obviously implausible and inconsistent, since the autopsies duly certified that injuries typical of instinctive attempts at self-defense did exist.
- h) The photograph of the clothing worn by the now deceased female at the time of her death. The photographs of the clothing show clearly that there were no perforations of any kind on the clothing, which is as implausible as it is absurd, since the deceased female had died of stab wounds and had been stabbed twenty-nine times.
- i) The report of the Federal Highway Police, dated May 30, 1992, confirms the complainant's version to the effect that he had been abducted and then assisted by officers with the Federal Highway Police. That report presents a logical and coherent sequence of events that is consistent with the preliminary plea entered by the complainant.
- k) Exhibit of the statement of Raúl García Chavarría. This person states that the complainant was abducted and later assisted by the Federal Highway Police.
- l) The preliminary plea entered by the complainant, dated June 1, 1992, wherein he flatly denies the allegations against him and denies that the alleged sworn confession has any value.
- m) The crime-scene report of the Federal District Public Prosecutor's Office, dated May 30, 1992, which offers a logical and coherent sequence of events that is consistent with the preliminary plea entered by the victim, given that he bled in his bedroom and continued bleeding in the trunk of the vehicle.
- n) Exhibit of Mr. Alfonso Martín del Campo's contusions and abrasions, which shows that the complainant was struck on the head with plaster figures and that he was beaten and tortured.
- o) Board of Experts, in the 55th criminal court, which fully confirms that there was more than one assailant in the criminal events that occurred and also confirms what the victim has said.
- p) The criminological report offered by the defense.
- q) Additions to the report of the Federal Highway Police in the presence of the 55th criminal court judge, wherein both Federal Highway Police officers mentioned that they had helped the complainant, who had been the victim of a kidnapping.

[FN30] The petitioners argue that:

The judicial guarantees protected in Article 8 of the American Convention are of fundamental importance. Justice in cases where an innocent person is accused of crimes he or she never committed often hinges on whether those guarantees are respected.

In this case, neither the Public Prosecutor's Office nor the judges who examined Alfonso Martín del Campo's case took this into account. They simply accepted as true the statement made to the police officers (not even the public prosecutor). Ironically, it was an agent of the Public Prosecutor's Office -and later a clerk of the court of first instance- who confirmed that Alfonso Martín del Campo sustained bruises and contusions after being taken into custody.

The petitioners' submissions of January 18, 2002, p. 11.

59. The numerous pieces of evidence mentioned above confirm the version of events that Alfonso Martín del Campo Dodd gave the first time he had an opportunity to speak spontaneously, which was on June 1, 1992, when his arbitrary detention and torture had ended. That evidence was submitted in Mexico to show Mr. Alfonso Martín del Campo Dodd's innocence and was never specifically rebutted by the Mexican State. The Inter-American Commission concludes that the presiding magistrates in the case disregarded any and all evidence that could support the accused' version of the events. Instead, they attached probative value only to the evidence that could convict him. This capricious attitude is a violation of the maxim of presumption of innocence, guaranteed under Article 8 of the American Convention.

c. Violation of the right of defense

60. The petitioners also contend that the victim in this case was denied the right of defense that is guaranteed by the American Convention:

Alfonso Martín del Campo did not have adequate defense, since the defense attorney assigned to him did not participate in the basic proceedings; more serious still was the fact that the defense counsel did not have the credentials that the law requires to serve as legal counsel to Mr. Martín del Campo Dodd, based on the standards established by Mexican law and in domestic jurisprudence. To make matters worse, this was the defense counselor provided by the State (a public defender).[FN31]

[FN31] The petitioners' submission of January 18, 2002, p. 11. The petitioners submitted a copy of memorandum DAEP 1 0078/98 Folio 0295, dated January 21, 1998, wherein the General Bureau of Professions certifies that Mr. Rolando Torres Martínez, Alfonso Martín del Campo Dodd's supposed defense counsel, does not have a license "to practice as an Attorney-at-Law." The same document certifies that in October 1993, Mr. Torres Martínez was professionally licensed as "a specialist in computer management systems."

61. The IACHR also considers that the victim in this case was not allowed adequate means of defense and that his irrevocable right to be assisted by a defense counsel provided by the State was violated. In effect, the petitioners submitted documentary evidence -not contested by the State- that the person assigned to defend Mr. Martín del Campo Dodd did not participate in the

basic proceedings, was not someone the defendant could place his trust in and was not even an attorney. "

62. The Commission therefore finds that Alfonso Martín del Campo Dodd was not given a hearing with due guarantees in the substantiation of the criminal accusation made against him. Nor was his innocence presumed nor his guilt established in accordance with the laws in force in Mexico, which include the guarantees of due process that are protected under the American Convention. The Mexican State has thus incurred responsibility for the violation of the right to the judicial guarantees protected in Article 8(1), to the detriment of Mr. Martín del Campo Dodd.

63. Also, the Mexican State is responsible for the violation of the right to be presumed innocent of Mr. Alfonso Martin del Campo Dodd enshrined in Article 8(2) of said international instrument, given that in the process he was not permitted to adequately exercise his defense; or to be assisted by legal counsel; the right not to be compelled to be a witness against himself or to plead guilty was not respected. Finally, the State is responsible for the decisions of its judicial organs that gave legal value to a confession of guilt by the accused made under torture while he was arbitrarily detained, in violation of the guarantee established in Article 8(3) of the American Convention. The Mexican State has thus incurred in a violation of the right to defense guaranteed in Article 8(2)(e) of the American Convention

.Right to effective judicial protection (Article 25 of the American Convention) in the investigation into acts of torture (articles 6 and 9 of the Inter-American Convention to Prevent and Punish Torture)

64. The Inter-American Court has held that under articles 8 and 25 of the American Convention, States Parties have an obligation to provide effective judicial remedies to victims of human rights violations, remedies that must be substantiated in accordance with the rules of due process. This must be done pursuant to the States parties' general obligation to guarantee the free and full exercise of the rights recognized in the Convention to all persons subject to their jurisdiction.[FN32]

[FN32] I/A Court H.R., Velásquez Rodríguez v. Honduras Case, Preliminary Objections, Judgment of June 26, 1989, par. 91.

65. In addition to the violations of due process already established in this case, the right to judicial protection recognized in Article 25(1) of the American Convention must be examined, in combination with articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture:[FN33]

Article 25. Right to Judicial Protection

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.

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 fora whose competence has been recognized by that State.

[FN33] Mexico ratified the Inter-American Convention to Prevent and Punish Torture on June 22, 1987.

66. This report has already cited the Inter-American Commission's decision in the case of Mr. Manuel Manríquez, a case that has much in common with that of Mr. Martín del Campo Dodd. On March 29, 1999, the Federal District Superior Court of Mexico released Mr. Manuel Manríquez when he entered a plea of innocence. That decision was handed down in response to the motion for recognition of innocence filed by Mr. Manríquez' defense counsel, who attached Report No. 47/98 on this case as "supervening evidence." In its ruling the Court allowed that "the Court recognizes that it was by virtue of the IACHR's recommendations that an investigation of the torture was initiated ... and that therefore we find that the report in question can be taken into consideration as evidence." [FN34]

[FN34] Manríquez Case supra, footnote para. 123.

67. Unlike the Manríquez case, Mr. Alfonso Martín del Campo Dodd is still deprived of his liberty by virtue of the conviction based on a confession coerced from him under torture, while he was being detained arbitrarily in the facilities of the PGJDF. This despite the fact that, as previously seen, the facts were denounced and evidence introduced at every instance available within the domestic system. First, the 55th criminal court of the Federal District delivered its ruling on May 28, 1993, convicting Mr. Martín del Campo Dodd and sentencing him to 50 years in prison, all on the basis of the supposed confession. On appeal, the Eighth Criminal Chamber of the Federal District Superior Court decided, on August 17, 1993, to uphold the lower court ruling.

68. Mr. Martín del Campo Dodd filed for direct amparo relief against that definitive sentence, which was identified as number 2004/97-475. On December 2, 1997, the conviction being appealed was upheld, again on the basis of a confession unlawfully extracted from the victim. As in the Manríquez Case, Mr. Martín del Campo Dodd's legal representatives filed a motion for recognition of innocence with the Federal District Superior Court, laying out all the evidence herein analyzed, supported by the jurisprudence of Mexico's own courts[FN35] and that of international organs for the protection of human rights.

[FN35] In the application filed seeking recognition of innocence, dated April 5, 1999, the following is quoted from the jurisprudence of the Mexican courts:

CONFESSION MADE IN THE PRESENCE OF THE JURIDICAL POLICE OR THE PUBLIC MINISTRY, VALUE OF. The Supreme Court holds that any confession made in the presence of the Judicial Police or the Public Ministry, who eventually become party to the proceedings instituted against the accused, shall have no evidentiary value. Jurisprudential Opinion No. 705, at 353 of the volume titled "JURISPRUDENCIA Y TESIS SOBRESALIENTES". 1966-1970, 1st Chamber, Edic. Mayo.

COERCED CONFESSION. A confession from the accused, given in the presence of the judicial police and ratified in the presence of the Public Ministry, shall by itself, without any other means of proof to support it, not be sufficiently substantiated to accord it full evidentiary value, since it becomes inconsistent once it comes to light that **IT WAS OBTAINED BY FORCE, IF THE DEFENDANT SO CLAIMS** (Emphasis in the original). 1st Chamber, 7th session, Six-month Volume 151-156, 2nd part, p. 32, Jurisprudence No. 854, at 122 of the work. JURISPRUDENCIA Y TESIS SOBRESALIENTES 1980-1981, Edic. Mayo, 2nd Edition.

COERCED CONFESSION, DETENTION PRIOR TO A COMPLAINT. When police detain a suspect before any complaint is filed, **COERCION OF THAT PERSON IS IMPLIED** and, consequently, so is the implausibility of the confession. Jurisprudential Opinion at 286 of the Semanario Judicial de la Federación, 1st Chamber, 1987, Edic. Mayo. (emphasis in the original)

PRINCIPLE OF PROCEDURAL IMMEDIACY, INTERPRETATION OF, VARIOUS STATEMENTS MADE BY THE PRISONER. According to the principle of procedural immediacy, the first statements the detainee makes ordinarily carry more evidentiary weight than his subsequent versions of the events; however, it is also true that when the accused' later statements are corroborated by other means of evidence that make their credibility more likely,

then the more recent statements should be given greater weight. Collegiate Circuit Courts, Eighth Session, *Semanario Judicial de la Federación*, Volume VIII, August , p. 207.

69. A complaint was filed with the Office of the Internal Controller of the PGJDF, which became case file QC/0011/FEB-94. That government office found that judicial police officer Sotero Galván Gutiérrez was guilty of having arbitrarily detained Mr. Alfonso Martín del Campo Dodd and of having violated his physical integrity. A complaint of torture was also filed with the PGJDF on May 11, 1995, identified as preliminary inquiry SC/3839/95-03. However, the inquiry was filed. The intervention of the National Human Rights Commission and the Federal District Human Rights Commission in this case did nothing to protect the fundamental rights given under Mexican law.

70. The information recounted above demonstrates that the Mexican State did not respect Mr. Alfonso Martín del Campo Dodd's right to effective judicial protection. In effect, at several levels of the judicial hierarchy, the Mexican courts upheld the violations of due process against the victim in this case and went so far as to assign evidentiary value to a torture-induced confession. The Mexican State also failed to take any effective measures to punish the torture and cruel, inhuman and degrading treatment inflicted by its agents and confirmed by its own investigative bodies. There was no immediate, ex officio examination of this case, and thus far no criminal inquiry has been instituted to punish the torturers with the severity that the aforementioned international obligations require.

71. For all these reasons, the Inter-American Commission concludes that the Mexican State is responsible for violation of Article 25 of the American Convention and articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

E. General duty to respect and ensure all the rights recognized in the American Convention (Article 1(1))

72. Article 1(1) of the American Convention establishes:

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

73. The Inter-American Court has held that:

It is a basic principle of law on the international responsibility of the State, embodied in international human rights law, that every State is internationally responsible for any or all act or omission of any of its powers or organs in violation of internationally enshrined rights. Article 1.1 of the American Convention is of fundamental importance in this regard.

Regarding acts or omissions of domestic judicial bodies, Articles 25 and 8 of the Convention define the scope of the above-mentioned principle of generation of responsibility for the acts of all State organs.[FN36]

[FN36] I/A Court H.R., Case of the “Street Children” (Villagrán Morales Case et al.), cited supra, par. 220.

74. In this case, Mexico City's judicial police committed serious violations against Mr. Alfonso Martín del Campo Dodd, which were corroborated by magistrates serving on the bench at various levels of the judicial system. The Mexican State has thus incurred in a violation of Article 1(1) of the American Convention, as it failed to comply with its obligation to respect Mr. Alfonso Martín del Campo Dodd's rights to personal liberty, humane treatment, due process and judicial protection.

V. CONCLUSIONS

75. The Inter-American Commission therefore concludes that Mr. Alfonso Martín del Campo Dodd was arbitrarily detained on May 30, 1992, and subjected to torture and other cruel, inhuman and degrading treatment by Mexico City judicial police officers, to force him to confess to the previous night's murders of his sister Juana Patricia Martín del Campo Dodd and his brother-in-law Gerardo Zamudio Aldaba.

76. The Commission also concludes that the guarantees of due process, especially the right to presumption of innocence were not respected, given the value that various magistrates accorded to his torture-induced purported confession. The State also failed to guarantee protection of his fundamental rights.

77. The facts established in the present report constitute violations of articles 5, 7, 8(1), 8(2), 8(3) and 25 of the American Convention, as well as articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, all in violation of the general obligation stipulated in Article 1(1) of the American Convention, which is to respect the rights and guarantees protected therein and ensure their free and full exercise.

Given these violations, THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS:

1. That measures leading to the release of Alfonso Martín del Campo Dodd be instituted immediately and that the judicial process prosecuted against him be reviewed; the first measure is to nullify the confession induced under torture on the premises of the PGJDF on May 30, 1992, and all judicial proceedings that followed from that torture-induced confession.
2. That a thorough, impartial and effective investigation be conducted to determine the responsibility of all the authors of the violations committed against Mr. Alfonso Martín del Campo Dodd's human rights.

3. That the State give Alfonso Martín del Campo Dodd fair compensation for the human rights violations herein established.

4. That the necessary measures be taken to prevent a recurrence of violations of the kind committed against Alfonso Martín del Campo Dodd.

VI. ACTIVITY SUBSEQUENT TO REPORT No. 63/02 ON THE MERITS

A. Processing by the Commission

78. The Commission approved Report No. 63/02 on the present case on 22 October 2002, during its 116th Regular Session. The Report, which included the Commission's recommendations, was transmitted to the Mexican State on 30 October 2002, conceding it a period of two months from the transmittal date of the Report to notify the Commission of the measures adopted in compliance with the Report's recommendations. On 30 December 2002, the State provided its response to Report No. 63/02, which indicated:

With regard to the first of the Commission's recommendations, "it decided [...] to assume responsibility for promoting legislative reform in the area of local jurisdiction to provide for the possibility of nullifying legal actions within a proceeding at any time there is proof that a confession was obtained by means of torture or similar circumstances." However, the State argued that the "homicide proceeding in which Mr. Alfonso Martín del Campo was sentenced [...] is a matter of *res judicata*, but that in terms of applicable legislation, for the time being it is not possible to assert any legal remedy that would provide for a complete review of the judicial proceeding and to promote measures aimed at throwing out the confession allegedly obtained through torture." The State maintained that, despite the foregoing, it was studying the possibility of establishing some type of legal basis that would make it possible to implement a mechanism for following up on the recommendation of the Inter-American Commission. With regard to the second recommendation put forward by the Commission in its Report, the State indicated that on 26 December 2002, the Deputy Prosecutor for Preceding Investigations of the Office of the Attorney General of the Federal District [Subprocurador de Averiguaciones Previas Centrales de la Procuraduría General de Justicia del Distrito Federal] issued a decision ordering the reopening of Preceding Investigation No. SC/3839/95-03 for the alleged commission of crimes by various public servants against Mr. Alfonso Martín del Campo. With respect to the remedy recommended by the Commission, the State indicated that, "taking into account the current status of the preceding investigations and the proceedings already legally resolved, the remedy would not be fully appropriate, inasmuch as some factors have yet to be considered and would likely come to light in the recently reopened preceding investigation.[FN37]

[FN37] See I/A Court H.R., Alfonso Martín del Campo Dodd v. Mexico case, Judgment and Preliminary Objections of 3 September 2004, Series C, No. 113, para.34.

79. The Commission deemed that the State had not complied with its recommendations and decided to submit the matter to the Inter-American Court on 30 January 2003, on the basis of

Article 50 of the American Convention and Article 44 of the IACHR Regulations. The Commission forwarded a copy of the case file to the Court and kept the original.

B. Processing by the Court

80. The representatives of the victims presented their pleadings, petitions, and evidence on 31 March 2003, pursuant to the provisions of Article 36 of the IACHR Regulations. In its answer to the IACHR complaint and the brief of the victims' representatives, the State filed two preliminary objections on 5 May 2003, as follows:

- a) the Inter-American Court lacks jurisdiction to hear events and actions prior to 18 December 1998 in case No. 12.228; and
- b) the Inter-American Court failed to observe the basic rules of procedure for individual petitions foreseen under the American Convention on Human Rights and the applicable Regulations; the Inter-American Commission on Human Rights' lack of objectivity and neutrality in the judicial formalities, admissibility, decision on the merits, the submission of the petition to the Honorable Court; and interference by the Commission on procedural balance that resulted in the lack of defense, which affected the Mexican State during the processing of the complaint.

81. The hearing on the preliminary objections was held on 27 April 2004. On 3 September 2004, the Inter-American Court handed down its judgment on the preliminary objections, deciding to admit the preliminary objection *ratione temporis* brought by the State and close the file. In this decision, the Court stated:

In exercising the protection function of the American Convention, the Court seeks a fair balance between the imperatives of protection, considerations of equity, and legal certainty, which is clearly inferred from the Court's constant jurisprudence.

In view of the foregoing, it is the opinion of the Court that the principle of the non-retroactivity of international rules enshrined in the Vienna Convention on Treaty Law and general international law is therefore applicable, and in accordance with the terms in which Mexico recognized the contentious jurisdiction of the Court, hereby admits the preliminary objection "*ratione temporis*" brought by the State to prevent the Court from hearing alleged violations of the American Convention and the Inter-American Convention to Prevent and Punish Torture that occurred prior to 16 December 1998. Consequently, the Court hereby states that it lacks jurisdiction to analyze the second preliminary objection.[FN38]

In the operative part of its judgment, the Court decided to:

1. Admit the first preliminary objection *ratione temporis* brought by the State, as set forth in paragraphs 78 through 85 of the present judgment;
2. Close the file; and
3. Notify the present judgment to the State, the Inter-American Commission on Human Rights, as well as the representatives of the alleged victim and his family members.

[FN38] I/A Court H. R., Alfonso Martín del Campo Dodd v. Mexico Case. Preliminary Objections. Judgment of September 3, 2004. Series C No. 113, paras. 84 and 85.

C. Subsequent processing by the Commission

82. Subsequent to the date the file was closed by the Inter-American Court, the Commission undertook an analysis into possible follow-up of the recommendations in its Report No. 63/02. During the course of this process, the Commission received a number of pleadings and additional information from the petitioners and the State.

83. The Inter-American Commission has carefully analyzed the pleadings of the parties and the facts presented in compliance with its recommendations, and, on the basis of its analysis, concludes that, pursuant to Article 51(2) of the American Convention, the Mexican State is nevertheless obligated to comply with the recommendations issued by the Inter-American Commission. The pleadings of both parties and the considerations of the IACHR are presented below.

84. The petitioners submitted pleadings to the IACHR on 10 November 2004, as well as 22 April, 30 May, and 8 July 2005. During its 124th Session in October 2006, the IACHR made the decision to follow up on the recommendations in its Report No. 63/02, and called on the State to furnish it with information on the implementation of IACHR recommendations, and forwarded it the pleadings of the petitioners in this regard. The State furnished the requested information on 20 December 2006. The IACHR studied the documentation during its 128th Regular Session in July 2007, and decided to request additional information from both parties in a letter dated 16 August 2007.

85. Both the petitioners and the State submitted their answer to the above-mentioned letter on 17 and 18 September 2007, respectively. The IACHR analyzed the pleadings submitted by both parties during its 133rd Regular Session in October 2008.

Petitioners' information

86. The petitioners request the publication of IACHR Report No. 63/02 on the merits of the case. In the first place, they contend that the Court did not analyze the merits of the case and, consequently, assert that the IACHR does in fact have jurisdiction to follow up on its recommendations. Secondly, the petitioners argue that publishing the Report is consistent with the Commission's protection mandate. Finally, they assert that their request is in keeping with IACHR habitual practice. Moreover, the petitioners ask that the Commission use its good offices to urge the Mexican Government to comply diligently and in good faith with the recommendations of IACHR Report No. 63/02.

Petitioners' information regarding compliance with the recommendations of IACHR Report No. 63/02

87. Additionally, the petitioners, through their correspondence, provided information on the measures adopted by the Mexican State towards compliance with the recommendations of the Commission included in its report on the merits of the case.

88. With respect to the first recommendation, namely, "Take the necessary measures to annul the confession obtained by means of torture in facilities of the Office of the Attorney General of the Federal District [Procuraduría General de la Justicia del Distrito Federal – PGJDF] on 30 May 1992, and all action deriving therefrom; review the entire judicial proceeding against the victim in this case; and order the immediate release of Alfonso Martín del Campo Dodd while such measures are in process." The petitioners reported that on 25 April 2006, a congressman introduced a resolution on the case before the Legislative Assembly of the Federal District (ALDF), which was adopted by the full Assembly on 9 May. The text of this resolution is as follows:

SOLE PARAGRAPH. The Third Session of the Legislative Assembly of the Federal District respectfully urges the Head of Government of the Federal District, Alejandro Encinas Rodríguez, to undertake the measures authorized by current legislation in order to comply with the recommendations of IACHR Report No. 63/02 regarding the case of Alfonso Martín del Campo Dodd, the primary result of which would be to release him from incarceration.

89. In follow-up to this resolution, the Secretary of the Federal [District] Government issued official letter No. SG/04866/2006 of 17 May 2006, in which he instructed the Federal District's Director General of the Bureau of Prisons [Prevención y Readaptación Social – DIGPRES] to take the appropriate measures to comply with the Commission's recommendations. The petitioners indicated that the Director General responded via official letter No. DO/2721/2006 of 8 June 2006, stating that although he was willing to comply in the matter, it was not within his competence to do so.

90. The petitioners also indicated that a resolution was issued by the full Senate of the Republic, approved on 9 March 2006, the text of which is as follows:

SOLE PARAGRAPH: The Senate urges the President of the Republic to comply with the recommendation issued by the Inter-American Commission on Human Rights in the case of Alfonso Martín del Campo Dodd, and, accordingly: 1) arrange for his immediate release; 2) identify and punish those persons responsible for violating his rights; and 3) provide compensation for material and moral damages.

91. According to the information submitted by the petitioners, this resolution was issued via official letter No. 1-3453, addressed to the Secretary of Public Security.

State's information

92. The State contends that IACHR Report No. 63/02 is based on erroneous grounds and, therefore, it is not obligated to comply with its recommendations. It added that the Inter-American Commission lacks jurisdiction to continue follow-up on its Report, inasmuch as

Articles 50 and 51 establish a clear procedure with mutually exclusive alternatives and that in this case, the IACHR's decision to submit the case to the Court precluded its jurisdiction.

State's information regarding compliance with the recommendations of IACHR Report No. 63/02

93. The State attaches ex gratia information on compliance with the IACHR's recommendations:

94. With respect to the first recommendation, the State reiterated its position in the sense that it "is studying the possibility of establishing a legal basis that would allow for the implementation of a mechanism to follow-up on the recommendation." In this regard, it added that in accordance with friendly settlements in other cases, on 15 November 2005, the Legislative Assembly of the Federal District approved the amendment of Article 614 of the Federal District Code of Criminal Procedure, which established that "the recognition of innocence of the convicted party proceeds [...] IV. When the sentence is essentially based on a confession obtained by means of torture."

95. With regard to the second recommendation, the State reiterated that on 26 December 2002, the Deputy Prosecutor for Preceding Investigations of the Federal District's Office of the Attorney General issued a resolution ordering the reopening of Preceding Investigation No. SC/3839195-03 into the alleged commission of crimes by various public servants against Mr. Alfonso Martín del Campo. In follow-up to this resolution, a psychological examination of Mr. Martín del Campo was conducted, which found no evidence of torture. Based on this examination, the Preceding Investigation was concluded in October 2006, which again established, as it had been the first time, that no criminal acts were committed, as no evidence was found regarding the alleged acts of torture.

d. Considerations regarding the IACHR's competence jurisdiction to issue the present Report

96. During its 134th Regular Session, in October 2008, the IACHR decided to move forward with the processing of Report No. 63/02, and consequently, follow up on its recommendations. This decision was made upon analyzing the information and pleadings of both parties, and considering the mandate of the Commission, which is safeguard the promotion and protection of human rights, as well as the arguments presented below.

i) Decision of the Inter-American Court

97. In its decision on the preliminary objections in the present case, the Inter-American Court decided it was not competent to hear the facts and violations presented by the IACHR, as follows:

On this point, the Court must indicate with all clarity that if the alleged crime was continuing or permanent, the Court would have competence to consider the acts or events occurring subsequent to recognition of the Court's jurisdiction.[FN39] But in a case such as this one, the supposed

crime underlying the alleged violation (torture) was instantaneous; it occurred and was consummated before recognition of contentious jurisdiction. With respect to the investigation of that crime, this was pursued and was reopened on several occasions. This occurred subsequent to recognition of the Court's jurisdiction, but neither the Commission nor the representatives of the presumed victim have provided any evidence to indicate specific violations of due process that the Court might have considered.

Likewise, the Court cannot hear any of the events associated with the criminal proceeding in the domestic jurisdiction against Mr. Alfonso Martín del Campo, including the alleged arbitrary arrest and incarceration and the alleged denial of justice, inasmuch as the regular proceeding ended with the 9 February 1998 ruling of the First Chamber of the Supreme Court of Justice, which decided to reject as inadmissible the recognition of innocence remedy filed by Mr. Martín del Campo on 19 January 1998 against the sentence of the Federal District's Fourth Collegiate Criminal Court, First Circuit, of 2 December 1997.

The filing of the recognition of innocence remedy by Mr. Martín del Campo with the Seventeenth Criminal Chamber of the Federal District Superior Court on 5 April 1999, was done after Mexico's recognition on 16 December 1998 of the Court's contentious jurisdiction, and is therefore an extraordinary appeal, since Mexico recognized the Court's compulsory jurisdiction after the regular criminal proceeding had been concluded.

Although the Commission and the representatives of the alleged victim asserted an alleged violation of due process in rejecting the recognition of innocence remedy, the Court affirms that, in fact, the point in contention is unrelated to the processing of this remedy per se, but rather to its result. The Commission and the representatives of the alleged victim assert that by declaring the remedy inadmissible, the result of a confession allegedly obtained by means of torture is upheld. The opinion of the domestic courts, however, is that the sentence was not based solely on the confession but also other evidence. The Court does not have jurisdiction to review this decision, unless there is an assertion of specific noncompliance with the rules of due process in the processing of this remedy, and such an assertion was neither made by the Commission nor the representatives of the alleged victim.

The decision the Court is now ruling on is absolutely not a judgment as to the existence or inexistence of torture against Mr. Alfonso Martín del Campo, but based solely and exclusively on judicial considerations derived from the rules on the Court's jurisdiction, the nonobservance of which would imply an overstepping of the powers provided under the Convention and result in a situation of legal uncertainty.[FN40]

[FN39] Cfr. I/A Court H.R., Blake v. Guatemala Case. Preliminary Objections. Judgment of July 2, 1996. Series C No. 27, paras. 39 and 40.

[FN40] I/A Court H.R., Alfonso Martín del Campo Dodd v. Mexico case, Judgment and Preliminary Objections of 3 September 2004, Series C, No. 113, paras. 78-85.

ii) Competence of the Commission

98. The State contends the Court clearly indicated that, within the three month time limit following the issuance of Article 50, the IACHR has only two mutually exclusive alternatives: either submit the case to the Court, or declare that it will continue to follow up on the matter. According to the State, submitting the case to the Court implies, ipso jure, the conclusion of proceedings before the Commission. It added that the Inter-American Court is the only organ of the Inter-American System with authority to interpret the American Convention, and, consequently, any interpretation of the Commission regarding the scope of the procedure and report under Article 50, once the case has been submitted to the Court, is irrelevant and without merit.

99. Articles 50 and 51 of the Convention stipulate:

Article 50

1. If a settlement is not reached, the Commission shall, within the time limit established by its Statute, draw up a report setting forth the facts and stating its conclusions. If the report, in whole or in part, does not represent the unanimous agreement of the members of the Commission, any member may attach to it a separate opinion. The written and oral statements made by the parties in accordance with paragraph 1.e of Article 48 shall also be attached to the report.

2. The report shall be transmitted to the states concerned, which shall not be at liberty to publish it.

3. In transmitting the report, the Commission may make such proposals and recommendations as it sees fit.

Article 51

1. If, within a period of three months from the date of the transmittal of the report of the Commission to the states concerned, the matter has not either been settled or submitted by the Commission or by the state concerned to the Court and its jurisdiction accepted, the Commission may, by the vote of an absolute majority of its members, set forth its opinion and conclusions concerning the question submitted for its consideration.

2. Where appropriate, the Commission shall make pertinent recommendations and shall prescribe a period within which the state is to take the measures that are incumbent upon it to remedy the situation examined.

3. When the prescribed period has expired, the Commission shall decide by the vote of an absolute majority of its members whether the state has taken adequate measures and whether to publish its report.

100. With respect to the analysis of Articles 50 and 51 of the American Convention, the Inter-American Commission observes that the Court's jurisprudence has established as a general rule that bringing a case before the Court precludes the IACHR's ability to prepare a report pursuant to Article 51. In this regard, the judgment on the preliminary objections in the case of *Fairén Garbí and Solís Corrales v. Honduras*, established:

Once an application has been filed with the Court, the provisions of Article 51 regarding the Commission's drafting of a new report containing its opinion and recommendations cease to apply. Under the Convention, such a report is in order only after three months have elapsed since transmittal of the communication referred to in Article 50. According to Article 51 of the Convention, it is the drafting of the report that is conditional on the failure to file a case with the Court and not the filing of a case that is conditional on the report not having been prepared or published. If, therefore, the Commission were to draft or publish the report mentioned in Article 51 after having filed the application with the Court, it could be said that the Commission was misapplying the provisions of the Convention. Such action could affect the juridical value of the report but would not affect the admissibility of the application because the wording of the Convention in no way conditions such filing on failure to publish the report required under Article 51.[FN41]

[FN41] I/A Court H.R., *Fairén Garbi and Solís Corrales v. Honduras* Case. Preliminary Objections, Judgment of 26 June 1987, para. 75.

101. This general rule was reaffirmed in the judgment on preliminary objections in the *Velázquez Rodríguez* case and Advisory Opinion OC 13, which respectively indicate:

“A second stage is regulated by Article 51. If within the period of three months, the State to which the preliminary report was sent has not resolved the matter by responding to the proposal formulated therein, the Commission is empowered, within that period, to decide whether to submit the case to the Court by means of the respective application or to continue to examine the matter. This decision is not discretionary, but rather must be based upon the alternative that would be most favorable for the protection of the rights established in the Convention.

The three months are counted from the date of transmittal of the Article 50 report to the State concerned, and the Court has clarified that the time limit, though not fatal, has a preclusive character, except in special circumstances, with regard to the submission of the case to this Court, independent of that which the Commission gives the State to fulfill its first recommendations (*Cayara* Case, Preliminary Objections, supra 41, paras. 38 and 39).

Article 51 authorizes the Commission to draw up a second report, whose preparation is conditional upon the matter not having been submitted to the Court within the three-month period set by Article 51(1). Thus, if the application has been filed with the Court, the Commission has no authority to draw up [that] report. (*Velásquez Rodríguez* Case, Preliminary Objections, supra 40, para. 63; *Fairén Garbi and Solís Corrales* Case, Preliminary Objections, supra 40, para. 63; and, *Godínez Cruz* Case, Preliminary Objections, supra 40, para. 66.)

Otherwise, the Commission has the authority to prepare a final report containing the opinions and conclusions it considers advisable. It must also make the pertinent recommendations, giving the State an additional period to take appropriate measures to fulfill its obligations under the Convention.”[FN42]

“[...] In this case, however, it should be borne in mind that the preparation of the Article 51 report is conditional upon the matter not having been submitted to the Court within the three-month period set by Article 51(1). Thus, if the application has been filed with the Court, the Commission has no authority to draw up the report referred to in Article 51 [...]”; “[...]. The presentation of the case to the Court implies, ipso jure, the conclusion of proceedings before the Commission [...]”.[FN43]

[FN42] I/A Court H.R., Certain Attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 44, 46, 47, 50, and 51 of the American Convention on Human Rights), Advisory Opinion OC-13/93 of 16 July 1993, Series A, No. 13, paras. 50-52.

[FN43] I/A Court H.R., Velásquez Rodríguez v. Honduras Case. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, paras. 63 and 75.

102. However, the Inter-American Court has established an exception to the aforementioned general rule. The Court decided in *Cayara v. Peru* that because it rejected the complaint on grounds of untimeliness, and, consequently, did not issue a judgment on the merits of the matter, the Commission retains all the remaining attributions conferred on it by Article 51 of the American Convention, establishing specifically the differences that this situation presents with respect to the Commission’s previous jurisprudence.[FN44] Consequently, the Commission went on to publish the complaint on the case, together with the report on the merits.[FN45]

[FN44] In this case, the Commission brought the complaint before the Court, later withdrawn, and brought again after almost eight months. The State filed various preliminary objections, including lack of compliance with the time limit for bringing the complaint.

[FN45] I/A Court H.R., *Cayara v. Peru* Case. Complaint and Reports, OAS/Ser.L/V/II.83, Doc. 32, 12 March 1993.

103. In its judgment, the Court indicated:

These considerations are not inconsistent with the precedents established by the Court. In a previous case (*Velásquez Rodríguez Case*, Preliminary Objections, supra 37, para. 75), the Court found that "the Commission's application to the Court unequivocally shows that the Commission had concluded its proceedings and submitted the matter for judicial settlement. The presentation of the case to the Court implies, ipso jure, the conclusion of proceedings before the Commission." On that occasion, the Court was referring to the impossibility of the Commission continuing proceedings in a case that had already been submitted to the Court. At the time, the Court did not define the meaning of "submit a case" or "file an application" nor did it, of course, refer to any subsequent motions or acts by the Commission, such as, for example, the withdrawal of a case already filed with the Court, which is precisely the issue now before the Court.

Without taking up the merits of the Commission's application, the Court will find that it was filed after the expiration of the appropriate time limit. Nevertheless, a reading of Article 51 leads to

the conclusion that a declaration of this nature cannot entail the neutralization of the other protective mechanisms set forth in the American Convention. Hence, the Commission continues to enjoy all the other powers conferred on it in that article, which is, furthermore, consistent with the object and purpose of the treaty.[FN46]

[FN46] I/A Court H.R., *Cayara v. Peru Case*. Judgment on Preliminary Objections of 3 February 1993, paras. 54 and 61.

104. This exception established by the Court to the general rule of precluding the Commission's jurisdiction is based, according to the arguments set out in its judgment, on interpretation of Article 51 of the American Convention, in the sense that, otherwise, the remaining protection mechanisms would be neutralized. This interpretation of the need for a protection mechanism to monitor the States' compliance with their human rights obligations, was reinforced by the Court in subsequent rulings.

105. Accordingly, in various judgments, the Court has indicated that:

Treaties must be interpreted "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose" (Art. 31(1) of the Vienna Convention on the Law of Treaties). The object and purpose of the American Convention is the effective protection of human rights. The Convention must, therefore, be interpreted so as to give it its full meaning and to enable the system for the protection of human rights entrusted to the Commission and the Court to attain its "appropriate effects." [FN47]

"[T]he ultimate aim of the American Convention is the effective protection of human rights, and, pursuant to the obligations contracted under it, the States should ensure the effectiveness of their mechanisms (endow them with *effet utile*), which implies implementing and carrying out the resolutions issued by its supervisory organs, whether the Commission or the Court." [FN48]

[FN47] In this regard, see I/A Court H.R., *Velásquez Rodríguez v. Honduras Case*. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 30. Also see para. 63; and I/A Court H.R., *Godínez Cruz v. Honduras Case*. Preliminary Objections. Judgment of June 26, 1987. Series C No. 3, para. 66.

[FN48] I/A Court H.R., *Matter of the Mendoza Prisons regarding Argentina*. Provisional Measures, Judgment of 22 November 2004, Advisory Point 16.

106. The State contends that Articles 50 and 51 of the Convention establish mutually exclusive alternatives, and that if the Commission opts for one of these alternatives it cannot later pursue the second without causing a situation of legal uncertainty for the states, petitioners, and victims.

107. In terms of these ideas, it is important to consider what the Court has established:

Article 29(a) of the American Convention states that no provision of the same shall be interpreted in the sense of “permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in the Convention or to restrict them to a greater extent than is provided for therein.” In this regard, it would make no sense to assume a State that freely decided to accept the Court’s contentious jurisdiction would, at that moment, prevent it from exercising its functions as foreseen under the Convention [..][FN49]

108. An interpretation of the American Convention in the sense of allowing a State Party the option of disassociating itself from compliance with its human rights obligations due to the absence of an appropriate supervisory organ, would imply suppressing the exercise of the rights and freedoms recognized under the Convention, would run counter to the goal and purpose of this treaty, which is the effective protection of human rights, and would deprive all the beneficiaries of the Convention of the guarantee of protection of those rights by the actions of its jurisdictional body.[FN50]

[FN50] I/A Court H.R., Constitutional Court v. Peru case, Competence, Judgment of 24 September 1999, Series C, No. 55.

109. In this regard, the Court has established that:

The American Convention and other human rights treaties are inspired in superior common values (focused on the protection of the individual), are provided with specific monitoring mechanisms, are applied in accordance with the notion of collective guarantee, embody obligations of an essential objective character, and have a special nature distinguishing them from other treaties, which regulate reciprocal interests of States Parties.[FN51]

[FN51] I/A Court H.R., Constitutional Court v. Peru case, Competence, Judgment of 24 September 1999. Series C, No. 55, para.41.

110. In view of the foregoing considerations, the IACHR is aware that pursuant to the principles of efficiency, utility, and good faith governing the human rights obligations of the States, in the event that the compliance does not satisfy the formal requirements of the Inter-American Commission for submission to the Court, the latter reassumes jurisdiction to implement the attributes set forth under Article 51 of the Convention.

111. In the present case, the Commission acknowledges the decision of the Inter-American Court that it lacked *ratione temporis* competence and therefore stated it did not have jurisdiction to issue a ruling on the merits of the matter. Consequently, by rejecting the complaint on this formal ground, the Commission maintains material jurisdiction to follow up on its recommendations.

112. In point of fact, in the absence of a judgment on merit that considers "[i]f [the Court finds that] there has been a violation of a right or freedom protected by this Convention," pursuant to Article 63 of the American Convention, the State's treaty obligation to comply in good faith with issued recommendations, based on the responsibility established in Report No. 62/02, remains:

The Court has previously stated that, in accordance with the stipulation regarding interpretation contained in Article 31(1) of the Vienna Convention on the Law of Treaties, the term "recommendations" used by the American Convention, should be interpreted to conform to its ordinary meaning (Caballero Delgado and Santana Case, Judgment of December 8, 1995. Series C No. 22, para. 67, and Genie Lacayo Case, Judgment of January 29, 1997. Series C No. 30, para. 93).

However, in accordance with the principle of good faith, embodied in the aforesaid Article 31(1) of the Vienna Convention, if a State signs and ratifies an international treaty, especially one concerning human rights, such as the American Convention, it has the obligation to make every effort to comply with the recommendations of a protection organ such as the Inter-American Commission, which is, indeed, one of the principal organs of the Organization of American States, whose function is "to promote the observance and defense of human rights" in the hemisphere (OAS Charter, Articles 52 and 111).

Likewise, Article 33 of the American Convention states that the Inter-American Commission is, as the Court, competent "with respect to matters relating to the fulfillment of the commitments made by the State Parties," which means that by ratifying said Convention, States Parties engage themselves to apply the recommendations made by the Commission in its reports.[FN52]

[FN52] I/A Court H.R., Loayza Tamayo v. Peru Case, Merits, Judgment of 17 September 1997, Series C, No. 33, paras 79, 80, and 81.

113. In this regard, and as indicated by the Inter-American Court, the Commission concludes that it is competent to reassume jurisdiction and follow up on the recommendations in its Report No. 63/02.

114. Based on the foregoing considerations and in exercise of its functions, the Commission proceeds to analyze whether or not the State complied with the recommendations in its Report No. 63/02.

iii) Analysis of compliance with recommendations

115. The petitioners pointed out that on 9 May 2006, the full Legislative Assembly of the Federal District (ALDF) adopted a resolution on the case, urging the Head of Government of the Federal District to proceed with the release from prison of Alfonso Martín del Campo Dodd in compliance with the recommendations of the Inter-American Commission on Human Rights in its Report No. 63/02. In follow-up to this resolution, the Secretary of the Federal [District] Government issued official letter No. SG/04866/2006 of 17 May 2006, in which he instructed the

Director General of the Bureau of Prisons of the Federal District to take the appropriate measures to comply with the Commission's recommendations. The petitioners indicated that the Director General responded via official letter No. DO/2721/2006 of 8 June 2006, stating that although he was willing to comply in the matter, it was not within his jurisdiction to do so.

116. The petitioners also indicated that a resolution was issued by the full Senate of the Republic, approved on 9 March 2006, urging the President of the Republic to order the immediate release of Alfonso Martín del Campo, identify and punish the persons responsible for violating his rights, and compensate him for material and moral damages, in compliance with the recommendations of the Report. According to the information submitted by the petitioners, this resolution was issued via official letter No. 1-3453, addressed to the Secretary of Public Security.

117. For its part, the State maintained its previous position in the sense that "it was studying the possibility of establishing some type of legal basis that would allow the implementation of a mechanism to follow up on the recommendation of the Inter-American Commission." In this regard, it added that in accordance with friendly settlements in other cases, on 15 November 2005, the Legislative Assembly of the Federal District approved the amendment of Article 614 of the Federal District's Code of Criminal Procedure, which established that "the recognition of innocence of the convicted party proceeds [...] IV. When the sentence is primarily based on a confession obtained by means of torture."

118. With regard to the second recommendation, the State reiterated that on 26 December 2002, the Deputy Prosecutor for Preceding Investigations of the Office of the Attorney General of the Federal District issued a resolution ordering the reopening of Preceding Investigation No. SC/3839195-03 into the alleged commission of crimes by various public servants against Mr. Alfonso Martín del Campo. In follow-up to this resolution, a psychological examination of Mr. Martín del Campo was conducted that found no evidence of torture. Based on this evaluation, the Preceding Investigation was concluded in October 2006, which again established, as it had been the first time, that no criminal acts were committed, as no evidence was found regarding the alleged acts of torture. Accordingly, the State added that it could not take any action related to the third recommendation.

119. The Commission looks positively on the information furnished by both parties; however, and despite the initial advances regarding the resolutions issued by both the Legislative Assembly of the Federal District and the Senate of the Republic ordering steps be taken to comply with the IACHR Report, the Commission concludes that, to date, its recommendations have yet to be effectively implemented.

V. CONCLUSIONS

120. The Inter-American Commission, based on the foregoing considerations of fact and law, reaffirms its conclusion that Alfonso Martín del Campo Dodd was arbitrarily arrested on 30 May 1992 and submitted to torture and other cruel, inhumane, and degrading treatment at the hands of Federal District Judicial Police officers in order to get him to confess to the murders of his sister, Juana Patricia Martín del Campo Dodd, and brother-in-law, Gerardo Zamudio Aldaba, committed the previous night.

121. Likewise, the IACHR reiterates its position that Alfonso Martín del Campo Dodd's due process guarantees were violated, especially the right to the presumption of innocence, by virtue of the value accorded by various magistrate to his alleged confession obtained by means of torture. Furthermore, the protection of the victim's basic rights in this case was not guaranteed.

122. The events established in this report constitute violations of Articles 5, 7, 8(1), 8(2), 8(3), and 25 of the American Convention, as well as Articles 6, 8, and 10 of the Inter-American Convention to Prevent and Punish Torture; all of which are in violation of the obligation to respect and guarantee the rights enshrined in Article 1(1) of the American Convention.

123. Based on the analysis and the conclusions in the present Report,

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

1. Take the necessary measures to throw out the confession obtained by means of torture in facilities of the PGJDF on 30 May 1992 and all legal action deriving therefrom; review the entire judicial proceeding against the victim in this case; and order the immediate release of Alfonso Martín del Campo Dodd while such measures are in process;
2. Carry out a complete, impartial, and effective investigation to determine the culpability of all those who violated the human rights of Alfonso Martín del Campo Dodd; and
3. Provide appropriate compensation to Alfonso Martín del Campo Dodd for the violations of his human rights established herein.

VIII. ACTIVITIES SUBSEQUENT TO REPORT No. 33/09 (ARTICLE 51)

124. The Commission approved Report on the Merits 33/09 (PUBLICATION) on 30 March 2009 and notified the Mexican State on 31 August 2009, pursuant to Article 51 of the Convention, granting it an additional one-month period to comply with the foregoing recommendations. On that same date, the Commission transmitted the Report to the petitioners. In the respective notes, the IACHR indicated to the State and the petitioners that they were not authorized to make the Report public until such time as the Commission adopted a decision in this regard.

125. The one-month period granted to the State expired without any report being issued by the State regarding compliance with the recommendations. Furthermore, on 20 October 2009, the petitioners voiced their concern that Mr. Alfonso Martín del Campo Dodd had been incarcerated for more than 17 years after having been "unjustly arrested and subsequently convicted for a confession obtained by means of torture." Likewise, they requested that, in view of the State's failure to respond, Report 33/09 be published and that the IACHR continue to follow up on compliance with the respective recommendations.

IX. CONCLUSIONS

126. The Inter-American Commission, based on the foregoing considerations of fact and law, reaffirms its conclusion that Alfonso Martín del Campo Dodd was arbitrarily arrested on 30 May 1992 and submitted to torture and other cruel, inhumane, and degrading treatment at the hands of Federal District Judicial Police officers in order to get him to confess to the murders of his sister, Juana Patricia Martín del Campo Dodd, and his brother-in-law, Gerardo Zamudio Aldaba, committed the previous night.

127. Likewise, the IACHR reiterates its position that Alfonso Martín del Campo Dodd's due process guarantees were violated, especially the right to the presumption of innocence, by virtue of the value accorded by various magistrates to his alleged confession obtained by means of torture. Furthermore, the protection of the victim's basic rights in this case was not guaranteed.

128. It also reiterates that the events established in this report constitute violations of Articles 5, 7, 8(1), 8(2), 8(3) and 25 of the American Convention, as well as Articles 6, 8, and 10 of the Inter-American Convention to Prevent and Punish Torture, all of which are in violation of the obligation to respect and guarantee the rights enshrined in Article 1(1) of the American Convention.

X. RECOMMENDATIONS

129. Based on the analysis and the conclusions in the present Report,

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

1. Take the necessary measures to throw out the confession obtained by means of torture in facilities of the PGJDF on 30 May 1992 and all legal action deriving therefrom; review the entire judicial proceeding against the victim in this case; and order the immediate release of Alfonso Martín del Campo Dodd while such measures are in process.
2. Carry out a complete, impartial, and effective investigation to determine the culpability of all those who violated the human rights of Alfonso Martín del Campo Dodd.
3. Provide appropriate compensation to Alfonso Martín del Campo Dodd for the violations of his human rights established herein.

XI. PUBLICATION

130. By virtue of the above-mentioned considerations and pursuant to Article 51(3) of the Inter-American Convention and Article 45 of its Regulations, the Commission has decided to publish the present Report and include it in its Annual Report to the OAS General Assembly. The Commission, in compliance with its mandate, shall continue to evaluate the measures adopted by the Mexican State with respect to its recommendations until they have been fully observed.

Done and signed in the city of Washington, D.C., on the 12th day of the month of November 2009. (Signed): Luz Patricia Mejía Guerrero, President; Víctor E. Abramovich, First Vice-

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president; Felipe González, Second Vice-president; Florentín Meléndez, Sir Clare K. Roberts, and Paolo G. Carozza, members of the Commission.